

**DEPARTMENT OF LABOR AND NATIONAL LABOR
RELATIONS BOARD NOMINATIONS**

HEARING

OF THE

**COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS**

UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING THE NOMINATIONS OF CHERYL MARIE STANTON, OF SOUTH CAROLINA, TO BE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, WHO WAS INTRODUCED BY SENATOR SCOTT, AND DAVID G. ZATEZALO, OF WEST VIRGINIA, TO BE ASSISTANT SECRETARY FOR MINE SAFETY AND HEALTH, BOTH OF THE DEPARTMENT OF LABOR, AND PETER B. ROBB, OF VERMONT, TO BE GENERAL COUNSEL OF THE NATIONAL LABOR RELATIONS BOARD

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OCTOBER 4, 2017
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DEPARTMENT OF LABOR AND NATIONAL LABOR RELATIONS BOARD NOMINATIONS

WEDNESDAY, OCTOBER 4, 2017

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

The Committee met, pursuant to notice, at 3:07 p.m., in room SD-430, Dirksen Senate Office Building, Hon. Lamar Alexander, Chairman of the Committee, presiding.

Present: Senators Alexander [presiding], Scott, Young, Murray, Casey, Jr., Bennet, Warren, Hassan, and Kaine.

OPENING STATEMENT OF SENATOR ALEXANDER

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

This afternoon, we're holding a confirmation hearing on Cheryl Stanton, nominated to be Wage and Hour Division Administrator at the Department of Labor; David Zatezalo, nominated to be Assistant Secretary of Labor for Mine Safety and Health, leading the Mine Safety and Health Administration at the Department of Labor; and Peter Robb, who has been nominated to be the General Counsel of the National Labor Relations Board.

Senator Murray and I will each have an opening statement, then we'll introduce our nominees. After their testimony, Senators will each have an opportunity to ask the nominees 5 minutes of questions.

We have two votes beginning in a few minutes, so at about 3:35, I'm going to recess the hearing for about 15 minutes so we can go over and vote at the end of the first vote and the beginning of the second one and then come back and resume the hearing. I think that's the only practical way to do it.

Today, we're considering three nominees who are tasked with leading important agencies to protect working Americans. As Wage and Hour Division Administrator at the Department of Labor, Ms. Stanton will be responsible for enforcing the Federal laws that guarantee a minimum wage, overtime pay, and protect your job during family or medical leave, as well as child labor laws. The division is examining the time card or overtime rule, a provision put forward by the previous administration that would have more than doubled the salary threshold under which employees qualify for overtime pay.

That rule went too high, too fast, and would have resulted in employers, non-profits, colleges, and others cutting workers' hours,

limiting their benefits and flexibility, as well as costing college students more in tuition. A Federal court struck down the regulation. Secretary Acosta has already started the process to consider a more reasonable rule, and I hope Ms. Stanton will work with him and Congress on a more moderate approach.

Ms. Stanton serves as the Executive Director for the South Carolina Department of Employment and Workforce. Senator Scott is here, and I'll ask him to introduce her when we introduce the witnesses in a few minutes. Ms. Stanton served as a law clerk to Hon. Samuel Alito, Jr. and received her J.D. from the Law School at the University of Chicago.

President Trump announced his intent to nominate Ms. Stanton on September 2nd. She was nominated on September 5th. On September 15th, we received her Government Ethics paperwork. Based on those documents, the Office of Government Ethics said she is in compliance with applicable laws and regulations governing conflicts of interest. We received her HELP paperwork on September 20.

As the Assistant Secretary of Labor for Mine Safety and Health, Mr. Zatezalo will be responsible for enforcing mine safety laws and improving the safety of the mining profession. He is uniquely qualified to lead the Mine Safety and Health Administration, having started as a union-member miner and working his way up to General Superintendent for Southern Ohio Coal Company and General Manager of AEP's Windsor Coal Company. He later rose to be Vice President of Operations of AEP's Appalachian Mining Operations and President and CEO of Rhino Resource Partners. He is a Mining Engineering graduate from West Virginia University.

The President announced his intent to nominate Mr. Zatezalo on September 2nd. He was nominated on September 5th. We received his paperwork on the 8th. On the 11th, we received Government Ethics paperwork, all in compliance with laws and regulations governing conflicts of interest.

Finally, as the National Labor Relations Board General Counsel, Mr. Robb will be responsible for helping workers who feel their right to organize collectively has been violated or assisting employers when some of their employees want to form a union. Mr. Robb should help restore the Board to the role of neutral umpire. While Board partisanship did not start under the previous administration, it became far worse. When the Board is too partisan, it creates instability in our Nation's workplaces and creates confusion for employers, employees, and unions.

For example, a 2015 NLRB decision dramatically expanded the so-called joint-employer liability, which means it's more likely a company will own and operate its stores, taking away the chance for a worker to own and run his or her own franchise. This was the biggest attack on the opportunity for small businessmen and women to make their way into the middle class that anyone has seen in a long time, threatening to destroy the American Dream for owners of the Nation's 780,000 franchise locations.

Mr. Robb currently works as the director of labor and employment at a law firm. He served as Chief Counsel to NLRB Member Robert Hunter. He was a regional field attorney for the NLRB in Baltimore. He earned his degrees from Georgetown and the University of Maryland.

He was nominated on September 25th. We received his paperwork on the 22nd. We received his Ethics paperwork on the 27th, and the OGE said he is in compliance with applicable laws and regulations governing conflicts of interest.

I look forward to your testimony and welcome you and your family members.

Senator Murray.

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. Thank you, Chairman Alexander.

Before I begin, I do want to say I'm disappointed we're holding this hearing, because there are a lot of conflicts occurring this afternoon, including the votes. All three of these nominees are going to be in critical roles that impact our workers' rights and safety and economic security, and working families really deserve to hear if these nominees will stand up and fight for them. So it's a challenging afternoon. I do want to thank our three nominees, Mr. Robb, Ms. Stanton, and Mr. Zatezalo, and all of your families for being here today as well.

Since day one, President Trump has rolled back worker protections and made it harder for families to become financially secure. It's clear that President Trump is committed to helping corporations and billionaires get ahead at the expense of working families and the middle class, from where I see it. So I look forward to hearing from all of you today on your plan to stand up for workers and working families in your roles at the Department of Labor and NLRB.

Mr. Robb, the National Labor Relations Act gives workers the right to join together and participate in collective bargaining. It guarantees workers a voice, allowing them to speak up together for fair wages and benefits and for safe working conditions. But over the past few decades, we've seen a decline in workers' bargaining power and in union membership, and with it we have seen a decline in the middle class. While the billionaires and corporations are getting richer, unfortunately, the reality today is that most workers no longer have a voice in advocating for their wages and benefits.

Without collective bargaining, companies unilaterally dictate these terms to workers who can take it or leave it. So I think now more than ever, it's important that the NLRB is committed to standing up for workers and their right to collectively bargain.

Mr. Robb, you've spent most of your career as a corporate lawyer, representing big business and fighting against workers. So I hope you're prepared today to talk about how, as General Counsel at the NLRB, you would use your position to take on cases where workers are being treated unfairly and to work to maintain the NLRB's role to proactively promote collective bargaining.

Ms. Stanton, the Wage and Hour Division at the Department of Labor plays a very critical role in making sure workers are being treated fairly and are paid what they earned, including enforcing the Federal minimum wage and overtime pay. As a businessman, President Trump has an abysmal record on those types of issues. His businesses have actually been involved in hundreds of legal actions for failing to pay workers what they're owed, including failing

to pay overtime and the minimum wage. Those issues impact many more workers than those just at Trump businesses.

Wage theft is actually an epidemic today that devastates workers across the country. It is estimated that employers steal approximately \$15 billion from their employees each year, and, sadly, immigrants and low-wage workers are the most likely to be taken advantage of.

Ms. Stanton, as I'm sure you're aware, the Trump administration is currently deciding whether to defend the overtime rule in court. This rule would simply update existing standards and make sure over 13 million workers are being paid what they deserve. Unfortunately, President Trump and his administration have refused to give millions of workers peace of mind by committing to defend and uphold that rule.

We need a Wage and Hour Division Administrator who will fight for workers, and I look forward to hearing from you, Ms. Stanton, on how you will stand up to this administration to combat wage theft and to defend the overtime rule.

Mr. Zatezalo—did I say that right?

Mr. ZATEZALO. Yes, ma'am.

Senator MURRAY. I'm sure you recall President Trump making promise after promise to miners during his campaign. He promised he would bring back good coal jobs to struggling communities. The position that you have been nominated for, the Assistant Secretary of Labor for Mine Safety and Health, is responsible for promoting health and safety conditions in mines across the country.

As a mining executive, I'm concerned your company had historic safety violations, and your company was sued by the Equal Employment Opportunity Commission for allowing discrimination, and I quote, "To continue unchecked in the workplace and for punishing the employee being targeted rather than those doing the harassing." That's really troubling to me and I fear is another example of a nominee of a fox to guard the hen house. So I want to hear from you about that, and I want to hear from you on how you're going to plan to put workers' health and safety, which is so critical in our mining operations, at the forefront.

I look forward to all three of your testimonies and responses on many of these issues, because these are important positions all of you hold that people in this country, who may not know who you are, or what that job is, are counting on you.

Thank you very much.

The CHAIRMAN. Thank you, Senator Murray.

For the Senators who just arrived, I think what I will—what I'm planning to do is to recess at about 3:35 so we can go vote, and maybe vote at the end of the first vote and the beginning of the second vote and come back in about 15 minutes and resume.

Each nominee will have up to 5 minutes to give his or her testimony. I'm pleased to welcome our three nominees today. I thank you for offering to serve our country.

Cheryl Stanton is the first nominee, and Senator Scott, would you like to say a few words about her.

STATEMENT OF SENATOR SCOTT

Senator SCOTT. Yes, sir. Thank you, Mr. Chairman.

It is my pleasure to introduce to the Committee Ms. Cheryl Stanton, who has been nominated to serve as the Administrator of the Wage and Hour Division of the Department of Labor. Since her appointment as Executive Director of the South Carolina Department of Employment and Workforce in 2013, Ms. Stanton has excelled as a dynamic leader and a true public servant, placing the interest of workers, employers, and communities at the center of every project.

Partnering with other state agencies and outside organizations, she has implemented numerous trailblazing initiatives aimed at boosting economic opportunities for the underserved. From the South Carolina Talent Pipeline Project and Data Base Talent Development System to the Second Chance Program, a transitional job training program for incarcerated South Carolinians, Ms. Stanton's record is one of both innovation and compassion.

Her career includes time as a labor and employment attorney in both the public and private sectors. In fact, this nomination marks her return to DC, it must be about public service if you're willing to leave South Carolina. No one does that voluntarily. She previously served as Associate White House Counsel during the Bush administration, acting as a chief liaison between the White House and the Department of Labor.

With an extensive background in labor issues, agency leadership, and workforce services, Cheryl is truly a strongly qualified person for this position.

Thank you, and I look forward to your testimony.

The CHAIRMAN. Thank you, Senator Scott.

David Zatezalo is joined by his wife Jo Lynn today, welcome. He has a wealth of experience in the mining industry, as I mentioned, working in it from 1974 until his retirement in 2014. During that time, he gained experience at every level within the industry and even spent 1 year as a general mine manager in Australia.

Peter Robb is in the audience, as is his wife, Kate, and his sons, Michael and Sean, and his daughter, Kelly. Welcome to all of you. Mr. Robb worked at the NLRB early in his career and has been practicing labor law in the private sector since 1985.

Welcome to all of our witnesses. If you would take about 5 minutes with your testimony, that will leave us time for questions.

Ms. Stanton.

STATEMENT OF CHERYL STANTON

Ms. STANTON. Thank you, Chairman Alexander, Ranking Member Murray, and other Members of the Committee, for having us here today. I also want to say thank you to Senator Scott for those kind words and for your great leadership and partnership on South Carolina Workforce Development issues. So thank you.

It is with great honor that I speak with you about my nomination to the Wage and Hour Division of the Department of Labor. Many have asked why I'm interested in the Wage and Hour Division and why now. Well, after spending the last four-plus years helping people find jobs, I want to help ensure that they are protected in those jobs. My current position has shown me firsthand

the dignity of work and what it means for families to be able to earn money to put food on the table. If confirmed, I look forward to leveraging the tools that the Wage and Hour Division has to allow families to provide for themselves.

The workforce was often a topic of conversation at my house when I was growing up. My father had worked his way through college but later became a labor and employment lawyer. We talked at the dinner table about the relationships between employers and their workers, that a good company is one that is fair to employees, and why new employment laws were passed. Despite dad's best efforts to the contrary—and they were strong—I also grew up to become a labor and employment lawyer.

In my time as a labor and employment attorney, I spent about two-thirds of the time on litigation. The remainder of my practice involved counseling employers on whether their processes or intended actions complied with the law and, if not, how they could become compliant without disrupting their business model.

In 2006, I was given the opportunity to work in the White House Counsel's Office. It was my first opportunity to serve and to impact labor and employment policy. I especially enjoyed looking at proposed legislation or regulations with a view to how the proposals would actually impact workers and employers in the workplace based on my experience counseling employers in the private sector.

I went back to private practice after my time in Washington, but after a few years, I did have the itch to serve again. In addition, my parents, Pat and Kathy Stanton, who are sitting behind me, had retired to the great State of South Carolina, and my sister and her family, who, unfortunately, could not be here because of the children's school, had moved to North Carolina.

I was given an opportunity to work with then Governor Nikki Haley as her Executive Director for the South Carolina Department of Employment and Workforce, and I took it with excitement. When I started in the agency, we really were focused on the unemployment insurance side of the house. South Carolina, like many other states, had gone into debt to pay the massive benefits that had been paid during the recession, and so we focused on technology upgrades, business process improvements, and employee training to improve processes, get the loan repaid, and make sure—in fact, we repaid the loan early, saving businesses millions of dollars in interest. We also were able to cut unemployment insurance taxes for three consecutive years, even as we continued to work to build the reserves in the trust fund for the next time we have a recession.

While much of the external focus when we started was on the unemployment insurance side of the agency, we at the agency were doing more and more to ensure people who wanted jobs in South Carolina were able to find them. We began looking at better processes for our SC Works Centers, which South Carolina has branded their American Job Centers, and we increased training for frontline staff who work with job seekers.

We strengthened our partnership with other agencies and entities that provide workforce development and training services to individuals and businesses, and as the economy got better, we started prioritizing our work on what we call priority populations, those

individuals with the greatest barriers to employment, such as veterans, the disabled, out of school youth, homeless, and ex-offenders. In fact, the Second Chance Initiative that the Senator identified is a partnership with the South Carolina Department of Corrections.

The two agencies literally created an American Job Center behind the wire at one of our state prisons. One of our Wagner-Peyser staff worked behind the wire full time with inmates who were due to be released in the next 60 to 90 days. She helps them relearn computer skills, work on their resumes, practice their interview skills, and search for jobs. Meanwhile, outside the wire, DEW's business services reps ask every employer they meet whether they are willing to be a Second Chance Employer and that is to hire a veteran—excuse me, an ex-offender. To date, South Carolina has seen more than 70 percent of those released find work.

If given the opportunity, I welcome the chance to work with you, your staff, the very knowledgeable and professional career staff at the Wage and Hour Division, and the public at large to administer the important laws entrusted to the Division.

Thank you again, Chairman Alexander and Ranking Member Murray. I look forward to answering the questions you and the Committee have.

[The prepared statement of Ms. Stanton follows:]

PREPARED STATEMENT OF CHERYL STANTON

Chairman Alexander, Ranking Member Murray and other Members of the Committee, thank you for having us here today.

It is with great honor that I speak with you about my nomination to the Wage and Hour Administration at the Department of Labor.

Many have asked me why I am interested in the Wage and Hour Division, and why now. Well, after spending the last four plus years helping people find jobs, I want to help ensure they are protected in those jobs. My current position has shown me first hand the dignity of work, and what it means for families to be able to earn money to put food on the table. If confirmed, I look forward to leveraging the tools that the Wage and Hour Division has to allow families to provide for themselves.

The workplace was often a topic of conversation in my house when I was growing up. My dad worked his way through college, and later went on to become a labor and employment lawyer. We talked at the dinner table about the relationships between employers and their workers, that a good company is one that is fair to employees, and why new employment laws were passed. Despite Dad's best efforts to the contrary, I also grew up to become a labor and employment lawyer.

In my time as a labor and employment attorney, I spent about two-thirds of my time on litigation. The remainder of my practice involved counseling employers on whether their processes or intended actions complied with the law, and if not, how they could become compliant without disrupting their business model.

In 2006, I was given the opportunity to work in the White House Counsel's Office. It was my first opportunity to serve, and to impact labor and employment policy. I especially enjoyed looking at proposed legislation or regulations with a view to how the proposals would actually impact workers and employers in the workplace based on my experience with counseling employers in the private sector.

I went back to private practice after my time in Washington, but after a few years I had the itch to serve again. In addition, my parents had retired to South Carolina and my sister had moved to North Carolina with her family. I was given an opportunity to work for Governor Nikki Haley as her Executive Director for the South Carolina Department of Employment and Workforce, and I took it with excitement.

When I started in the agency we were focused on the unemployment insurance side of the house—South Carolina like many states had gone into debt to pay the massive unemployment insurance benefits needed during the recession. We focused on technology upgrades, business process improvements and employee training to get the loan repaid—and repaid the loan early, saving businesses millions of dollars in interest. We also cut unemployment insurance taxes for three consecutive years, even as we worked to rebuild the reserves in the trust fund.

While much of the external focus was on the unemployment insurance side of the agency, we at the agency began doing more and more to ensure people who wanted jobs in South Carolina were able to find them. We again looked at better processes for our SC Works Centers (which is what SC has branded our American Job Centers), and we increased training for front line staff who work with job seekers. We strengthened our partnerships with other agencies and entities that provide workforce development and training services to individuals and businesses. As the economy got better we started prioritizing our work on what we call “priority populations” those individuals with the greatest barriers to employment such as veterans, the disabled, out of school youth, homeless and ex-offenders.

One program we started—the Second Chance Initiative—is a partnership with the South Carolina Department of Corrections. The two agencies literally created an American Jobs Center behind the wire at one of South Carolina’s state prisons. One of the Department of Employment and Workforce’s (DEW) Wagner-Peyser staff members works full time in the facility. Inmates who are due to be released in the next 60–90 days relearn computer skills, work on their resumes, practice their interview skills and search for jobs. Meanwhile, outside the wire, DEW’s business services representatives ask every employer they meet whether the business is willing to be a “Second Chance Employer”—i.e. whether they will hire ex-offenders. DEW then attempts to match ex-offenders as they are being released to those on the Second Chance list. To date, SC has seen more than 70 percent of those released find work.

If given the opportunity, I welcome the chance to work with you, your staff, the very knowledgeable and professional career staff at the Wage and Hour Division, and the public at large to administer the important laws entrusted to the Division. I believe that together we can ensure the laws protecting American workers are properly enforced.

Thank you again, Chairman Alexander and Ranking Member Murray. I look forward to answering any questions you and the Committee Members have.

The CHAIRMAN. Thank you, Ms. Stanton.
Mr. Zatezalo.

STATEMENT OF DAVID G. ZATEZALO

Mr. ZATEZALO. Thank you, Mr. Chairman.

Chairman Alexander, Ranking Member Murray, and Members of the Committee, thank you for the opportunity to appear before you this afternoon. I’d like to thank you and your staffs for the manifold courtesies shown to me as I’ve prepared for this hearing.

Before I begin, I’d like to recognize my wonderful wife, Jo Lynn, who is with me here today, and thank her for 40 years of help, support, patience, supervision, and three outstanding children we’ve been blessed with. I would also like to express my thanks to my parents, who are no longer with us, my extended family, and the many great people I have been privileged to work with during my 41 years in the mining industry. Their friendship, trust, and allowance of my leadership has been more important to me than they will likely ever realize.

It is a great honor for me to be nominated by President Trump and supported by Secretary Acosta, and, if confirmed, I will support and advance their agenda for the health and safety of America’s miners. I began my mining career as an underground general laborer at the Blacksville No. 2 mine, worked my way through West Virginia University to become a mining engineer, and later was able to become a registered professional engineer.

I worked as a certified foreman in nearly all areas of mining, and later, after completing a Master’s in Business, I moved into senior management roles before retiring in 2014 as chairman of Rhino Re-

sources. During my working career, I have managed and operated 39 different mines in both the United States and Australia.

The mining industry in the United States today is safer and healthier than at any time in our Nation's history. However, further progress needs to be made. I look forward to working hard to make that a reality. Though I have not been involved in government service previously, I'm confident that the many good people at the Mine Safety and Health Administration, Congress, and other state and Federal groups will bear me the courtesy of working to further enhance and progress more consistent enforcement across MSHA districts, adopt technologies which promote safety, and safer mining and health behaviors.

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

[The prepared statement of Mr. Zatezalo follows:]

PREPARED STATEMENT OF DAVID G. ZATEZALO

Chairman Alexander, Ranking Member Murray and Members of the Committee, thank you for the opportunity to appear before you this afternoon. I want to thank you and your staff for the manifold courtesies shown to me as I have prepared for this hearing.

Before I begin I would like to recognize my wonderful wife Jo Lynn who is with me today for her help, support, patience, supervision and the three outstanding children we have been blessed with.

I would also like to express thanks to my parents, who are no longer with us, and extended family, and the many great people I have been privileged to work with during my forty-one years in the mining industry. Their friendship, trust, and allowance of my leadership has been more important to me than they will likely ever realize.

It is a great honor for me to be nominated by President Trump and supported by Secretary Acosta, and if confirmed, I will support and advance their agenda for the health and safety of America's miners.

I began my mining career as an underground general laborer at the Blacksville number 2 mine, worked my way through school to become a mining engineer and later was able to become a registered Professional Engineer. I worked as a certified foreman in nearly all areas of mining and later, after completing an MBA, moved into senior management roles before retiring in 2014 as Chairman of Rhino Resources. During my working career, I have managed and operated thirty-nine mines, in both the United States and Australia.

The mining industry in the United States is safer and healthier than at any time in our history; however, further progress needs to be made. I look forward to working hard to make this a reality.

Though I have not been involved in government service previously, I am confident that the many good people at the Mine Safety and Health Administration, Congress, and other state and Federal groups will bear me the courtesy of working to further enhance and progress more consistent enforcement across MSHA districts, adopt technologies which promote safety, and safer mining and health behaviors.

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

The CHAIRMAN. Thank you, Mr. Zatezalo.
Mr. Robb, welcome.

STATEMENT OF PETER ROBB

Mr. ROBB. Chairman Alexander, Ranking Member Murray, and Members of the Committee, I come before you today as the nominee for General Counsel of the National Labor Relations Board. As always, my wife, Kate, is here with me, as are my sons, Mike and Sean. My son James and lovely daughter, Kelley, unfortunately could not be here due to their schedules.

I will try to summarize my life and career, which is set forth in more detail in the statement previously submitted. Upon returning from the Pacific theater in World War II, my father packed up his small family and moved from New York City to Meriden, Connecticut. Meriden was very much a working person's town in tune with America's heartbeat. So my friends' parents were machinists, tool and die makers, farmers, laborers, as well as some professionals.

My pop was a physician. I often rode with him as he made house calls and marveled at how people paid what they could in jars of pennies and baked goods, including fudge, which I especially liked. Later, I would see him sleep at the hospital next to the critically ill. My gracious mom did what moms do, taught me to care and love others. Thus, treating all people with respect and compassion was ingrained in me from the outset.

I graduated from Georgetown University here in Washington, DC with a degree in economics. I then drove a truck for 3 years. Two weeks after our first child arrived a little late, I entered the University of Maryland School of Law. There, my economics background, desire to work directly with people, and love of litigation found a home in labor law.

Because the NLRB was not hiring, I worked for a year with the Maryland Office on Aging, where I represented the elderly in a variety of actions and advised the Director on Aging. Then I was hired as an NLRB field attorney in Region 5. I did all the functions that field attorneys and agents do. I investigated scores of unfair labor practice charges, conducted representation elections, served as a Hearing Officer, and prosecuted unfair labor practice cases. The vast majority involved charges brought by unions and employees against employers.

My public service continued at the fledgling Federal Labor Relations Authority in its Washington regional office. There, I trained trial attorneys and helped adapt the NLRB forms and procedures to the new agency, which helped me gain a detailed understanding of the inner workings of the NLRB's regions and a keen appreciation of the critical role that staff play within the organization. I also litigated about 40 unfair labor practice cases, almost all of which were against agency employers.

Well versed in NLRB procedures and field operations, I moved back to the NLRB as Deputy and then Chief Counsel to Bob Hunter. I learned the nuances of the Act as well as the inner workings of the Board's headquarters operation and budget. At the end of Member Hunter's term, we went to Proskauer Rose, a large private law firm that was noted for its expertise in labor law, where I honed my negotiation and settlement skills.

After a decade at Proskauer, I left to fulfill a dream of returning to New England, this time to the emerald mountains of Vermont and the law firm of Downs Rachlin Martin. I was fortunate enough to continue with national clients, providing advice and representation with respect to all aspects of labor law, and served as deputy managing partner just as the firm was facing the effects of the great recession. I received an in-depth education in law firm administration, economics, and best practices.

Over the years, I learned firsthand about the pressures that drive management: maintaining profitability, acquiring new technology, satisfying stockholders, recruiting and retaining employees, as well as dealing with the myriad and oft-changing laws and regulations that apply to the workplace. My union counterparts educated me on the concerns of labor organizations and their members: improving wages and benefits, job retention, addressing work conditions, as well as internal union issues.

After all these years of private practice and living in beautiful Vermont, I've been asked why I would want to be General Counsel for the National Labor Relations Board, and that is a fair question, which I've asked myself, especially lately. I've always believed in the core values expressed in the Act, which can be paraphrased as protecting the rights of employees to engage in union or other protected concerted activity with respect to wages, hours, and working conditions, as well as the rights of employees to refrain from such activity, and once employees have freely chosen the labor organization to represent them, the Act promotes collective bargaining. I believe these principles are part of the foundation of our successful economic system.

I've spent most of my life studying labor law and the National Labor Relations Board. I've learned the lessons, and I've acquired the experience that will enable me to maintain and improve the agency. In that regard, I will strive for an effective and efficient administration in all aspects.

Therefore, Honorable Senators, I respectfully ask your consent to be the General Counsel of the National Labor Relations Board.

Thank you.

[The prepared statement of Mr. Robb follows:]

PREPARED STATEMENT OF PETER ROBB

Chairman Alexander, Ranking Member Murray and Members of the U.S. Senate Committee on Health, Education, Labor, and Pensions, I come before you today, as a nominee for General Counsel of the National Labor Relations Board. As always, my wife Kate is here with me. I am very pleased that my sons Mike, James and Sean and my daughter Kelley were able to take time off from their busy schedules and families to be here with me today.

I am very grateful to the President for nominating me, and each of you for taking the time to consider my nomination. I am honored and humbled.

First, I would like to tell you a little about me, which will help you understand how I came to be here. In so doing, I will honor some of those people who have meant so much to me in fashioning my career and my life.

Upon returning from the Pacific Theatre in World War II, my father packed up his small family and moved from New York City to Meriden, Connecticut. Meriden was then called the Silver City because it produced much of the country's silverware. Meriden also was very much a working person's town—in tune with America's heartbeat. So my friends' parents were machinists, tool and die makers, farmers, laborers as well as some professionals. My Pop was a physician—a urologist—or, as he described himself—a plumber. I often rode with him as he made house calls and marveled at how people paid what they could in jars of pennies and baked goods, including fudge, which I especially liked. Later, I would see him sleep at the Hospital, next to the critically ill. My gracious Mom did what moms do—taught me to care, and love others. Thus, treating all people with respect and compassion was ingrained in me from the outset.

I attended Fairfield College Preparatory School, where the Jesuits gave me firsthand lessons in discipline—self-discipline and otherwise. Out of necessity, I developed a keen sense of the importance of the rules of law. I was heavily involved in playing sports. Prep also instilled in all of us a keen sense of teamwork. Indeed, it was evident at our 50th reunion that we remained a Band of Brothers. The deep

respect for the rule of law, including enforcement of those rules, and working together positively have never left me.

I went on to Georgetown University, where I took as many philosophy and theology courses as I could. In between, I studied economics and received honors for my presentation in my oral comprehensive examination, which I found just as daunting as appearing before you here today. The marriage of philosophy and economics taught me how conflicts, and sometimes unpredictable human factors, influence the choices people make. Therefore, when giving advice and making decisions, I have always tried to understand how others feel and take those feelings into account.

Along the way, I had many opportunities to apply these principles. I have worked as a hospital porter and orderly, construction laborer, highway sign maker, welder, forklift operator, medic at Army hospitals, and a truck driver. Throughout, I tried to apply my Depression-era parents—philosophy of working hard and harder. So, after college, I drove a truck, delivering barricades and lights for 60 hours a week for 3 years—outdoors, staying in shape by repeatedly lifting metal barricades, getting paid by the hour and saving some money.

The dreams of law school intervened. Two weeks after our first child arrived—a little late—I entered the University of Maryland School of Law. Our classes were very small, often less than 15; and the Socratic method was vigorously applied. It was in those small classes that I learned how much I did not know; how to think and how to write. Those developing skills were applied with a keen sense of representing clients ethically and with total commitment. In my final year, I experienced two epiphanies. The first was in the Juvenile Law Clinic—a full-semester clinical law program where I represented a 13-year old accused of murder. The issue was whether the child should be kept in the juvenile system for rehabilitation or tried as an adult where he would face the death penalty. Our team literally worked day and night for months as my law school partner and I prepared to present the case. We succeeded. Our client would get a chance at rehabilitation. That case, which I have been told is still cited in child waiver litigation, impressed on me the way the law and lawyers can help people. It also raised in me a keen desire to be a litigator. As much as I grew in the law, I did not find a particular focus until I took labor law in my final semester. Suddenly, my economic background, desire to work directly with people and love of litigation found a home. I also discovered how best to proceed. I would start working for the National Labor Relations Board—public service and excellent training.

Unfortunately, the Federal Government was in a hiring freeze that year, so I took a job as an attorney for the Maryland Office on Aging where I represented the elderly and advised the Director on Aging. I testified before the Maryland legislature on a variety of issues including a new law creating guardianship for the elderly which I had drafted. I even had my own television show where I educated the elderly on social security, Medicare and other issues early Sunday mornings between the cartoons. I also called the NLRB Regional Attorney often.

Finally giving in to my relentless calls and with the hiring freeze lifted, the Regional Attorney hired me as a Field Attorney for the NLRB in Region 5 about a year later. I quickly tried my three mandatory training cases, attended trial training and was approved to conduct trials on my own. All of my trials were against employers and based on charges filed by unions or employees. I did virtually all of the functions that field attorneys and agents do. I conducted representation elections, served as a Hearing Officer, and even took a case into Federal district court to enforce a subpoena. I also investigated scores of unfair labor practice charges, with the vast majority being against employers. I became proficient at quickly and thoroughly investigating charges and settling most, which earned me a Sustained Superior Performance Award early in my career.

My public service continued at the fledgling Federal Labor Relations Authority in its Washington Regional Office. There, I trained trial attorneys and helped adapt the NLRB forms and procedures to the new agency, which helped me gain a detailed understanding of the inner workings of the NLRB's regions and a keen appreciation for the critical role that staff play within the organization. During my FLRA tenure, I also litigated about 40 unfair labor practice cases, almost all of which were against agency employers.

Now well versed in NLRB procedures as well as NLRB and FLRA field operations, I moved back to the NLRB as Chief Counsel to Robert P. Hunter, who had previously served as Counsel to Senator Hatch as well as Republican Counsel to the Senate Labor Committee. I learned the nuances of the NLRA as well as the inner workings of the NLRB's headquarters operation. At the end of Member Hunter's term, we went to Proskauer Rose—a large private law firm that was noted for its expertise in labor law. I was lucky enough to have two of the most respected labor

lawyers, Saul Kramer and Ed Silver (often called the Prince of New York's labor law community), take me under their wings. From them, I honed my negotiation and settlement skills. I was also involved in complex NLRA litigation and advice issues for many of the most prominent employers in the world.

After a decade at Proskauer, I left to fulfill a dream of returning to New England—this time, to the emerald mountains of Vermont and the law firm of Downs Rachlin Martin. I was fortunate enough to continue with national clients in providing advice and representation with respect to all aspects of labor law. I also helped develop their Labor and Employment practice group, which I chaired for many years. I was selected as Deputy Managing Partner just as the firm was facing the effects of the Great Recession. I received an in-depth education in law firm administration, economics and best practices—indeed, we studied the practices of many law firms, large and small, including ways in which to motivate and retain attorneys and staff. This refined my administrative experience and put me in a leadership position for a large group of attorneys and staff. Nonetheless, I continued to maintain virtually a full load of representation of my clients, mostly in the labor law area dealing with collective bargaining.

Over the years I gained extensive knowledge in negotiation and the resolution of labor disputes. In the private practice of labor law, attorneys rarely represent management and unions a practice with which I believe this Committee is familiar. I represented management primarily in labor cases. I learned first-hand about the pressures that drive management? maintaining profitability, acquiring new technology, satisfying stockholders, and recruiting and retaining employees as well as dealing with the myriad and oft-changing laws and regulations that apply to the workplace. My union counterparts presented the concerns of labor organizations and their members improving wages and benefits, and addressing working conditions as well as dealing with internal union issues. I have learned that consideration and appreciation of all these factors is essential to negotiating and administering collective-bargaining agreements successfully. Recently, I was amused to see comments about the lack of published decisions where I was representing a party. This really is not an accident. My focus has always been to resolve labor disputes and reach collective-bargaining agreements. I have been successful in both.

Now, after all these years in private practice and living in beautiful Vermont, I have been asked why I would want to be General Counsel of the National Labor Relations Board. That is a fair question, which I have asked myself—especially lately. I've always believed in the core values expressed in the National Labor Relations Act, which can be paraphrased as protecting the rights of employees to engage in union or other protected, concerted activity with respect to wages, hours and working conditions, as well as the rights of employees to refrain from such activities. Then, once employees have freely chosen a labor organization to represent them, the Act promotes collective bargaining. I believe these principles are part of the foundation of our successful economic system. I've spent most of my lifetime studying labor law and the National Labor Relations Board. I have learned the lessons. I have acquired the experience that will enable me to maintain and improve the agency. In that regard, I will strive for an effective and efficient administration in all aspects.

Therefore, Honorable Senators, I respectfully ask your consent to be the General Counsel of the National Labor Relations Board. Thank you.

The CHAIRMAN. Thank you, Mr. Robb.

I'll begin—after conferring with Senator Murray, I'm going to begin questioning with Senator Young. Then I'll recess for about 15 minutes, and we'll go vote and then come back and resume with Senator Murray's questioning, if she's back.

Senator Young.

STATEMENT OF SENATOR YOUNG

Senator YOUNG. Well, thank you for the courtesy, Mr. Chairman.

I want to thank all our nominees for your interest in serving our country.

Mr. Zatezalo, I'd like to ask you a series of questions, because the mining industry in the State of Indiana is really important to our economy. We have a diverse presence of that industry in our state. The Small Mines Office, which you're likely familiar with, was cre-

ated back in 2003, and the purpose of this office was to provide technical assistance and education and counsel to smaller operators, and by almost all accounts, this office worked. It really did a good job.

According to MSHA's numbers, small mines that utilize the supports of this Small Mines Office saw fatalities reduced by 86 percent, 86 percent, from the previous 10-year rate after they consulted with this office after the office was created. In contrast, those small mine operators that did not utilize the services of this office only saw a fatality rate reduction of 32 percent. So it seems like a fair benchmark of success from this Senator's viewpoint.

In 2014, the Small Mines Office was absorbed into a different division, rendering feedback less available to our small mine operators.

In your opinion sir, do you believe the Small Mines Office was, in fact, effective, as it seems to be by the numbers, in promoting and increasing utilization for safety measures in small mines?

Mr. ZATEZALO. Yes sir, it certainly sounds as if it's been effective. I don't have any personal experience with it. It was my understanding that it had been rolled into the education section of MSHA. Why it seems to have disappeared within the education sector is something I'd be happy to look into, if confirmed. It's a good point that our first priority is preventing people from getting hurt and improving the compliance regime across the board. Small operators are typically more vulnerable because they don't usually have the staff to stay on top of these things as well.

Senator YOUNG. Right. So you'll make it a priority to make sure that technical assistance, educational assistance is available to these small operators in a way that they're likely to utilize?

Mr. ZATEZALO. I certainly will.

Senator YOUNG. All right. Thank you. Do you foresee any barriers as you step into this position in providing customized assistance, whether it's of the technical, the educational, or any other nature, to our smaller operators?

Mr. ZATEZALO. The only barriers that I can imagine sir, would be the budget constraints within MSHA. I'm not familiar enough to say that there is ample money for all that, but if there is, we will certainly do that, because compliance, compliance assistance, and reduction of accidents is what MSHA is all about.

Senator YOUNG. If there are those resource constraints after further investigation, I hope you'll let me know and the Committee know, sir.

Mr. ZATEZALO. Yes, sir.

Senator YOUNG. I'd like to turn to technological advancements within the mining industry and to your testimony. You indicated that adopting the latest technologies can help reduce the rate of fatalities but also promote safety more generally. You mentioned, I think, highly specialized sensors, night vision cameras.

Are there some examples of perhaps other necessary and immediate improvements in technology that need to be made by our operators, and if so, are there barriers in approving some of these technologies that hinder their adoption?

Mr. ZATEZALO. One of the biggest areas that I want to focus on is early technology adoption, because the mining industry has not

been at the forefront of technology advancement, especially for safety. The first case that comes to mind is proximity detection. Proximity detection was mandated on continuous mining equipment some time ago. It seems to be fairly effective. However, there are further refinements that need to be made to that.

Proximity detection relies upon a proximity sensor that's to be worn by the operator. There are two groups out there today that are, for example, making proximity detection that is embedded within the cap lamp of a continuous miner. We've had issues, accidents, and, sadly, a fatality since then because of people who removed the proximity detection badge because it was a nuisance to them.

We can put those in cap lights, which miners will not remove. The hold-up on that seems to be that that has to be 2G approved. In the electrical approval group of MSHA, all electrical devices have to be approved as explosion proof in a methane and air mixture. That technological support is currently backlogged at MSHA, and I believe it needs some additional resources put to it so that we can get some of the new innovations, especially the innovations that affect safety of miners, approved and in use underground.

Senator YOUNG. Well, to the extent barriers still exist after your confirmation vote, sir, and to the extent that Congress can be of assistance in pushing through some of these barriers, count me in. I'll look forward to working together.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Young.

We'll recess for about 15 minutes while we vote, and then we'll resume.

[Whereupon, at 3:39 p.m., the Committee recessed, to reconvene at 4:05 p.m., the same day.]

The CHAIRMAN. The hearing will come to order, and we'll go to Senator Kaine.

STATEMENT OF SENATOR KAINÉ

Senator KAINÉ. Thank you, Mr. Chair, and I appreciate the witnesses.

Congratulations on your nominations by the White House. I'm going to direct my questions to Mr.—I want to make sure—is it Zatezalo?

Mr. ZATEZALO. Yes.

Senator KAINÉ. Thank you, Mr. Zatezalo. There has been a controversial matter dealing with the mining accident at the Upper Big Branch Mine that was significantly investigated, including by MSHA.

Mr. ZATEZALO. Yes, sir.

Senator KAINÉ. The CEO of Massey Energy, Don Blankenship, who served a 1-year sentence for that—for conspiracy to violate mine safety laws, has asked President Trump and MSHA to reopen the investigation into that incident in which 29 miners were killed. Would you honor that request should you be confirmed?

Mr. ZATEZALO. Senator, absent any new evidence, I don't see any reason why it should be reopened.

Senator KAINE. My understanding is that there have been six investigation reports. All of them found the same thing, that Upper Big Branch was a preventable coal dust explosion ignited by methane fire caused by failure to abide by certain regulations, especially a ventilation plan. So your testimony here today is that unless there's some new factor that's never been looked at or some new information that hasn't been seen, there would be no reason to re-open that investigation.

Mr. ZATEZALO. That's correct, sir.

Senator KAINE. Thank you for that. There's a difference between—you were a CEO of a regulated entity and obviously head of the entity doing the regulating. There's no bar to that. We often put people in those positions who have a private sector background. When you were the CEO of Rhino Resources, the Eagle No. 1 mine was put on a proposed pattern of violation, PPOV, notice in November 2010 and then again in August 2011. A PPOV is issued—am I correct about that? Do I have the dates right?

Mr. ZATEZALO. Yes, sir, you do.

Senator KAINE. My understanding is a PPOV is issued to a mine if safety violations are extensive and the enforcement actions are not immediately addressing the problems. Do you think those sanctions of your company in those instances were fair and appropriate?

Mr. ZATEZALO. I think that the management of that particular group and that particular site was not doing what they should have been doing. I was not proud of the fact that we got designated as a PPOV mine. I did not try to lawyer up and stop anything from happening. I felt that if you haven't done your job, then we should be big kids and deal with it as such.

Incidentally, I replaced that management, because I wasn't too happy with their performance and I hadn't been for some time. So I replaced that management.

Senator KAINE. Was that one of the reasons in the matter that we're talking about?

Mr. ZATEZALO. That was one of the reasons, yes sir.

Senator KAINE. Do you think you would have any challenge working with the senior career staff at MSHA given that some of them were involved in taking enforcement action against your company?

Mr. ZATEZALO. No, sir. I don't. They did what they were supposed to do.

Senator KAINE. In southwest Virginia, there's been an epidemic of the progressive massive fibrosis, PMF, and that's the most severe form of black lung disease, and it's a disabler of hundreds of coal miners. Miners are contracting this disabling illness in very significant clusters, in their 30's, at a very young age. The largest cluster of this disease ever documented was found there in southwest Virginia last year and more are being uncovered every week at a clinic in Saint Charles, Virginia.

In your staff interview, it's been reported to me that some of the severe lung damage is caused by mining rock mixed with thinner coal seams causing miners to then inhale the crystalline silica, which is far more toxic than coal dust.

Mr. ZATEZALO. Yes, sir.

Senator Kaine. You said during a staff interview, it's been reported to me, that the technology to monitor silica dust in real time does not exist. Talk to me a little bit about that. Is there the possibility, the technological possibility, of getting to a point where we can more effectively monitor the real time—

Mr. Zatezalo. I would hope so, sir. I mean, we have been successful with the assistance of NIOSH of being able to monitor coal dust in real time. NIOSH had to develop that technology, and, to date, there is only one manufacturer who has a device like that that's available for purchase. My understanding is that with the assistance of that device, we've been able to reduce the amount of black lung exposure that we have had.

MSHA has had laws on the books for many years that regulate quartz, which is a mineral that is predominately silica, that sets a statutory limit on that of 5 percent. However, in order to do that, you have to collect the sample; it has to weigh a certain amount; you have to send it to a lab; you have to get it back; and by the time you get it back, there could have been a couple of weeks elapsed.

I am not aware of any technology that allows you to monitor silica in real time. It is certainly something that I would be interested in. Incidentally, I understand that the National Academy of Sciences, as well as NIOSH and MSHA—it's being coordinated by the National Academy of Sciences—is putting together a report that should be available in January to delineate and, hopefully, offer suggestions on how to address this.

Silicosis is not an acceptable thing for our people to be exposed to. It has been prevalent within Virginia and in eastern Kentucky, I believe, because of the amount of out of seam dilution.

Senator Kaine. Right.

Mr. Zatezalo. Coal dust is something that we think at this point in time we can handle fairly well. Silica is much more difficult to handle, and we're going to have to go to some engineering type controls and really increase ventilation and really increase some water to be able to control that, sir. That's my thoughts.

Senator Kaine. Thank you for answering those questions.

Thank you, Mr. Chair.

The Chairman. Thank you, Senator Kaine.

Senator Casey.

STATEMENT OF SENATOR CASEY, JR.

Senator Casey. Thanks very much, Mr. Chairman.

I wanted to start with a similar line of questioning that Senator Kaine pursued with regard to—first and foremost, I wanted to ask you about mine safety. There have been 13 coal mine fatalities, including Andrew Oxenrider, who was killed in an accident in Schuylkill County, Pennsylvania. That was in July of this year. This is the highest total since 2014 or 2013 killed. In the previous administration, improved enforcement efforts by MSHA led to a decrease in violations and fewer deaths. President Trump didn't nominate you to head MSHA until September 2nd.

Do you believe that there's a lack of leadership at MSHA that might have contributed to lax enforcement?

Mr. ZATEZALO. No, sir. I have not—I do not believe that the fatalities we've had have been due to lack of enforcement. But I don't have all the details on that. All I have is the little one-page summary, so it's probably inappropriate for me to comment on that.

Senator CASEY. Do you have a sense, for any of those fatalities, of what caused them?

Mr. ZATEZALO. I do know that one of them was caused by proximity detection being taken off of the worker.

Senator CASEY. I'm sorry. By—

Mr. ZATEZALO. Proximity detection being removed from the worker. The remainder of them—and it was my understanding that six of those were in metal, nonmetal. It's my understanding that the remainder of them were all separate isolated incidents, of course.

Senator CASEY. I guess that one of the main issues here in terms of preventing deaths or preventing injuries is how many inspectors you have. Do you have any sense of the adequacy of the number of inspectors?

Mr. ZATEZALO. It seems to me that the number of inspectors is pretty good today. I mean, from the data that I see, MSHA has still been making—they have made all of their required inspections, which is four per year. We certainly don't want to let that fall down, I mean, just as I wouldn't want to drive on the highways without police and constables to take control of speeders and drunk drivers. Inspections in mines in the United States are a necessity, and they have to continue, and I don't think they should continue at a diminished rate, either.

Senator CASEY. Well, I hope, Mr. Zatezalo, if you were to be confirmed, that you would—and you did not see the number of inspectors at a level you would expect, that you would advocate for more funding, more support, and make that clear to Congress.

Mr. ZATEZALO. I absolutely would, sir.

Senator CASEY. Let me go back to the black lung issues, the progressive massive fibrosis question. You may have answered a good part of this already. But the last administration, by way of rule-making and enforcement, allowed protection for both health and safety of coal miners, including those in my home state. The respirable dust rule reduces the exposure of mines to coal mine dust that causes lung diseases, including black lung.

Tell me about how you would approach enforcement of those rules or those laws and regulations.

Mr. ZATEZALO. Sir, that enforcement is ongoing today and would have to continue. I would not propose any reduction in the enforcement in that. That's very prescribed in the laws as enacted by Congress, and I would not see that diminished. The only thing that remains—that has to be investigated further is probably the silicosis and the silicon issues that, hopefully, we'll have some better light on in the January report by the National Academy of Sciences that's going to, hopefully, lay out a plan for that.

Silicosis is a much different dust to control than is black lung, which is really lighter carbonaceous material that can be—that we have the technologies to handle. We may have to develop some technologies to handle silicosis better and take some interim steps in the meantime. The increase that's been discussed is certainly unacceptable, and it's something that, until it's explained more

fully, I can't elaborate on what we would have to do. But we would have to start by taking some engineering type control, sir.

Senator CASEY. I'm out of time, but I'll just read a headline from the December report—Advanced Black Lung Cases Surge in Appalachia. That, among other pieces of evidence, I think, indicates that we've got some work to do. I hope you would advocate for resources and resist or push back on efforts to undermine those rules and regulations.

Mr. ZATEZALO. Absolutely.

Senator CASEY. Thank you.

The CHAIRMAN. Thank you, Senator Casey.

Senator Murray.

Senator MURRAY. Thank you very much.

Ms. Stanton, let me start with you. Last year, the Wage and Hour Division finished a rule to make overtime pay a reality for about 13 million workers. In putting together that rule, the agency went through a very strenuous 2-year process. They incorporated input from workers and businesses and unions and stakeholders. A Texas court's decision has blocked that rule, and the Trump administration has the opportunity to stand up for workers. It can appeal the decision and defend that rule in court.

Will you commit to standing with the 13 million workers affected who would benefit from the updated overtime rule and appeal this court decision?

Ms. STANTON. Thank you, Senator, for that question. The rule that went into effect, as you mentioned, last year has been stopped by a Texas court judge right now. I think before any decision is being made on whether to appeal would always involve, whether I was confirmed as the Administrator or someone else—would always need to involve talking to the lawyers.

My first question, if I were to be confirmed—my first question when I went to ask about this would be to say, "What do we think our legal chances are here? How do we see this case progressing? How long do we see this case progressing?" Because one of the concerns I would have is every day we're fighting in court is one more day that we don't have a regulation on the books.

The questions I would want to ask of the lawyers are whether it would be more prudent to fight this, which is definitely one action that we could do, or whether we would want to look at promulgating a different rule that would be more likely to withstand a litigation, that would then go into effect faster than the litigation. If I were confirmed, I would have a lot of questions about which avenue would get us protections for workers faster.

Senator MURRAY. Do you think those 13 million workers should be paid more?

Ms. STANTON. I don't think there's any dispute that it has been a very long time since that salary test was adjusted and that it's time to re-look at it and find a better benchmark for today.

Senator MURRAY. More than 5 years ago, the Department of Labor finalized a rule that stipulates that tips are the property of tipped employees. The rule said that employers cannot take workers' tips to pad their own pockets or pay untipped workers, even if the employer has paid tipped employees the minimum wage. This rule has helped a lot of workers become more financially secure, es-

pecially women, who make up two of every three tipped workers, many of them moms.

Do you believe that tips are workers' property?

Ms. STANTON. I did see that there is on the regulatory agenda an intent to look at that rule. I don't know—I have not talked to anyone at the Department and don't know what the view behind that is. I do know that—I do believe that workers should be entitled—that we need to comply with the statute and ensure that people who are paid in accordance with the law receive the money they're entitled to. I don't know, as I say, what the intent was behind that going on there.

I know that, like any other rulemaking, it's very hard to pre-judge where you are going to go with a regulation if you go into the rulemaking process. It's hard for me to sit here right now to know what that looks like, including what the legal parameters on something like that would be.

Senator MURRAY. President Trump has announced he's going to rescind the rule. I wanted to know if you would advocate to keep the current rule. It doesn't sound to me like you're—

Ms. STANTON. I did not mean to suggest I was taking a position, Senator. What I should have said more clearly is if I were confirmed, I'd want to go in and hear more about both sides of the issue. I'd want to understand what comments came through in the rulemaking process. Again, I would also—recognizing that the regulation can only be enacted to the extent that Congress has authorized the Department to act under a statute—would want to understand from the lawyers what the options, legally, are, and then turn to the policy issues, particularly, as we learn more through a rulemaking process.

Senator MURRAY. I want to ask both Ms. Stanton and Mr. Robb—President Trump has owned a number of businesses that have come under investigation for mistreating workers and have been cited for numerous labor violations.

Ms. Stanton, according to USA Today's investigation, President Trump's businesses have been involved in hundreds of legal actions for failing to pay workers the wages they are owed. His businesses have been cited by the division of the Department of Labor that you would lead for 24 wage violations.

Mr. Robb, at least 40 cases involving President Trump's businesses have come before the NLRB.

I wanted to ask both of you, broadly, how will you handle ethical issues raised when your agencies have cases involving businesses owned by the President when he has appointed you to your job? Will you recuse yourself? What will you do? I'll ask both of you.

Ms. Stanton.

Ms. STANTON. I would start by saying I would go to the Department of Labor ethics officer. In my limited experience in Federal Government, we have a very strong group of professionals who handle ethics and conflict of interest issues like that, and I would seek guidance on what the best course of action would be.

Senator MURRAY. Mr. Robb.

Mr. ROBB. Similarly, the National Labor Relations Board has an office on ethics with a number of people in it, and I would consult with them to make an appropriate determination.

Senator MURRAY. My time is up, but thank you, Mr. Chairman.

The CHAIRMAN. Senator Murray, if you have any other questions, you're welcome to ask them, and then after that, I'm going to ask my questions and conclude the hearing.

Senator MURRAY. OK. I do have a number of questions, and I would like to submit them for the record. Unfortunately, today's hearing was amidst budget hearings and votes and everything else, and these are three important witnesses. But I will submit them for the record and would like answers in writing.

The CHAIRMAN. Thank you, Senator Murray. They'll be—I'm sure they will answer your questions.

Mr. Robb, in August 2015, the NLRB declined to assert jurisdiction over football players at Northwestern University who were seeking to form a union. In spite of this conclusion, the NLRB General Counsel issued a memorandum in October 2016 stating that scholarship football players at private colleges and universities should be considered employees and protected by the National Labor Relations Act.

A General Counsel memo is not binding. It doesn't have the force of law, however, it does direct NLRB officers how to apply the law. Twenty-five years ago, when I was president of the University of Tennessee, I was on the Knight Commission on Intercollegiate Athletics. It was headed by Bill Friday, the president of North Carolina, and Ted Hesburgh, the head of Notre Dame. Today, it includes Arne Duncan, the former Secretary of Education, and Paul Tagliabue, the former NFL Commissioner, and some very distinguished people.

Here's something that this group of university presidents and others emphasized. They said, quote, "We reject the argument that the only realistic solution to the problem of intercollegiate athletics—there's always been some—is to drop the student athlete concept, put athletes on the payroll, and reduce or even eliminate their responsibilities as students. Such a scheme has nothing to do with education," the Knight Commission said, "the purpose for which colleges and universities exist. Scholarship athletes are already paid in the most meaningful way possible with a free education.

"The idea of intercollegiate athletics is that teams represent their institutions as true members of the student body, not as hired hands. Surely, American higher education has the ability to devise a better solution to the problems of intercollegiate athletics than making professionals out of the players, which is no solution at all, but rather an unacceptable surrender to despair."

Mr. Robb, do you believe it's appropriate for the NLRB General Counsel to tell the regional divisions that athletic scholarship students should be considered employees when the NLRB has clearly and very recently declined to assert jurisdiction?

Mr. ROBB. The scheme of the National Labor Relations Act has the Board as deciding the cases and the issues. The General Counsel acts more as a prosecutor for unfair labor practices. In terms of overseeing the regional directors, the General Counsel's job is to ensure that the regional directors are following the law. I would not expect to act any differently if I become a General Counsel. I would expect them to follow the laws the Board sets forth. I'm not

specifically aware of why that particular memo was issued, but it doesn't seem to be consistent with the direction that I would think regional directors should take in following the law.

The CHAIRMAN. Well, thank you. I hope you would give your attention to that, because it's a very important issue to me. I was a student athlete at Vanderbilt University, and I didn't feel like I was an employee of Vanderbilt University. I felt like I got a good education.

Mr. ROBB. I certainly will, sir.

The CHAIRMAN. Thank you.

Ms. Stanton, Senator Murray mentioned the overtime regulation. My primary concerns with the overtime rule were, although I agree with what you said, that it was time to address it. But the way it was addressed caused a lot of bipartisan consternation in the U.S. Congress, and several bipartisan bills were introduced to try to change it.

My concerns were the rapid rate of increase—the salary threshold was set to double overnight—the harm it would cost to nonprofits, colleges, universities. I've got all sorts of letters from private colleges and universities about how they would have to increase tuition in order to deal with the overtime rule. The proposed rule included annual increases based on inflation with only 2 months' notice. If the salary level is indexed to inflation, there should be plenty of time for employers to prepare, and the top number of \$47,000 was just too high for many parts of the country.

Now, raising the threshold would have a different effect in New York City than it would in Maryville, Tennessee, where I live. Should regional variance be taken into consideration when setting a national threshold in a new rule?

Ms. STANTON. Senator, that is a very important question. I will tell you that when we in South Carolina were looking at complying with the regulation, we recognized that salary disparity—the regional disparity, rather, and the impact it was having on South Carolina versus some other places.

If confirmed as the Wage and Hour Administrator, I recognize that I don't go in on a blank slate. I go in to enforce the laws that Congress has set and the statutes set by Congress, and because of that, I know that there are certain parameters. My first question to the lawyers would be, "Would it be possible to have regional variations?" If legally possible to do that under the statute as it exists, then the second question would be, "We need to look at the policy and at the labor information behind it to make a decision."

The CHAIRMAN. Well, I would hope you would focus on that, because common sense just tells you that a threshold in Manhattan is different than a—New York is different than a threshold in Manhattan, Kansas, and some accommodation ought to be taken on that. Also, I would hope that you would especially look at the impact of whatever rule you develop on nonprofits. We had stories of Boy Scout districts having to lay off one or two employees, of church camps having to close, and a whole variety. Senator Isakson made that point here.

I would hope you would focus on that. I think this is an excellent opportunity for the Department to show the country a good exam-

ple of how to write a good regulation on overtime regulation. I look forward to what you do.

I ask consent to introduce two letters of support for Ms. Stanton, one letter of support for David Zatezalo, and three letters of support for Peter Robb, including from a union, into the record.

[The following information can be found in the Additional Material section.]

If Senators wish to ask additional questions of the nominees, questions for the record are due by 5 p.m. Friday, October 6th. For all other matters, the hearing record will remain open for 10 days. Members may submit additional information for the record within that time. We will meet in 2 weeks to consider these nominees.

Thank you for being here today. The Committee will stand adjourned.

[Additional Material follows:]

ADDITIONAL MATERIAL

THOMAS C. ALEXANDER,
WALHALLA, SC,
September 27, 2017.

Hon. LAMAR ALEXANDER, CHAIRMAN,
Hon. PATTY MURRAY, RANKING MEMBER,
*U.S. Senate Committee on Health,
Education, Labor, and Pensions,
428 Senate Dirksen Office Building,
Washington, DC.*

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: What a sincere pleasure to share my enthusiastic support for Ms. Cheryl Stanton. President Donald J. Trump's nominee as the next Administrator of the United States Department of Labor's Wage and Hour Division. I am confident you will witness a consistent theme of those from the public and private sector here in South Carolina and across our great Nation who believe in Ms. Stanton for this prestigious position.

Personally, as Chairman of the Committee that oversees Director Stanton's agency, the South Carolina Department of Employment and Workforce (SC DEW) I have witnessed firsthand her success in streamlining the agency and making sure it serves the people of South Carolina. Further, as Chairman, I have asked the tough questions and have firsthand knowledge of Director Stanton's management that has transformed the agency with enhanced customer service for all stakeholders.

In her service as the Director of SC DEW she has taken the agency from disarray to one that is nationally recognized as a best practice model for placing returning veterans and families in jobs. Ms. Stanton and her leadership has been a guiding light within our state, as our citizens and businesses have faced not one but three natural disasters. Her efforts have consistently been recognized as helping to ensure benefits to those who were entitled and helping to get citizens back to work.

I believe you will appreciate the transition from various complaints by constituents about the agency prior to Director Stanton to virtually no complaints now. This speaks directly to the transformation of the agency that I attribute directly to Ms. Stanton. In Director Stanton's four short years we see SC DEW dedicated to our workforce by matching workers with employers, lifting up the disabled and giving former inmates and the homeless hope for a better tomorrow. Morale is improving. benefits provided to those who qualify, and while taxes on our state's businesses are lower for the third consecutive year. Also, I have observed how she has brought people together, community advocates, business leaders, to partner with the agency and members of the General Assembly as well.

It is my hope and desire that this letter relates to you my belief that Ms. Cheryl Stanton will serve with distinction as Administrator of the United States Department of Labor's Wage and Hour Division. I am honored to support her nomination and humbly request she be confirmed by your Committee and the United States Senate.

With warm personal regards,

THOMAS C. ALEXANDER.

STATE OF SOUTH CAROLINA,
OFFICE OF THE LIEUTENANT GOVERNOR,
COLUMBIA, SC,
October 3, 2017.

DEAR CHAIRMAN ALEXANDER, RANKING MEMBER MURRAY AND THE OTHER MEMBERS OF THE HEALTH, EDUCATION, LABOR, AND PENSIONS COMMITTEE: I write in advance of your October 4, 2017, hearing to highlight the outstanding work that the South Carolina Department of Employment and Workforce's Executive Director Cheryl Stanton has done for South Carolina, and to enthusiastically support her nomination to serve as the Administrator of the Wage and Hour Division at the United States Department of Labor.

I served as the Chair of the Labor and Employment Subcommittee of the South Carolina Senate Labor, Commerce and Industry Committee from the start of Director Stanton's tenure at DEW until January of this year. When Director Stanton

began, South Carolina's debt to the federal government was \$531,557,413.41, the state's unemployment rate was 8.1 percent, and my office was flooded with constituent calls complaining about how badly the department was handling unemployment claims.

Today, South Carolina's unemployment trust fund has a positive balance of more than \$700,000,000, and the unemployment rate is 4.0 percent. Furthermore, I never hear complaints from constituents -employers or claimants -about how DEW has handled an unemployment insurance claim. Moreover, DEW has cut employer's state unemployment taxes in three consecutive years, for an average savings of more than 30 percent in taxes for class rates 1 through 19. In fact, in 2017, more than 69,000 employers will pay less in taxes than they would have paid under the previous tax system.

Under Director Stanton's tenure, the workforce system has put 392,193 South Carolinians to work. DEW has issued 171,843 Work Opportunity Tax Credit certifications to employers (for a potential savings of \$478,300,750) to incentivize them to hire job seekers with the greatest barriers to employment. Additionally, South Carolina leveraged a grant issued by the Department of Defense to save 1090 jobs -and create 490 more jobs -by helping defense contractors who were impacted by budget cuts/sequestration diversify their product lines.

Director Stanton has brought a practical, but empathetic approach to solving South Carolina's workforce development issues, and in ensuring individuals who want jobs get jobs.

Director Stanton, as I have told people across South Carolina, was the best decision former Governor Nikki Haley ever made in South Carolina. She transformed an agency overnight and made it work for employers, employees, and taxpayers. I offer you my full and unqualified recommendation, because I know that she will do for our country what she did for South Carolina.

With Warmest Regards,
Sincerely,

KEVIN L. BRYANT,
Lieutenant Governor.

UNITED WAY OF THE MIDLANDS,
COLUMBIA, SC,
September 28, 2017.

Hon. LAMAR ALEXANDER, CHAIRMAN,
Hon. PATTY MURRAY, RANKING MEMBER,
*U.S. Senate Committee on Health,
Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC.*

DEAR SENATOR ALEXANDER AND SENATOR MURRAY: I write in support of Cheryl M. Stanton's nomination for Administrator of the U.S. Department of Labor Wage and Hour Division. I have known Ms. Stanton for several years in professional and volunteer capacities. I am a former human resources executive for a major firm in South Carolina, so have worked with her as she has led South Carolina Department of Employment and Workforce. Additionally, she and I have worked together as volunteers for several years with the area wide United Way campaign.

Ms. Stanton is not only a committed public servant but also a committed community volunteer, working to improve the lives of the most vulnerable in our area. She is passionate about providing opportunities for economic mobility for disadvantaged individuals as well as being willing to work to raise money to support community programs towards these opportunities. This busy state executive volunteered to lead the South Carolina state employees' charitable giving campaign for two years in a row, raising over \$625,000 and increasing state employee participation in the campaign by over 20 percent. She did this by not only recruiting and motivating an outstanding team of volunteers but also with her personal involvement and personal asks.

While I believe her accomplishments leading DEW are enough to support a successful nomination, her community service and commitment provide additional proof

of her commitment to opportunity and success for all—particularly the most vulnerable.

I am happy to answer any questions you may have regarding Ms. Stanton. Thank you for the opportunity to address her nomination. I believe she will serve all of us very well as the nation's Wage and Hour Division Administrator, and I encourage you to approve her nomination.

Sincerely,

SARA S. FAWCETT,
President and Chief Executive Officer.

Hon. LAMAR ALEXANDER, CHAIRMAN,
Hon. PATTY MURRAY, RANKING MEMBER,
*U.S. Senate Committee on Health,
Education, Labor, and Pensions,
428 Senate Dirksen Office Building,
Washington, DC.*

DEAR CHAIRMAN, SENATOR MURRAY AND COMMITTEE MEMBERS: It is with great pleasure that we write to recommend Cheryl Stanton for Wage and Hour Administrator at the United States Department of Labor.

We are labor and employment lawyers in New Jersey who represent management, individuals and unions. Some of us have competed with Ms. Stanton for clients and others of us have been on the other side of the table advocating on behalf of employees and labor unions. In all instances, Ms. Stanton has behaved professionally and collegially in our dealings with her. Consistently, she has been courteous to both counsel and litigants and holds herself to the highest ethical standards in her role as an advocate.

The undersigned have interacted with Ms. Stanton in the courtroom and/or through either the Executive Committee of the Labor and Employment Law Section of the New Jersey Bar and/or the Sidney Reitman Employment Law American Inn of Court. There were many instances in which one of us would contact Ms. Stanton regarding a case to seek her advice regarding legal issues, and we saw first hand her knowledge of the law and ability to analyze legal problems practically and emphatically to real life situations and real people.

Many of us have disagreed with Ms. Stanton on legal issues at times, but we believe Ms. Stanton demonstrates sensitivity and understanding toward issues facing workers despite her representation of management. Her confirmation to the Wage and Hour Division would be an asset to the Department of Labor, employers and American workers.

Respectfully submitted,

LABOR AND EMPLOYMENT LAWYERS
OF NEW JERSEY.

NATIONAL ASSOCIATION OF
STATE WORKFORCE AGENCIES,
October 3, 2017.

Hon. LAMAR ALEXANDER, CHAIRMAN,
Hon. PATTY MURRAY, RANKING MEMBER,
*U.S. Senate Committee on Health,
Education, Labor, and Pensions,
428 Senate Dirksen Office Building,
Washington, DC.*

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: I am delighted to write this letter of support for Ms. Cheryl Stanton's confirmation as Administrator of the United States Department of Labor's Wage and Hour Division. As the Executive Director of the National Association of State Workforce Agencies, I have had an opportunity to observe Ms. Stanton's performance as Executive Director of the South Carolina Department of Employment and Workforce, and as NASWA's inaugural Chair of the Technology Committee and inaugural member of the WIOA Information Technology Support Center steering committee.

I continue to be impressed by Ms. Stanton's professional leadership and organizational skills. Her ability to facilitate discussion on how improvements in technology can result in improved performance and service in the public workforce system exemplify her knowledge, dedication and expertise in these areas. During our national meetings of workforce agency leaders, she has shared best practices on serving ex-offenders, launching apprenticeship programs, and serving veterans all in an effort to return individuals to gainful employment.

I believe her work in South Carolina will transfer over to the U.S. Department of Labor where she will represent both employees and employers fairly and work to improve employment in the United States. Please join me in endorsing Ms. Cheryl Stanton for the position of Administrator of the United States Department of Labor's Wage and Hour Division.

Sincerely,

SCOTT B. SANDERS,
Executive Director.

COLUMBIA URBAN LEAGUE, INC.
SOUTH CAROLINA,
September 26, 2017.

Hon. LAMAR ALEXANDER, CHAIRMAN,
*U.S. Senate Committee on Health,
Education, Labor, and Pensions,
Joel E. Soloman Federal Building,
Chattanooga, TN.*

Hon. PATTY MURRAY, RANKING MEMBER,
*154 Russell Senate Office Building,
Washington, DC.*

DEAR SENATORS ALEXANDER AND MURRAY: I am delighted to write this letter of support for Ms. Cheryl Stanton's confirmation as Administrator of the United States Department of Labor's Wage and Hour Division. As a member of the South Carolina Workforce Development Board, I had an opportunity to observe Ms. Stanton's performance as Executive Director of the South Carolina Department of Employment and Workforce. I was impressed with her professional leadership and organizational skills in restructuring the Agency's Workforce and Economic Development Division, resulting in enhanced employment opportunities for veterans, individuals with disabilities, youth and the homeless. Also, she partnered with the South Carolina Department of Corrections-Manning Correction's Second Chance employment training program, resulting in a 75 percent employment rate upon release for those inmates participating in this program.

In South Carolina, Ms. Stanton has demonstrated a commitment to supporting opportunities for employees, as well as working effectively with employers. She is well qualified to serve as Administrator of the United States Department of Labor's Wage and Hour Division.

Sincerely,

JAMES T. MCLAWHORN, JR.,
President and Chief Executive Officer.

CORPORATE OFFICE,
115 HAYWOOD ROAD,
Greenville, SC.
MIDLANDS DIVISION,
2119 SUNSET BOULEVARD,
W. Columbia, SC,
September 27, 2017.

Hon. LAMAR ALEXANDER, CHAIRMAN,
Hon. PATTY MURRAY, RANKING MEMBER,
U.S. Senate Committee on Health,
Education, Labor, and Pensions,
428 Senate Dirksen Office Building,
Washington, DC.

DEAR SENATOR ALEXANDER AND SENATOR MURRAY: I am honored to write this letter of support for Cheryl M. Stanton, Executive Director of the South Carolina Department of Employment and Workforce (DEW). I have known Cheryl since her appointment and have worked closely with her in my capacity as a South Carolina State Workforce Development Board member as DEW provides staff coordination for the SWDB. I also serve as an appointed member of the South Carolina Department of Employment and Workforce Review Committee and in this capacity participant in the performance review of its Executive Director (Cheryl Stanton). As such, I am comfortable and qualified to write this letter to you.

As you know, Ms. Stanton has led the South Carolina Department of Employment and Workforce admirably since 2013. Here list of accomplishments is long. Cheryl is one of the strongest administrators I have seen.

- Ms. Stanton improved business processes across all programs to begin meeting nearly every federal performance measure.
- South Carolina was the first state in the nation to have every county fully certified as an ACT Work Ready Community.
- Cheryl brought in more than \$7.17 million in funds from the sale of ten unneeded DEW properties.
- From 2013-2017 under her leadership, DEW issued Work Opportunity Tax Credit Certifications that may result in potential tax savings of \$508,281,350.

Ms. Stanton is admired by the business community in our state for a number of accomplishments.

- She reduced UI tax on businesses for four consecutive years, with an average savings of 30.9% across tax rates since 2013.
- In 2017, nearly 70,000 of our state's businesses will pay lower taxes than the lowest rate prior to the 2010 tax reform.
- Cheryl helped defense contractors diversify their product lines to retain over 1000 jobs, create 490 new jobs, retain over \$420 million in sales and generate new sales of \$219 million through a defense diversification grant.

Cheryl is also a good friend to those in (and who want to be in) the South Carolina workforce.

- From July 2013 to August 2017, DEW has put 392,193 South Carolinians to work.
- DEW is recognized as a national best practice model for placing returning veterans into jobs so they can support their families.
- In partnership with the leadership of other agencies, Cheryl initiated a program that begins serving soon-to-be-released inmates while they are still in prison. Through her leadership this program helped 389 inmates (75% of total) find work after completing the Second Chance program at Manning Correctional Facility's Re-Entry/Work Release program.

Ms. Stanton continues to be one of South Carolina's most respected officials. I think this is due, in large part, because of her ability to bring different stakeholders together, build consensus among them and solve the workforce development challenges facing our state. I heartily endorse Cheryl and hope you will, too.

Sincerely,

PATRICK MICHAELS,
Chief Executive Officer.

GIBSON, DUNN & CRUTCHER, LLP,
 WASHINGTON, DC,
 September 27, 2017.

Hon. LAMAR ALEXANDER, CHAIRMAN,
 Hon. PATTY MURRAY, RANKING MEMBER,
*U.S. Senate Committee on Health,
 Education, Labor, and Pensions,
 428 Senate Dirksen Office Building,
 Washington, DC.*

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: I am writing in support of the President's nomination of Cheryl M. Stanton to serve as Administrator of the U.S. Department of Labor's Wage and Hour Division.

I have known Cheryl since she was in law school, when I recruited her to accept a summer position at the Gibson Dunn Law Firm. She accepted, and then joined the firm full time after her clerkship; I worked closely with her in the approximately year-and-half she was with the firm before returning home to the New York-New Jersey area. Cheryl and I have remained in touch since. (I also know Cheryl's parents; her father is a respected employment lawyer whom I came to know from professional events.)

Cheryl would be an outstanding Administrator of the Wage and Hour Division. She is an exceptionally experienced, knowledgeable employment lawyer who now has substantial government management experience as head of South Carolina's Department of Employment and Workforce. She also would bring familiarity with the operation of government agencies in Washington, DC, having served in the White House Counsel's Office (in addition to her time in Washington with my firm). And of course, as her resume reflects, she's a very smart, capable lawyer. I served as Solicitor at the Department of Labor in the administration of President George W. Bush, and have followed the Labor Department fairly closely during most of my 27-year career as a practitioner-I believe that Cheryl brings experience and credentials as strong as any recent Wage-Hour Administrator.

Cheryl is also a warm, decent person, as I believe you will see when you meet her. As confident as I am that she would manage Wage-Hour effectively, I am equally confident that she would also do so in a manner that is mindful of the importance and often very personal impact of the decisions she would be called upon to make, and that is respectful toward all whom she encounters as Administrator. Even where there is disagreement, I think, Cheryl will learn and make better decisions by having weighed and genuinely considered the different points of view on matters that come before her.

I hope that this letter is helpful. Please let me know, of course, if there is more information I can provide as you consider Cheryl's nomination.

Very truly yours,

EUGENE SCALIA.

COL (R) CRAIG J. CURREY,
 27 WATEREE KEY COURT,
 WINNSBORO, SC,
 September 29, 2017.

Hon. LAMAR ALEXANDER, CHAIRMAN,
 Hon. PATTY MURRAY, RANKING MEMBER,
*U.S. Senate Committee on Health,
 Education, Labor, and Pensions,
 428 Senate Dirksen Office Building,
 Washington, DC.*

DEAR COMMITTEE MEMBERS: I want to give my highest recommendation to Ms. Cheryl Stanton for appointment to serve as Administrator of the U.S. Department of Labor's Wage and Hour Division. Her selection will benefit not only American businesses but also American workers.

While serving on the State Workforce Development Board under her tenure as the leader of the Department of Employment and Workforce for South Carolina, I had the opportunity to watch her form a Back to Work Program to help unemployed homeless people at the shelter where I am currently the CEO. She moved her staff

to create the program and made it effective at helping homeless. The program was incredibly successful at placing homeless into jobs that have led to successful placement into housing for many of them. The program is presently being modeled to be used elsewhere in the state. She also formed the Special Population Committee for the SWDB of which I am a member. The committee has given added attention to the homeless, disabled, and veterans. As a 34-year veteran of the Army, I am glad that Cheryl cares enough about those who need extra effort to get back into the workforce.

Cheryl Stanton has run the Board and committees with excellence. She is organized, articulate, and caring. She will do well in whatever job she does. Please appoint her, so she can help our nation.

Respectfully,

CRAIG J. CURREY,
Colonel, US Army Retired,
Transitions Homeless Center CEO.

INTERNATIONAL FRANCHISE ASSOCIATION,
October 3, 2017.

Hon. LAMAR ALEXANDER, CHAIRMAN,
Hon. PATTY MURRAY, RANKING MEMBER,
*U.S. Senate Committee on Health,
Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC.*

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: As the oldest and largest trade association in the world devoted to representing the interests of the franchising industry, the IFA writes to express its support for the President's nomination of Cheryl Stanton as the Administrator of the Wage and Hour Division of the Department of Labor. The IFA's membership includes franchisers, franchisees and suppliers. IFA's membership currently spans more than 300 different industries, including more than 11,000 franchisee, 1,100 franchiser and 575 supplier members nationwide. The IFA's mission is to protect, enhance and promote franchising through government relations, public relations and educational programs on issues that affect franchising.

The Wage and Hour Division is critical to the franchising industry because it plays a key role in the regulation of the workplace and oversees the enforcement of the federal minimum wage, overtime pay, record-keeping and child labor requirements of the Fair Labor Standards Act and the Family and Medical Leave Act. The IFA believes that Ms. Stanton would be a strong Administrator of the Wage and Hour Division, who could fairly balance the workplace needs of both business and employees.

The new Administrator of the Wage and Hour Division will need to provide a balanced approach to workplace policies and reverse the Obama Administration's Wage and Hour Administrator, David Weil's, unprecedented and over-reaching rules and regulations. President Trump has already made clear that the promotion of entrepreneurs and small businesses lies at the heart of his regulatory policy. The new Administrator needs to tear down the Obama era regulatory barriers, such as unrealistic overtime rules and expanded joint employer liability, and create an environment that protects the health of the economy by allowing small businesses to create businesses and jobs.

Ms. Stanton is an excellent choice for fostering an environment conducive to small business growth and job creation. She has served as the Executive Director of the South Carolina Department of Employment and Workforce for the last four years. Under her leadership, the S.C. Department of Employment and Workforce expanded the effectiveness of its workforce department and transformed its unemployment insurance division. The number of people working in South Carolina increased by ten percent and unemployment in the state is at a record low. Ms. Stanton focused on the workforce needs of South Carolina's business community, while also giving individuals the education and skills required to meet those needs. Ms. Stanton also has substantial working knowledge of the U.S. Department of Labor because she previously worked in the White House under President George W. Bush as his principal legal liaison to that agency, the National Labor Relations Board and the Equal Employment Opportunity Commission. She also worked as a shareholder at a major employment law firm and clerked for a federal circuit court judge after graduating from Williams College and University of Chicago Law School.

Further, Ms. Stanton would bring a balanced approach to meeting workplace needs to the Wage and Hour Division. While in South Carolina, Ms. Stanton fostered partnerships with other agencies to identify workforce opportunities while sharing resources and assets. These partnerships include initiatives for veterans, individuals with disabilities, youth, and the homeless, and programs to enhance skills, address training for industry clusters and effectively match job seekers to businesses. For instance, Ms. Stanton partnered with the S.C. Department of Commerce, S.C. Technical College System and the S.C. Department of Education to create the S.C. Talent Pipeline project, which creates a steady stream of workforce-qualified candidates for state jobs. Ms. Stanton also partnered with the S.C. Department of Corrections for the Second Chance program, which works with inmates to search for work when released. Seventy five percent of the participants found work after completing the Second Chance program.

Ms. Stanton would act as a responsible steward of the agency's resources. Under her leadership, the S.C. Department of Employment and Workforce repaid an almost \$1 billion loan used to pay state unemployment insurance benefits between

2008 and 2011. Early repayment of the loan ensured S.C. businesses did not pay Federal unemployment insurance surcharge taxes and saved businesses more than \$12.5 million.

Ms. Stanton would also work to streamline the regulatory process at the Wage and Hour Division. At the S.C. Department of Employment and Workforce, she simplified the unemployment insurance benefits process to give individuals benefits faster and reduce fraud and overpayments. The resulting efficiencies saved the state money and have allowed South Carolina to reduce unemployment insurance taxes on average of 30 percent for three years, which put nearly \$200 million dollars back into the state's economy. At the same time, unemployment in the state dropped from 8.1 percent to 3.9 percent during her tenure at the agency. The IFA believes that Ms. Stanton would bring this same innovative problem solving to her tenure as Administrator of the Wage and Hour Division.

For these reasons, IFA believes that Ms. Stanton would be an excellent choice to lead the Wage and Hour Division and urges the Committee to move as expeditiously as possible to ensure that the Administration has the benefit of her experience, innovation and expertise. Thank you for considering our views.

Sincerely,

MATT HALLER,
Senior Vice President of Government,
Relations & Public Affairs,
International Franchise Association.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.,
Attorneys at Law,
Raleigh, NC,
October 2, 2017.

Hon. LAMAR ALEXANDER, CHAIRMAN,
Hon. PATTY MURRAY, RANKING MEMBER,
U.S. Senate Committee on Health,
Education, Labor, and Pensions,
428 Senate Dirksen Office Building,
Washington, DC.

Re: Nomination of Cheryl Stanton as Wage and Hour Division Administrator

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: It is with great pleasure that I write to support Cheryl Stanton's nomination for Wage and Hour Administrator at the United States Department of Labor on behalf of myself and the lawyers and staff at Ogletree Deakins.

Cheryl was an associate at Ogletree Deakins from January 2004 until January 2006 when she became a Shareholder in the firm. She left in October 2006 to join President Bush's administration, but we were pleased when she returned in July of 2008 (again as a Shareholder).

Shortly after she returned to Ogletree Deakins in July 2008, Cheryl was asked to serve as the General Counsel for the entire firm, in addition to her regular duties as a Shareholder representing clients. I was on the Board of Directors of Ogletree Deakins during the two years that Cheryl was the firm's General Counsel, and worked closely with her on important issues. I saw first hand not only Cheryl's legal acumen and problem solving skills, but also her practical and empathetic approach to issues.

In addition to providing valued legal advice to the firm, Cheryl was well liked and often requested by our clients needing legal assistance in litigation as well as counseling. Cheryl was known for understanding the law and requirements, but also for taking the time to learn the client's business and needs to help them get to their desired outcomes within the confines of the law.

Cheryl also managed several very large cases that involved supervising attorneys across many offices in the firm, spanning the east coast from Florida to Boston, and extending to Denver and Kansas City. She was able to handle multiple complex

projects at the same time, a skill that would serve her well in running the Wage and Hour Division.

We were disappointed for our firm and clients when Cheryl left to become Governor Nikki Haley's Executive Director for the SC Department of Labor and Employment, but we were excited for her. We are proud of the great work she has done there, and believe her leadership and talent would benefit the Wage and Hour Division.

Please do not hesitate to contact me if you have questions or if I can provide additional information to the Committee, thank you.

Sincerely,

C. MATTHEW KEEN,
Managing Shareholder.

NATIONAL STONE,
SAND & GRAVEL ASSOCIATION,
October 3, 2017.

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

Hon. PATTY MURRAY, RANKING MEMBER,
*U.S. Senate Committee on Health,
Education, Labor, and Pensions,
648 Hart Senate Office Building,
Washington, DC.*

DEAR CHAIRMAN AND RANKING MEMBER: As the Committee on Health, Employment, Labor, and Pensions prepares to vote on the nomination of David Zatezalo to serve as Assistant Secretary of Labor for Mine Safety and Health, 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. We are deeply committed to the wellness of our workers. For this reason, our operators have committed themselves to constant improvements in safety performance. This has led annual reductions in injury rates from previous years' levels for 16 consecutive years. Last year, we attained our sector's lowest injury rate in history: 1.95 injuries per 200,000 hours worked.

Mr. Zatezalo's wide range of experiences in the mining sector render him well-prepared for administering the important work undertaken by MSHA. Mr. Zatezalo began his career as a laborer, and ascended to the position of President and CEO. Furthermore, Mr. Zatezalo attained academic degrees in both mine engineering and business administration.

NSSGA appreciates your consideration of these views.

Sincerely,

MICHAEL W. JOHNSON,
President & CEO.

INDEPENDENT ELECTRICAL CONTRACTORS,
ALEXANDRIA, VA,
October 4, 2017.

Hon. LAMAR ALEXANDER, CHAIRMAN,
Hon. PATTY MURRAY, RANKING MEMBER,
*U.S. Senate Committee on Health,
Education, Labor, and Pensions,
Washington, DC.*

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the Independent Electrical Contractors (IEC), I want to urge your swift approval of Peter Robb as the next general counsel of the National Labor Relations Board (NLRB) and urge you to quickly fill the vacancy that will occur when NLRB Chairman Phil Miscimarra's term ends on December 16, 2017.

Based in Alexandria, Virginia, the Independent Electrical Contractors is an association of over 50 affiliates and training centers, representing over 2,300 electrical and systems contractors nationwide. IEC's membership consists of primarily small businesses, with the average contractor member having around 30 employees, 20 of which are electricians. IEC's purpose is to establish a competitive environment for the merit shop, a philosophy that promotes free enterprise, open competition and economic opportunity for all. IEC and its training centers conduct apprenticeship training programs under standards approved by the U.S. Department of Labor's (DOL) Office of Apprenticeship. Collectively, in the 2017 school year, IEC will train more than 10,000 electrical apprentices.

Reports have indicated that John Ring, a partner with Morgan Lewis, is the frontrunner for Mr. Miscimarra's position. Mr. Ring, who has served in various leadership positions in his firm and has decades of experience practicing labor law, is an excellent candidate and would have IEC's full support as a nominee for NLRB chair.

Regardless of who the Trump administration nominates, IEC requests that you move forward with that nomination as quickly as possible. Once Chairman Miscimarra's term ends, the NLRB will be left with 2 Democrat Members and 2 Republican Members. Without a third Republican member to break the tie, the Board is unlikely to revisit the many Obama-era decisions it issued, which have caused disruption and uncertainty in labor relations at the expense of entrepreneurs, small businesses, workers and job growth.

Thank you for your swift consideration of Mr. Robb, and we encourage you to move forward quickly with a replacement for Chairman Miscimarra, be it with Mr. Ring, or another equally qualified candidate.

Sincerely,

JASON E. TODD,
*Vice President,
Independent Electrical Contractors.*

INTERNATIONAL FRANCHISE ASSOCIATION,
October 2, 2017.

Hon. LAMAR ALEXANDER, CHAIRMAN,
Hon. PATTY MURRAY, RANKING MEMBER,
*U.S. Senate Committee on Health,
Education, Labor, and Pensions,
428 Senate Dirksen Office Building,
Washington DC.*

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the International Franchise Association (IFA), the world's oldest and largest organization representing franchising worldwide, I write to you to expeditiously vote to support the nomination of Mr. Peter Robb as the General Counsel of the National Labor Relations Board. Franchising is made up of 733,000 establishments across the country, directly contributing \$674.3 billion in economic output, and accounting for roughly 2.5 percent of the private sector U.S. GDP.

The IFA and its members have come to know firsthand the important role the General Counsel plays in the Administration of the National Labor Relations Act

and the functioning of the Board and its multiple regions. For example, the ongoing litigation brought by the current General Counsel against a worldwide franchise brand has created uncertainty for an entire business model. Further, the General Counsel's Division of Advice has issued a letter involving yet another franchise business model which sadly failed to articulate clear standards for others seeking to avoid joint employer liability. Moreover, the legal theories advanced by the incumbent General Counsel has produced similar allegations of joint employment liability under other Federal statutes and state laws resulting in confusion, unnecessary legal exposure and expense causing some franchisor and franchisees to even curtail the job creation franchising is known to produce.

The new General Counsel of the NLRB enters office at an important time for franchising given what has been described above. More than anything, IFA members will benefit from clear direction to help guide the further development of franchising without hindering it through novel legal theories tested at the expense of many franchisees who simply lack the resources, let alone expertise, to defend against the full force of an Agency of the US Government.

Peter Robb's decades of experience as a practicing labor lawyer uniquely qualifies him for the position of General Counsel. He has worked in NLRB Regional offices where he has investigated hundreds of unfair labor practice charges on behalf of employees. He has litigated on behalf of employees who were disadvantaged under the Act achieving remedies for them. This is a person who not only understands and supports the underlying principles of the NLRA which fully protect the rights of employees to engage in protected and union activity but who has spent countless hours defending their rights to do so.

In addition to his work at the Regional levels of the NLRB, Mr. Robb has served as Deputy Chief Counsel and then Chief Counsel for former NLRB member Robert Hunter. In such capacity, he provided balanced, objective input enabling distinguished Member Hunter to issue decisions in hundreds of cases before the Board.

Mr. Robb understands fully, then, the way the Board operates in the field and at the Board level. Such understanding is critical since the General Counsel has many administrative responsibilities to carry out in his official capacity. Among them are budgeting for the Agency ensuring it can accomplish its critical mission efficiently within Administrative and congressional guidelines.

More recently, Mr. Robb has been in private practice devoting his efforts exclusively to labor law. For many years, he has participated in multi-employer bargaining for an industry where union members are provided with extremely competitive pay and benefits. His mature guidance and balanced approach to labor management relations has contributed to the negotiation of those agreements.

In short, Mr. Robb has been an employee advocate under the NLRA, has performed the functions the General Counsel's office must oversee and carry out and appreciates the way the NLRB members must decide cases with a healthy respect for the facts before them, existing precedent and the underlying principles of the NLRA. He has our complete confidence and we urge the Committee to vote for his confirmation as quickly as possible thereby avoiding any break in service between the incumbent General Counsel and his successor.

Best Regards,

ROBERT CRESANTI, CFE,
President and CEO,
International Franchise Association.

UNITED NURSES & ALLIED,
PROFESSIONALS,
UNDA McDONALD, RN,
President,
Providence, RI.

Hon. LAMAR ALEXANDER, CHAIRMAN,
Hon. PATTY MURRAY, RANKING MEMBER,
*U.S. Senate Committee on Health,
Education, Labor, and Pensions,
428 Senate Dirksen Office Building,
Washington, DC,
September 28, 2017.*

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: I am writing this letter in support of the nomination of Peter B. Robb, Esq. to the position of General Counsel, National Labor Relations Board.

I have spent 35 years on the Union side of the bargaining table representing health care workers in Rhode Island and Vermont. I have worked in all aspects of union work including organizing, negotiating contracts, representing the Union before the NLRB and in countless arbitrations. During that time my path has crossed with many management labor attorneys. Peter Robb stands out among them.

First and foremost, I consider Mr. Robb a solid honest man of unquestioned integrity. He was always good to his word. While Mr. Robb is a very talented attorney and able advocate for his client, I felt he worked hard to settle disputes fairly whether they were in the grievance forum or at the negotiating table. Mr. Robb had an excellent grasp of the technical aspects of our challenges but I think his sense of people and the dynamics of labor relations were exceptional. He was always respectful to the people I represent demonstrating a steady, calm temperament whether in arbitration, at the NLRB or at the negotiating table. I have to confess that my dealings with Mr. Robb were not all serious business. I also enjoyed his good sense of humor.

Because of his unquestioned integrity, knowledge, skill and decency, I am proud to offer this letter of support.

Sincerely,

JOHN V. CALLACI,
Director,
Collective Bargaining and Organizing,
United Nurses and Allied Professionals.

RESPONSE BY CHERYL STANTON TO QUESTIONS OF SENATOR ALEXANDER, SENATOR MURRAY, SENATOR CASEY, JR., SENATOR FRANKEN, SENATOR WHITEHOUSE, SENATOR WARREN, SENATOR KAINE, AND SENATOR HASSAN

SENATOR ALEXANDER

Service Contract Act: The Service Contract Act (Act) requires that service employees who perform work on government contracts in excess of \$2,500 be paid locality-specific wage rates and fringe benefits, or the particular rates found in a predecessor contractor's collective bargaining agreement. Currently, there is confusion as to whether commercial motor carriers that haul government freight are exempt from the Act.

Question 1. If confirmed, will you examine the Department of Labor's Service Contract Act guidance and clarify whether commercial motor carriers that haul government freight are exempt from the Act?

Answer 1. If confirmed, I look forward to briefings with the Wage and Hour Division staff and the Department's attorneys, concerning whether commercial motor carriers that haul government freight are exempt from the Service Contract Act.

Independent Contractor: The definition of who constitutes an independent contractor, as opposed to an employee, can vary significantly for purposes of federal and state laws. The multitude of tests used to determine a worker's status in different contexts can make predictability impossible for contracting parties, and can result in situations where an individual is an independent contractor in one instance, but an employee in another.

Question 2. Would a harmonized employee definition allow federal agencies to more efficiently determine proper worker classification and enhance predictability among contracting parties?

Answer 2. It would be premature for me to make a determination on this matter, but, if confirmed, I look forward to being briefed by Wage and Hour staff regarding matters pertaining to independent contractors, especially the laws enforced by the Wage and Hour Division. Generally speaking, harmonized rules and definitions can benefit workers and employers.

SENATOR MURRAY

Question 1. As the Administrator of the Wage and Hour Division (WHD), how will you carry out the mission of the Division and protect America's most vulnerable workers? What will your priorities be?

Answer 1. If confirmed, I look forward to joining the Wage and Hour Division and administering and enforcing the laws within the Division's jurisdiction. Together with the Division's staff, I will assist in fulfilling the Division's longstanding mission "to promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation's workforce." The Division is instrumental in promoting access to opportunities—opportunities for workers to move into the middle class, opportunities for workers to balance their family and work obligations, and opportunities for employers to compete on a level playing field.

Question 2. Do you have experience enforcing the Fair Labor Standards Act (FLSA) or the prevailing wage laws commonly known as the Davis-Bacon Act and the Service Contract Act?

Answer 2. As the Executive Director at the South Carolina Department of Employment and Workforce, I was responsible for ensuring that the agency was in compliance with the FLSA. While in private practice as a labor and employment lawyer, I spent approximately one-third of my time counseling individual employers. That counseling included providing guidance to clients to ensure they were in compliance with wage and hour laws or, if they were not in compliance, advising them how to become compliant without disrupting their business model.

Question 3. During your time in private practice, did you ever represent a worker in a case to recover unpaid wages, overtime or any other matter?

Answer 3. While in private practice, I mostly represented workers in the restrictive covenant area—i.e., ensuring that workers were not subject to overly broad or unduly burdensome restrictions on their ability to work, compete with a former employer, or solicit former clients.

Question 4. How do you believe your previous role representing employers will affect your judgment as the head of an agency charged with enforcing laws that protect workers?

Answer 4. If confirmed, I will fully and fairly enforce the laws within the Wage and Hour Division's jurisdiction. I believe that my experience in representing employers will assist me in developing an effective outreach strategy within the confines of the Division's resources and available data to provide educational assistance

to employers on becoming compliant and repaying workers and also taking full enforcement measures for willful violations of the law.

Question 5. Looking at the history of the WHD under the Clinton, Bush, and Obama Administrations, which of those periods best captures your approach to a reasonable use of regulatory authority that provides greater certainty to the regulated community?

Answer 5. I believe there are lessons to be learned from each Administration. If confirmed, I look forward to working with the Wage and Hour Division to assist the regulated community in navigating and complying with the numerous laws and regulations the Division covers. Given the scope of the Division's responsibilities, making the most of resources to achieve the greatest impact is paramount. Partnering with stakeholders to produce meaningful compliance assistance resources and focusing enforcement and compliance assistance efforts can increase and promote compliance with the laws the Division enforces.

Question 6. What are three areas of wage and hour law that you believe need strengthening in order to better protect workers in the 21st Century?

Answer 6. I believe we need to (1) have a viable, lawful updated overtime regulation; (2) ensure that the Division's precious resources are being used to maximize enforcement to protect workers; and (3) establish how the existing wage and hour laws can lawfully be used to protect workers in the emerging "sharing economy." However, if confirmed, I would seek the guidance and input from the Wage and Hour Division career professionals and many stakeholders to ensure that my current beliefs are in alignment with their experience and observations.

Question 7. What do you see as the top five most important needs of workers in the 21st Century?

Answer 7. Workers in the 21st Century need (1) opportunities for good paying jobs that allow them to provide for their families; (2) the skills to obtain and perform those jobs (which might require additional education/training); (3) enforcement of existing worker protections (i.e., wage and hour; safety; leave; etc.); (4) identification of any additional protections needed; and (5) clear, understandable information about their legal rights.

Question 8. What is your management and leadership philosophy and how did it evolve during your time running the South Carolina Department of Employment and Workforce?

Answer 8. My management and leadership philosophy is to set priorities for the agency (in consultation with career professional experts and external stakeholders); verbalize those priorities clearly; hold individuals to the expectations regarding those priorities; and clear any hurdles, barriers or problems for employees to meet the expectations so the priorities can be accomplished.

One way this philosophy evolved during my time as Executive Director of the South Carolina Department of Employment and Workforce was to make sure I found time to listen to the perspective of front line staff. When I began meeting in small groups of front line staff, I learned that the picture and information that I was given from their senior management was not always accurate, and/or that the senior management was not properly conveying to their front line the priorities that the rest of senior leadership had established. We created more avenues for employees to verbalize what they were seeing, and gave employees exposure to leaders across the agency, not only to their specific managers. I encouraged leadership to get to know, listen and support people not just in their own chain of command but across the agency.

Question 9. How will criticisms of your management and leadership, including from Republican Members of the South Carolina Senate, shape your approach to running the far larger WHD?

Answer 9. As stated above, if confirmed, I would want to ensure that my direct reports and their direct reports are clear about the Division's priorities and the expectations to work toward those priorities and that those managers clearly provide that same information to all employees in their unit. I would want to ensure that employees have multiple avenues for sharing truthful information about what is happening in their units and workplaces and that their direct manager does not prevent crucial information from being shared, either to more senior management or to front line staff.

Question 10. President Trump's Budget proposal for FY18 included a cut of 21 percent below last year's enacted level to the Department of Labor. If confirmed, will you publicly advocate for maintaining current funding levels and for increased resources for WHD enforcement activities?

Answer 10. I did not participate in the budget process, nor as a nominee, could I have been involved in this process. If I am confirmed, I will maximize every dollar

the Wage and Hour Division is appropriated. I look forward to working with Congress regarding Wage and Hour Division priorities.

Question 11. What steps will you take to ensure that you retain staff at the Department of Labor (DOL)?

Answer 11. The career Wage and Hour staff members bring a wealth of experience, knowledge, and passion to their individual areas of expertise. If confirmed, I will strive to ensure that the Wage and Hour Division retains and supports its current staff, whose institutional knowledge is invaluable, so they can continue to protect American workers.

Question 12. How will you make decisions about how to deploy the limited number of investigators at the WHD to oversee some 7.3 million workplaces?

Answer 12. Decisions on how to deploy resources should be based on an evidence and data-driven approach that ensures the effective combination of complaint response, directed enforcement, and compliance assistance. If confirmed, I look forward to working with the Division's committed staff and helping the Division realize efficiencies that maximize its resources to achieve the greatest impact on compliance.

Question 13. How will you address egregious, repeat, and pervasive violators as Administrator?

Answer 13. The central role of the Wage and Hour Division is to promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation's workforce. In some cases, however, employers may egregiously, repeatedly, and pervasively violate the law. These unacceptable practices deny employees of wages and critical benefits and protections to which they are afforded under the law. Another consequence of such pervasive actions is the loss to the federal government and state governments who rely on compliance. If confirmed, I will work to fully and fairly enforce the laws within the Division's jurisdiction, including laws that penalize those who are repeat and pervasive violators of the FLSA. Further, I look forward to partnering with other Department of Labor agencies, such as the Office of the Solicitor and the Office of the Inspector General, on such issues.

Question 14. What is the appropriate role of the WHD Administrator in determining when and how to dedicate resources to pursuing major violations of the FLSA?

Answer 14. If confirmed, I look forward to helping the Wage and Hour Division use its limited resources appropriately and strategically to pursue all violations of the FLSA, particularly with the guidance and input of career professionals. I look forward to being briefed on the current use of certain tools and will work to address major violators within the Division's jurisdiction.

Question 15. As Administrator, how will you pursue settlements that strike a balance between compensating employees for individual violations and promoting longer-term structural employer reforms?

Answer 15. If confirmed, I would look to the investigators who have worked on individual investigations to make recommendations on the best avenue for ensuring the workers involved in that particular situation are protected and receive the best outcome possible. I would then discuss how that approach fits into and can further the greater enforcement strategy. In particular, I would be interested in analyzing the information we see in each settlement to see if there is a pattern of violations and whether the Division would need to reallocate its resources to ensure greater compliance with the laws it enforces.

Question 16. What is the respective value of litigation, civil monetary penalties, and publicity in the case of egregious violations?

Answer 16. If confirmed, I look forward to helping the Wage and Hour Division use these tools, and all of its tools, appropriately and strategically. I look forward to being briefed on the current use of these tools and will work to address egregious violators within the Division's jurisdiction.

Question 17. In recent years, the WHD has utilized a data-driven approach in its work, which has helped the Agency more efficiently identify employers most likely to violate workers' rights or where employees face barriers to file complaints. What is your opinion and using data in wage and hour enforcement?

Answer 17. If confirmed, I look forward to being briefed by the Wage and Hour Division staff on the various data and analytical tools available to identify employers most likely to violate workers' rights in order to protect the American worker. Using the available evidence and tools, the Division can prioritize enforcement resources, compliance assistance, and other tools to not only uncover violations, but assist troubled employers with future compliance with such laws.

Question 18. Do you favor deploying the WHD's enforcement resources through strategic enforcement efforts like compliance agreements that apply to multiple es-

tablishments owned or licensed by the same company? What types of strategic enforcement methods do you expect to utilize?

Answer 18. The determination concerning the best way to deploy enforcement resources with any particular matter or industry will likely depend on the particular circumstances of that industry or case. However, I believe effective enforcement requires the proper balance of responding to individual complaints and strategic enforcement in high-violation areas. If confirmed, I look forward to being briefed by the Wage and Hour Division staff on the various data and analytical tools available to identify employers most likely to violate workers' rights in order to protect the American worker.

Question 19. Will you commit to maintain the coordination agreements that the WHD has entered into with 37 state agencies around the country?

Answer 19. If confirmed, I look forward to being briefed on these memoranda of understanding. I believe that mutual beneficial partnerships and cooperative enforcement between federal, state, and local agencies can benefit the American worker.

Question 20. The Obama Administration discontinued the use of Opinion Letters by the WHD. Secretary Acosta has relaunched the use of the program. Do you believe that the case by case nature of the opinion letter process is an effective use of limited WHD resources? Why or why not?

Answer 20. The Wage and Hour Division issued opinion letters for more than 70 years. The opinion letters provided specific facts and circumstances and the Division's interpretation to assist both employees and employers comply with the law. Because of the uniqueness of each opinion letter response and the lasting value, I support Secretary Acosta's relaunch of this program.

Question 21. Do you believe that there should be transparency in the opinion letter process including requests as well as all responses whether signed by the WHD Administrator or others?

Answer 21. For more than 70 years, the Wage and Hour Division exercised its discretion to determine which questions or issues should be addressed via opinion letters. Although the Division did not typically make requests publicly available, it did make its opinions publicly available. If confirmed, I intend to continue that process.

Question 22. The WHD has a longstanding policy of not issuing opinion letters to parties under active investigation or in litigation. Will you retain and follow that policy?

Answer 22. If confirmed, I will continue the policy of not issuing opinion letters concerning parties that the Wage and Hour Division knows are in litigation or under active investigation.

Question 23. How do you respond to the perspective that violations of the FLSA undermine good actors who seek to comply with the law?

Answer 23. A central role of the Wage and Hour Division is to ensure that employers have clear guidance from the Division on how to comply with the FLSA. Employers who intentionally violate the FLSA, however, undermine law-abiding employers that are paying their workers properly. If confirmed, I will work to fully and fairly enforce the laws within the Wage and Hour Division's jurisdiction, including the FLSA, to ensure the protection of both workers and law-abiding employers.

Question 24. In 2013, you represented the Chamber of Commerce in challenging the National Labor Relations Board (NLRB) rule which required posting a notice of employee rights under the National Labor Relations Act. The Labor Department has a very similar rule (29 CFR 516.4) which, like the NLRB's, was written to ensure workers are aware of their rights under the FLSA. Do you believe that the FLSA notice-posting requirement is lawful and appropriate?

Answer 24. I am not aware of any challenge to or argument that the FLSA notice-posting requirement is unlawful or that the Division is unlawfully or inappropriately enforcing that requirement.

Question 25. Will you advocate for the phasing out of the tipped wage for customarily tipped workers?

Answer 25. If confirmed, I will fully and fairly enforce the law as established by Congress, which provides for a tipped wage. States and localities may also set a tip minimum wage. I do recognize that cost of living and other economic factors vary greatly across the United States and that many states and localities have increased their tipped wage above the federal floor. If confirmed, I look forward to being briefed on various tip credit laws and regulations.

Question 26. One of the most frequently violated labor standards is the "80/20 rule" that limits the amount of time tipped workers can spend on work that is not directly tipped work. What measures will you take to enforce the 80/20 rule and en-

sure that tipped workers spend no more than 20 percent of their work time on non-tipped work?

Answer 26. If confirmed, I am committed to listening to interested stakeholders to understand the rule's impact on tipped workers and businesses. I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly.

Question 27. Please provide your understanding of the role that the salary threshold and the duties tests play in determining if workers are exempt from overtime pay requirements for hours worked over 40 hours a week under the FLSA?

Answer 27. For more than 75 years, the Department of Labor's regulations implementing the exemptions that Congress set under Section 13(a)(1) of the Fair Labor Standards Act have generally defined the terms "bona fide executive, administrative, or professional capacity" by the use of three criteria. With some exceptions, for an employee to be exempt: (1) The employee must be paid on a salary basis ("salary basis test"); (2) the employee must receive at least a minimum specified salary amount ("salary level test"); and (3) the employee's job must primarily involve executive, administrative, or professional duties ("duties test"). If confirmed, I look forward to working with the Wage and Hour Division staff in reviewing the more than 160,000 comments received in response to the Request for Information.

Question 28. With regard to the overtime rule, as you are likely aware, when adjusted for inflation, the salary level set in the 2016 Rule is lower than the short test salary threshold set by DOL in 1975. If the 1975 short test salary threshold were adjusted for 2013 dollars, it would result in salary level of \$1,083 per week. Do you believe working people in the United States should be earning less today relative to the incomes of working people in 1975?

Answer 28. The Fair Labor Standards Act's overtime exemption salary threshold has not been updated since 2004. I look forward to briefings from the Wage and Hour Division staff on the Fair Labor Standards Act, the history of the Division's updates to the law, as well as from the Office of the Solicitor as to the legal authority the Division has, and the review of more than 160,000 comments received in response to the Request for Information as we develop the Department's regulatory policies and priorities.

Question 29. If you are confirmed as the Administrator of the WHD, what steps would you take to ensure that the salary level for Executive, Administrative, and Professional (EAP) exemption is set sufficiently high so that it ensures that those who are not bona fide exempt employees would be protected by the FLSA's overtime rules?

Answer 29. As I referenced earlier, the Fair Labor Standards Act's overtime exemption salary threshold has not been updated since 2004. I look forward to briefings from the Division's staff on the Fair Labor Standards Act, the history of the Department's updates to the law, as well as from the Office of the Solicitor as to the legal authority the Division has, and the review of more than 160,000 comments received in response to the Request for Information as we develop the Department's regulatory policies and priorities.

Question 30. Do you commit to reviewing the more than 293,000 comments that DOL weighed and considered before promulgating the 2016 Final Rule prior to making a decision on appealing the adverse decision on the 2016 Final Rule?

Answer 30. I understand that the Department recently issued a Request for Information concerning potentially new overtime regulations and received more than 160,000 comments. If confirmed, I look forward to analyzing comments concerning the overtime regulations, as well as receiving briefings from staff concerning comments received both before the promulgation of the 2016 Final Rule and in response to the most recent Request for Information.

Question 31. A 2011 Department of Labor rule (the home care rule) requires home care workers to be paid at least the minimum wage and to be paid fairly for overtime work. Will you commit to maintaining this rule so that workers are not forced back to a time when they were paid subminimum wages and forced to work overtime hours without pay?

Answer 31. If confirmed, I look forward to briefings from the Wage and Hour Division as we develop the Department's regulatory policies and priorities. I would need to thoroughly review the rule before I committed to supporting or opposing the 2011 home care rule.

Question 32. According to 2011 data from the Rehabilitation Research and Training Center on Disability Statistics and Demographics (StatsRRTC), the median wage for a worker with a disability is less than two thirds the median wage for a worker without a disability. 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, then President-elect Trump stated, "People with disabilities have the right to be paid on parity with all others in the

work force so they may earn a fair day's wage for a fair day's work. My administration will work with Congress to ensure that labor laws treat people with disabilities fairly." A significant barrier to fair wages for workers with disabilities is section 14(c) of the Fair Labor Standards Act (FLSA) of 1937, which authorizes employers to pay subminimum wages to workers with disabilities. In your staff interview, you stated the 14(c) subminimum wage certificate program was a priority issue for you.

- a. Do you agree with President Trump that workers with disabilities have the right to be paid on parity with all others in the workforce?
- b. Under 14(c), workers with disabilities are denied the guarantee of a minimum wage and instead are paid wages matching their productivity. Is it your opinion that paying workers with disabilities differential wages according to their output is discriminatory?
- c. Do you support phasing out the 14(c) subminimum wage certificate program? Do you support the Raise the Wage Act or other legislation that would eliminate 14(c)?

Answer 32. As stated at the hearing, I believe that if confirmed, I would not be acting as the Wage and Hour Administrator on a blank slate, but rather would enforce the laws that Congress has passed. 14(c) of the FLSA remains a statutory requirement that the Wage and Hour Division must enforce and implement. It is the duty of the Wage and Hour Division to enforce the laws which Congress enacts. If confirmed, I look forward to being briefed by career staff who have expertise on the 14(c) subminimum wage issues. I will support efforts to assist individuals with disabilities to achieve and maintain meaningful workforce participation.

Question 33. The Advisory Committee on Increasing Competitive Integrated Employment for individuals with Disabilities was created by the Workforce Innovation and Opportunity Act. In September 2016 they issued a report to Congress and Secretary Perez, which included recommendations for both a phase out and, in the interim, improved oversight of the 14(c) subminimum wage certificate program.

- a. Will you commit to reading the report issued by the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities?
- b. What steps will the WHD take to limit the use of 14(c) certificates, including the issuance and renewal of certificates?
- c. Will you make public data collected by the WHD on the 14(c) subminimum wage certificate program?

Answer 33. As stated at the hearing, I believe that if confirmed, I would not be acting as the Wage and Hour Administrator on a blank slate, but rather would enforce the laws that Congress has passed. 14(c) of the FLSA remains a statutory requirement that the Wage and Hour Division must enforce and implement. While I would need to thoroughly review any particular program (or changes thereto) before I committed to supporting or opposing it, I support efforts to assist individuals with disabilities achieve and maintain meaningful workforce participation.

Question 34. Section 511 of the Workforce Innovation and Opportunity Act (WIOA) requires youth under age 24 explore and try competitive integrated employment before they can be placed in a subminimum wage setting, prohibits schools from contracting with entities holding subminimum wage certificates, and requires at least annual engagement of anyone in a subminimum wage setting to discuss opportunities for competitive integrated employment. The WHD has authority and jurisdiction to enforce these WIOA requirements.

- a. As the Administrator of the WHD, will you commit to the implementation and enforcement of section 511 of WIOA?
- b. How will the WHD ensure schools no longer contract or have other arrangements with entities holding subminimum wage certificates to employ or train transition-age youth with disabilities?
- c. How will the WHD ensure both youth under 24 and current 14(c) employees receive the career counseling on competitive integrated employment they are entitled to under section 511?

Answer 34. If confirmed, I look forward to being briefed by staff at the Wage and Hour Division on these issues. I will work to ensure all provisions of the statutes enforced by the Division are applied fairly and fully to ensure compliance with the law.

Question 35. The misclassification of employees as independent contractors harms workers who are not paid what they are owed, taxpayers who are subsidizing companies that evade their obligations and responsible employers who play by the rules. In your view what is most effective way for the WHD to signal that misclassification will not be tolerated?

Answer 35. As I referenced earlier, a central role of the Wage and Hour Division is to ensure that employers have clear guidance from the Department on how to

comply with the FLSA. Using independent contractors is a lawful and longstanding business option for employers. However, I understand some employers may violate the law by inappropriately classifying an employee as an independent contractor. Employees incorrectly classified as independent contractors may be denied access to critical benefits and protections to which they are entitled under the law and negatively impact federal and state governments. Employers who intentionally violate the FLSA undermine law-abiding employers that are paying their workers properly. If confirmed, I will work to fully and fairly enforce the laws within the Wage and Hour Division's jurisdiction, including laws prohibiting the misclassification of employees as independent contractors, to ensure the protection of both workers and law-abiding employers.

Question 36. Many parts of the US are dealing with the devastating aftermath of Hurricanes Harvey, Irma, and Jose. The recovery in Puerto Rico is particularly devastating. What is your view of the appropriate prevailing wage for work funded by the federal government and what role should the WHD play in policing violations of prevailing rates by contractors in the course of reconstruction?

Answer 36. The Davis-Bacon Act, the Service Contract Act, and the Public Contracts Act are the law. The Wage and Hour Division and contracting agencies share responsibility for enforcing that law. If confirmed, I intend to assure full and fair enforcement of the provisions under the authority of the Division.

Question 37. If complaints are filed by workers in multiple locations of a large nationwide employer with a history of labor law violations, would you investigate those individual complaints, or would this type of circumstance warrant a systemic investigation of the company?

Answer 37. The determination concerning the best way to proceed with any particular matter, including whether to proceed with an investigation on an individual or systemic basis, will depend on the particular facts in each given case. If confirmed, I look forward to briefings from, and consultations with, the Department on the most effective way to promote compliance with the laws under the jurisdiction of the Wage and Hour Division.

Question 38. Under what circumstances would a repeat violator of wage and hour laws that is also a federal contractor warrant debarment?

Answer 38. The determination concerning repeat violators and debarment proceedings depend on the particular facts in each given case. I understand that government agencies have suspension and debarment authorities and that the Department of Labor has existing capacity in the context of some statutes, including Davis-Bacon and the Service Contract Act. If confirmed, I look forward to being briefed on matters pertaining to this issue and will work to enforce the laws under the Department of Labor's jurisdiction, full and fairly, to ensure protection of all workers.

Question 39. Many workers, including restaurant workers in particular, are subject to unpredictable scheduling of their work. As the WHD Administrator will you advocate for legislation providing workers with scheduling protections at work, including greater say over their hours?

Answer 39. If confirmed, I look forward to working with Congress to provide the relevant information and technical assistance for Congress to best determine the necessary and appropriate legislation going forward.

Question 40. Green Tobacco Sickness and nicotine poisoning are real hazards for 16- and 17-year-olds whose bodies and brains are still developing, leading to nausea, vomiting, headaches, dizziness, lightheadedness, and more. Human Rights Watch surveyed 26 children ages 16 and 17 who worked on tobacco farms in the summer of 2015 and found that 25 of the 26 reported sickness, pain, and discomfort while working. What is the proper role of the WHD when it comes to protecting kids from nicotine poisoning and green tobacco? What tools would you use to address this problem?

Answer 40. I share your concerns regarding the safety and health of children and young workers. If confirmed, I will fully and fairly enforce the FLSA provisions as they pertain to child labor. I will work with staff at the Wage and Hour Division and receive briefings on matters pertaining to children working on tobacco farms. I look forward to ongoing dialogue with Congress as to how we can advance the goal of child safety in the workplace.

Question 41. The Family and Medical Leave Act (FMLA) guarantees eligible employees up to 12 weeks of unpaid leave each year to care for a newborn, a newly adopted child or a seriously ill family member, to recover from one's own serious health condition, including pregnancy, or address certain needs of military families. As the WHD Administrator, you would have responsibility for educating employees and employers about the FMLA, for investigating potential violations, and for enforcing this law. Will you defend the FMLA against efforts to gut the law or undermine its enforcement through the defunding of your agency?

Answer 41. I recognize both the importance of the Family and Medical Leave Act and the critical role the Wage and Hour Division plays in increasing employee awareness, enforcing violations, and providing the necessary tools and resources to foster compliance. If confirmed, I will enforce the law fully and fairly. Although I have not participated in any budget discussions, I am happy to work with Congress to ensure that the Wage and Hour Division can meet its objectives. I also look forward to being briefed on all aspects of the Wage and Hour Division's budget and will work to ensure that workers are protected while the taxpayers' dollars are spent in the most effective ways possible.

Question 42. Will you commit to advocating for adequate funding to maintain or increase staffing levels for FMLA enforcement in the budget the Administration submits to Congress?

Answer 42. I recognize both the importance of the Family and Medical Leave Act and the critical role the Wage and Hour Division plays in increasing employee awareness, enforcing violations, and providing the necessary tools and resources to foster compliance. If confirmed, I will enforce the law fully and fairly. Although I have not participated in any budget discussions, I am happy to work with Congress to ensure that the Wage and Hour Division can meet its objectives. I also look forward to being briefed on all aspects of the Wage and Hour Division's budget and will work to ensure that workers are protected while the taxpayers' dollars are spent in the most effective ways possible.

Question 43. DOL's own research and that of other academics shows that somewhere between 15 and 30 percent of employers' leave policies violate the FMLA. How will you address these violations?

Answer 43. If confirmed, I commit that I will fully and fairly enforce the laws within the jurisdiction of the Wage and Hour Division, including the Family and Medical Leave Act. Additionally, I look forward to briefings with the Division concerning how to most effectively and efficiently increase employee awareness, promote employer compliance, and enforce violations of the law.

Question 44. Will you support statutory updates to the FMLA to include some or all of the 40 percent of employees who are currently excluded from the law?

Answer 44. If confirmed, I look forward to discussing how to support FMLA's protections with the Wage and Hour Division's staff, stakeholders, and Congress.

Question 45. Will you support updates to the FMLA to allow grandchildren and grandparents to care for one another?

Answer 45. Amending the Family and Medical Leave Act would require Congressional action. If confirmed, I look forward to working with Congress on important issues such as the need for families to have additional resources in an every changing economy.

Question 46. Will you support an update to the FMLA to allow parents to take leave to attend meetings at their children's schools?

Answer 46. Amending the Family and Medical Leave Act would require Congressional action. If confirmed, I look forward to working with Congress on important issues such as the need for families to have additional flexibility in an ever-changing economy.

Question 47. Thirty-two percent of the private sector workforce—more than 37 million people—have no paid sick leave. One recent study found that just 14 percent of women in the fast food industry report having access to paid sick days. When workers lack paid sick days, they are forced into impossible choices between taking care of their personal health, family health and the public health and meeting basic expenses like food and rent. For the typical family without paid sick days, just a few unpaid days away from work costs the family an amount equivalent to its entire monthly grocery budget. Workers without paid sick days are nearly 1.5 times more likely than those with paid sick days to go to work while sick, at significant cost to public health. Studies of the 2009 H1N1 pandemic show that access to paid sick days correlated with lower worker incidence of illness and shorter outbreaks in workplaces. Do you agree that workers' lack of access to paid sick days is a public health problem?

Answer 47. 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 Congress as discussions regarding paid leave move forward.

Question 48. Do you agree that employers have a role to play in ensuring workers have access to paid sick days?

Answer 48. Attempts to expand federally-mandated paid leave beyond federal contractors would require Congressional action. If confirmed, I look forward to being briefed on this issue and working with Congress to provide the Wage and Hour Division's perspective on this important issue.

Question 49. Would you support or oppose a national paid sick days standard like the standard set out in the Healthy Families Act?

Answer 49. I would need to review any legislation or policies before I committed to supporting it. Attempts to expand federally-mandated paid leave beyond federal contractors would require Congressional action. If confirmed, I look forward to being briefed on this issue and as needed, working with Congress to provide the Wage and Hour Division's perspective on this important issue.

Question 50. You were on the board of directors of the South Carolina Chamber of Commerce, an organization that supported a bill to block local governments from enacting laws providing paid sick days or other employment benefits. Do you believe that state and local government are entitled to enact paid sick days legislation?

Answer 50. Congress has set certain parameters for leave and other employee benefits, but states and local governments also weigh in on those issues. I recognize that cost of living and other economic factors vary greatly across the United States and that many states and localities have passed legislation that meet their local and regional needs.

Ultimately it is the decision of legislatures at the federal, state and local levels what laws to pass regarding sick days and employee benefits; the Wage and Hour Division has no authority to act unilaterally. If confirmed, I will faithfully enforce the laws Congress enacts.

Question 51. Do you believe that there are systemic concerns regarding wage and work conditions in the restaurant industry? If yes, what would you do to address these concerns?

Answer 51. The Wage and Hour Division should use data and evidence to identify industries in which serious violations may be widespread. If confirmed, I look forward to being briefed on the work the Division is doing and I am committed to fully and fairly enforcing the FLSA and all its provisions while also providing meaningful compliance assistance to achieve the greatest impact.

Question 52. Do you commit to inform the Members of this Committee if you intend to undertake any review or revision of any existing guidance?

Answer 52. If confirmed, I look forward to working with Congress and keeping the Committee apprised of significant developments.

Question 53. What is your opinion about whether minority Members of the Health, Education, Labor, and Pensions ("HELP") Committee have the authority to conduct oversight of the Department of Labor?

Answer 53. Performing oversight of the executive branch is a longstanding responsibility of Congress.

Question 54. If confirmed, do you agree to provide briefings on the Department of Labor to Members of the HELP Committee, including minority Members, if requested?

Answer 54. If confirmed, I will answer requests for briefings from all Members of Congress.

Question 55. If confirmed, do you commit to answer promptly any letters or requests for information from individual Members of the HELP Committee including request for Department of Labor documents, communications, or other forms of data?

Answer 55. If confirmed, I will provide responses to all Members of Congress.

SENATOR CASEY, JR.

Question 1. 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 1. I believe discrimination on the basis of sexual orientation or gender identity is wrong, although I support religious entities' freedom to hire consistent with their faith. If confirmed, I will enforce anti-discrimination laws to protect employees of all protected statuses, including the Family Medical Leave Act.

Question 2. How specifically will you ensure thorough investigation and enforcement of violations of the Fair Labor Standards Act?

Answer 2. The determination concerning the best way to proceed with any particular matter will depend on the particular facts in each given case. If confirmed, I will strive to fully and fairly enforce the laws within the jurisdiction of the Wage and Hour Division. I look forward to being briefed by career staff on the various investigation and enforcement methods available to the Division under the Fair Labor Standards Act to ensure thorough investigations and lawful enforcement.

Question 3. 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 3. A central role of the Wage and Hour Division is to ensure that employers have clear guidance from the Department on how to comply with the FLSA. Using independent contractors is a lawful and longstanding business option for employers. However, I understand some employers may violate the law by inappropriately classifying an employee as an independent contractor. Employees incorrectly classified as independent contractors may be denied access to critical benefits and protections to which they are entitled under the law and negatively impact federal and state governments. Employers who intentionally violate the FLSA undermine law-abiding employers that are paying their workers properly. If confirmed, I will work to fully and fairly enforce the laws within the Wage and Hour Division's jurisdiction, including laws prohibiting the misclassification of employees as independent contractors, to ensure the protection of both workers and law-abiding employers.

Question 4. 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 4. If confirmed, I look forward to reviewing this issue with staff from the Wage and Hour Division and stakeholders. I will certainly ask to be briefed on the support the Department provides to states such as Pennsylvania, in a continued effort to provide technical assistance to states.

Question 5. Will you make the enforcement of equal pay laws a priority?

Answer 5. If confirmed, I will fully and fairly enforce the laws within the jurisdiction of the Wage and Hour Division, including laws related to lawful pay.

Question 6. Do you think that the Department of Labor's past enforcement of equal pay laws have been beneficial to women and their families?

Answer 6. Pay discrimination on the basis of sex is unlawful. If confirmed, I will ensure the Wage and Hour Division enforces the laws under its jurisdiction fully and fairly to protect the rights of all Americans, including women and their families.

Question 7. Do you support the Davis-Bacon and the payment of prevailing wages for public works projects? Will you fully enforce Davis-Bacon and resist efforts to weaken Davis-Bacon through regulation or legislation?

Answer 7. The Davis-Bacon Act is the law. The Wage and Hour Division enforces the Davis-Bacon Act, and any modifications thereto must come from Congress. If confirmed, I look forward to briefings with my staff concerning how to most effectively and efficiently enforce and promote compliance with this law.

Question 8. In April 2017, President Trump said that he was "going to make an announcement in two weeks" regarding Davis-Bacon. No announcement was made. Do you know what announcement or changes he was referencing?

Answer 8. I have not spoken with the President concerning this comment, and do not know what the President did or did not intend to announce. As I referenced above, however, the Davis-Bacon Act is the law and, if confirmed, I look forward to briefings with Wage and Hour staff concerning how to most effectively and efficiently enforce and promote compliance with the law.

SENATOR FRANKEN

Question 1. During Secretary Acosta's confirmation hearing he was asked if he would continue the previous Administrations efforts to offer administrative interpretations to provide clarity when the meaning of a statute was too plain or unambiguous. He said, "I support giving guidance to the regulated community to ensure compliance with the law" and that "I think there's a particular value to opinion letters." If confirmed, would you support the issuance of Wage and Hour administrative interpretations and opinion letters to provide clarity and guidance to the public?

Answer 1. I agree with Secretary Acosta's testimony regarding the unique value in providing guidance to the regulated community to ensure compliance with the law. Opinion letters provide specific facts and circumstances and the Division's own interpretation to assist both employees and employers comply with the law. Because of the uniqueness of each opinion letter response and the lasting value, I support Secretary Acosta's relaunch of this program.

Question 2. Worker misclassification is a growing problem that threatens workers and undercuts law-abiding employers. And worker misclassification is a significant problem in Minnesota, particularly in the construction industry. Why do you think worker misclassification is so prevalent?

Answer 2. A central role of the Wage and Hour Division is to ensure that employers have clear guidance from the Department on how to comply with the FLSA. Using independent contractors is a lawful and longstanding business option for employers. However, I understand some employers may violate the law by inappropriately classifying an employee as an independent contractor. Employees incorrectly classified as independent contractors may be denied access to critical benefits and protections to which they are entitled under the law and negatively impact federal and state governments. Employers who intentionally violate the FLSA undermine law-abiding employers that are paying their workers properly. If confirmed, I will work to fully and fairly enforce the laws within the Wage and Hour Division's jurisdiction, including laws prohibiting the misclassification of employees as independent contractors, to ensure the protection of both workers and law-abiding employers.

Question 3. When it comes to the enforcement of worker misclassification violations, one of the biggest problems on the state and federal level is a lack of communication and coordination with investigations and the sharing of information between agencies. Does DOL plan to work with state and other federal enforcement agencies to ensure compliance and identify employers who misclassifying their employees?

Answer 3. Employers who intentionally misclassify workers undermine 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.

Question 4. The misclassification of workers puts law-abiding employers at a competitive disadvantage, robs workers of protections such as workers compensation and unemployment insurance, and allows employers to avoid paying state and federal taxes. A 2009 Government Accountability Office (GAO) report estimated that independent contractor misclassification cost federal revenues \$2.72 billion in 2006.

- a. If confirmed, would you continue the Wage and Hour Division's past practice of identifying worker misclassification by specifically scrutinizing companies that classify workers as independent contractors?
- b. Do you agree that these efforts are important for the security of workers and to the nation's revenue stream?
- c. Is it fair to say that those employers who are paying unemployment taxes and worker's compensation premiums are also paying for employers who misclassify their employees?
- d. Is it possible that unemployment taxes and worker's compensation premiums could be reduced if some employers weren't misclassifying their employees and everybody was paying their fair share?
- e. If confirmed, would the Wage & Hour Division share information with the IRS to help identify employers who may be misclassifying their workers as independent contractors and avoiding their tax obligations?

Answer 4. The use of independent contractors is a valuable business practice, and is legally permissible. However, in some circumstances, when an employer incorrectly treats 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 Wage and Hour Division is to ensure that employers have clear compliance guidance from the Division. If confirmed, I will work to enforce the laws under the Wage and Hour Division's jurisdiction, including these employment laws, fully and fairly to ensure the protection of workers.

Question 5. 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 and when they are an independent contractor. On June 7th Secretary Acosta withdrew this interpretation. If confirmed, how do you plan to provide clarity and guidance to employers and workers who have questions about their status as an employer, joint employer, or independent contractor?

Answer 5. I support giving guidance to the regulated community to ensure compliance with the law. I believe this is essential for good governance. 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 Wage and Hour Division's jurisdiction, fully and fairly to ensure protection of all workers.

Question 6. During our meeting in my office, you said that you weren't aware of internal discussion regarding the Department of Labor's overtime rule. Based on what you know now and the limited discussion you have had, what are your personal views on the overtime rule? Do you believe \$47,000 is an appropriate threshold? Would you inform Congress if you believe that you need additional legal authority beyond your current authorization to set an appropriate overtime threshold?

Answer 6. I believe that if confirmed as Wage and Hour Administrator I would not be there to impose my personal views on topics but rather to enforce the law set by Congress and I would certainly inform Congress if I believed there were legal limitations to what the Wage and Hour Division could do so that Congress could act as it deemed best with that information.

Question 7. The federal minimum wage was last raised to \$7.25 an hour, effective in 2009. By comparison, the value of the minimum wage peaked in 1968, and adjusted for inflation in today's dollars would be worth \$11.03 per hour. Do you think it is fair that the American worker, earning minimum wage, has taken over thirty percent cut in pay due to fact the hourly wage rate has not kept up with inflation?

- a. Do you think the current federal minimum wage of \$7.25 is a fair or living wage?
- b. Would you support efforts to adjust the federal minimum wage to a living wage?
- c. Would you support efforts to regularly index the minimum wage to inflation?

Answer 7. Congress sets the federal minimum wage and it is the duty of Wage and Hour Division to enforce the set minimum wage. Ultimately it is Congress' decision whether to raise the federal minimum wage and the Wage and Hour Administrator does not have the lawful ability to effectuate a change to the federal minimum wage. If confirmed, I will faithfully enforce the rate Congress enacts.

Question 8. If confirmed, how would you address worker wage complaints filed against a large company, with sizable government contracts, with multiple operations across the country, and a history of labor violations?

Answer 8. The determination concerning the best way to proceed with any particular matter will likely depend on the particular facts in each given case. If confirmed, I intend to fully and fairly enforce all laws that the Wage and Hour Division administers. This would include development of compliance assistance and enforcement strategies that are designed to have a broad impact on compliance.

Question 9. Would you simply investigate those individual complaints, or would these circumstances trigger your agency to look beyond those individual complaints and see if there is a nationwide, systemic problem with this particular contractor?

Answer 9. The determination concerning the best way to proceed with any particular matter will likely depend on the particular facts in each given case. If confirmed, I intend to enforce the law fully and fairly, including by enforcing individual complaints as part of a balanced enforcement strategy. This would include the development of compliance assistance and enforcement strategies that are designed to have a broad impact on compliance.

SENATOR WHITEHOUSE

Question 1. Regarding overtime salary thresholds, do you believe the salary threshold in 1975, which covered more than half of all full-time salaried workers, applied to too many workers?

Answer 1. If confirmed, I look forward to being briefed by the Wage and Hour Division staff on the FLSA, the history of the Division's updates to the FLSA, and the review of more than 160,000 comments received in response to the Request for Information.

Question 2. In 2015, the salary threshold covered only 8% of full-time salaried workers—do you believe that level of coverage is too low?

Answer 2. 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 invalidating the 2016 overtime rule.

Question 3. The DOL's 2016 overtime rule updated the threshold to the 40th percentile of earnings of full-time salaried employees in the lowest-wage Census Region, resulting in a salary threshold of \$913 per week or \$47,476 per year—do you believe covering the 40th percentile of earnings for full-time salaried employees is an appropriate level?

Answer 3. The Fair Labor Standards Act's overtime exemption salary threshold has not been updated since 2004. I look forward to briefings from the Wage and Hour Division staff on the Fair Labor Standards Act, the history of the Division's updates to the law, as well as from the Office of the Solicitor as to the legal authority the Division has, and the review of more than 160,000 comments received in response to the Request for Information as we develop the Department's regulatory policies and priorities.

Question 4. Do you commit to not using non-commercial airplane or helicopter travel paid for at taxpayer expense?

Answer 4. If confirmed, I commit to fully complying with all federal government travel policies.

SENATOR WARREN

Question 1. During your time as an attorney in the private sector, you defended large employers such as Domino's FedEx, and Barnes & Noble¹ from accusations that they violated wage-and-hour laws. How can workers count on you to protect them, rather than employers, as WHD Administrator position requires?

Answer 1. As an attorney in the private sector, my job was to advocate legal positions for my client, which I did. If confirmed as the WHD Administrator, I would enforce the laws Congress has passed to protect workers.

Question 2. As Executive Director of South Carolina's Department of Employment and Workforce, were you responsible for any enforcement of wage-and-hour laws? If so, please describe those responsibilities in detail. If not, please list other experiences you have with the enforcement of wage-and-hour laws, if any.

Answer 2. As Executive Director at the Department of Employment and Workforce, I was responsible for ensuring that agency was in compliance with the FLSA. While in private practice as a labor and employment lawyer, I spent approximately one-third of my time counseling individual employers. That counseling included providing guidance to clients to ensure they were in compliance with wage and hour laws or, if they were not in compliance, advising them how to comply while still achieving their business objectives.

Question 3. South Carolina law allows the Department of Employment and Workforce to waive overpayments of unemployment insurance if the recipient was not at fault for the overpayment or if requiring payment would be against equity and good conscience.² But you have said that you favor wage garnishment of employees who have received overpayments and that recoupments from overpayment rose from \$300,000 to \$8 million under your leadership at DEW.³ While you were Executive Director, did DEW garnish the wages of employees who received overpayments due to no fault of their own?

Answer 3. As a point of clarification, I favor the recoupment of money from claimants who received more benefits than they should—even in cases of administrative fraud—over prosecuting such individuals. One of the core missions of DEW is to ensure that the trust fund is adequately funded to ensure that all claimants eligible for unemployment insurance benefits receive payments and that if the money was improperly paid, it can be recouped so that eligible claimants can be paid—even in a time of recession.

Moreover, no collection effort was conducted unless and until an overpayment determination was made, and the claimant had full opportunity to appeal the overpayment determination. During the overpayment determination and appeal, the claimant has the opportunity to present evidence to seek a waiver of repayment of the benefits paid to the claimant. During my tenure, we used involuntary wage withholdings (i.e., garnishments) from former claimants' paychecks only after the appeal process was complete and only after attempting to obtain repayment directly from the claimant through a variety of mechanisms including payment plans.

- a. Did you make individual assessments of the impact of the garnishment on families before you initiated the garnishment proceeding?

Answer a. See above as to a claimant's opportunity to seek a waiver long before a collection effort of any kind is initiated. Moreover, DEW not only complies with United States Department of Labor minimum wages requirements for involuntary wage withholdings (IWW), but it actually has set a higher threshold of what an individual's wages must be in a quarter before IWW is used. Also, if the claimants call to ask that less than the full 25% permitted by law be deducted from their paychecks, DEW will negotiate with them on a case by case basis to set the amount to be deducted via IWW.

- b. Please describe how the use of this practice changed under your leadership of DEW.

Answer b. The process for establishing an overpayment and for a claimant to seek a waiver has not changed. The IWW process is used only after other collection efforts have failed has not changed. The process for a claimant to negotiate a reduction in the IWW has not changed. We increased the number of IWW that DEW has sent to employers so to ensure the health of the trust fund for claimants who were lawfully entitled to benefits.

Question 4. If you are confirmed, what metrics will you use to assess the effectiveness of your enforcement efforts?

¹ <https://www.bgov.com/core/news/#!/articles/OW4HF73H0JKO>

² <http://www.scstatehouse.gov/code/t41c041.php>

³ <https://www.youtube.com/watch?v=8R8Bh8W-KsM>

Answer 4. If confirmed, I look forward to being briefed by the Wage and Hour Division staff on all current measurement tools. Additionally, I will bring my experience and knowledge as the Executive Director of the South Carolina Department of Employment and Workforce to the Division.

Question 5. In 2009, the Government Accountability Office released a report detailing the WHD's failure to properly process and investigate complaints.⁴ What lessons do you take from this report, and what will you do to ensure that the Division does not have similar problems under your leadership?

Answer 5. If confirmed, I look forward to being fully briefed by the Wage and Hour Division staff about actions they have taken to address the findings described in the report. Further, I am committed to a balanced approach to achieve the Division's mission that includes a focus on customer service and responding to complaints.

Question 6. 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?

- a. 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 6 (a). I am sensitive to the fact that the overtime rule has not been updated since 2004. I look forward to briefings from the Wage and Hour Division staff on the Fair Labor Standards Act, the history of the Division's updates to the law, as well as from the Office of the Solicitor as to the legal authority the Division has, and the review of more than 160,000 comments received in response to the Request for Information as we develop the Department's regulatory policies and priorities.

Question 7. President Trump has taken several different positions on the federal minimum wage, including proposing to raise it to ten dollars.⁵ Considering that the minimum wage has not been raised in nearly a decade,⁶ and that a full-time minimum-wage worker earns less than the poverty line for a household of two,⁷ do you support any increase in the federal minimum wage? If so, approximately what level do you believe would be appropriate? If not, why not?

Answer 7. Congress sets the federal minimum wage and it is the duty of Wage and Hour Division to enforce the set minimum wage. Ultimately it is Congress' decision whether to raise the federal rate. The Wage and Hour Administrator does not have the legal capacity to effectuate a change to the federal minimum wage. If confirmed, I will faithfully enforce the rate Congress enacts.

Question 8. Do you believe that federal law should allow employers to pay employees with disabilities less than the minimum wage? If so, why? Should federal law also allow employers to pay any other groups less than the minimum wage?

Answer 8. As stated at the hearing, I believe that if confirmed, I would not be acting as the Wage and Hour Administrator on a blank slate, but rather would enforce the laws that Congress has passed. 14(c) of the FLSA remains a statutory requirement that the Wage and Hour Division must enforce and implement. It is the duty of the Wage and Hour Division to enforce the laws which Congress enacts. If confirmed, I look forward to being briefed by career staff who have expertise on the 14(c) subminimum wage issues. However, I will support efforts to assist individuals with disabilities achieve and maintain meaningful workforce participation.

Question 9. 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 9. This answer would be dependent on a specific set of facts of each given case. If confirmed, I will work to enforce the laws under the Wage and Hour Division's jurisdiction fully and fairly.

Question 10. What are your specific plans to protect the rights of workers of franchised companies?

Answer 10. If confirmed, I look forward to receiving input from the Wage and Hour Division staff and Congress to improve the working conditions and opportunities for all Americans. The determination concerning the best way to proceed with any particular matter will likely depend on the particular facts in each given case.

⁴ <http://www.gao.gov/products/GAO-09-458T>

⁵ <http://www.cnn.com/2016/07/27/politics/donald-trump-minimum-wage/index.html/>

⁶ <http://www.pewresearch.org/fact-tank/2017/01/04/5-facts-about-the-minimum-wage/>

⁷ <http://www.epi.org/publication/minimum-wage-workers-poverty-anymore-raising/>

Question 11. Workers' ability to collect back wages is a crucial part of the enforcement of Wage and Hour Laws. Yet 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.⁸

- a. If confirmed, will you commit to investigating this phenomenon to determine whether workers are declining back pay because they fear deportation?
- b. 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 11(a)(b). If confirmed, I look forward to being briefed by the Wage and Hour Division staff and learning more about these concerns and I will work to enforce the laws under the Division's jurisdiction fully and fairly, including wage and hour laws, to protect all workers' rights.

Question 12. As you know, federal contractors have unique wage and hour obligations, such as those codified by the Davis-Bacon Act and the Service Contract Act. 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) ⁹ Will you implement these authorities?

Answer 12. I understand that the Wage and Hour Division has existing suspension and debarment authorities in the context of some statutes, including Davis-Bacon and the Service Contract Act. If confirmed, I look forward to being briefed on matters pertaining to this issue and will work to enforce the laws under the Wage and Hour Division's jurisdiction, full and fairly to ensure protection of all workers.

Question 13. Existing Wage and Hour data indicate that violations of wage and hour laws are common among large federal contractors.¹⁰ What specific steps will you take to improve the enforcement of wage and hour laws among federal contractors?

Answer 13. If confirmed, I look forward to a briefing by the Wage and Hour Division staff on existing strategies that are being implemented. Additionally, I will bring my experience and knowledge as the Executive Director of the South Carolina Department of Employment and Workforce to the Division.

Question 14. What steps will you take to assist contracting agencies in enforcing contractors' wage-and-hour obligations, such as through suspension and debarment proceedings?

Answer 14. I understand that the Wage and Hour Division has suspension and debarment authorities in the context of some statutes, including the Davis-Bacon Act and the Service Contract Act. If confirmed, I look forward to being briefed on matters pertaining to this issue and will work to enforce the laws under the Division's jurisdiction full and fairly to ensure protection of all workers.

Question 15. 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 Division improve its efforts to (a) identify misclassified workers and (b) conduct enforcement actions against employers that misclassify them?

Answer 15. A central role of the Wage and Hour Division is to ensure that employers have clear guidance from the Department on how to comply with the FLSA. Using independent contractors is a lawful and longstanding business option for employers. However, I understand some employers may violate the law by inappropriately classifying an employee as an independent contractor. Employees incorrectly classified as independent contractors may be denied access to critical benefits and protections to which they are entitled under the law and negatively impact federal and state governments. Employers who intentionally violate the FLSA undermine law-abiding employers that are paying their workers properly. If confirmed, I will work to fully and fairly enforce the laws within the Wage and Hour Division's jurisdiction, including laws prohibiting the misclassification of employees as independent contractors, to ensure the protection of both workers and law-abiding employers.

Question 16. 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?

⁸ <https://www.bna.com/workers-turn-down-n57982084889/>

⁹ <https://fas.org/sgp/crs/misc/R40633.pdf>

¹⁰ <https://www.warren.senate.gov/files/documents/2017-3-6-Warren-Contractor-Report.pdf>

Answer 16. As a nominee, I do not have specific information about any ongoing enforcement matters. If confirmed, I intend to enforce the law fully and fairly.

Question 17. 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 17. It is my understanding from public reporting that this case recently closed with a compliance agreement and \$1 million in back-pay payments. I have no information regarding internal deliberation about this enforcement action.

Question 18. Will you continue with any other ongoing debarment proceedings?

Answer 18. As a nominee, I do not have specific information about any ongoing enforcement matters. If I am confirmed, I will consult with Wage and Hour Division staff and the Solicitor's Office to determine the appropriate course of action for this and all other matters in litigation. I intend to enforce the law fully and fairly.

Question 19. Will you promise to continue the Department's ongoing investigation of wage and hour violations at Wells Fargo?

Answer 19. As a nominee, I do not have specific information about any ongoing enforcement matters. If I am confirmed, I will consult with the Wage and Hour Division staff concerning matters under investigation and will enforce the law fully and fairly.

Question 20. Will you commit to enforcing wage and hour laws and regulations against The Trump Organization if the company violates these laws and harms its employees?

Answer 20. If confirmed, I will enforce the laws under the jurisdiction of the Wage and Hour Division fully and fairly and regardless of association or ownership.

Question 21. What is your specific plan for insulating yourself and WHD from conflicts of interest related to WHD actions that may impact the Trump Organization?

Answer 21. If confirmed, I will enforce the laws under the jurisdiction of the Wage and Hour Division fully and fairly and regardless of association or ownership. Further, I will work with career ethics staff at the Department of Labor and the Office of Government Ethics to ensure any possible conflict of interest, if any, are addressed and handled appropriately.

Question 22. Will you commit to closing the revolving door and preventing WHD employees from personally profiting from their activities at the Division?

- a. Will you prevent WHD employees from working on issues that directly impact a previous employer?
- b. 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 three or more years upon leaving federal service?

Answer 22(a)(b). If confirmed, I work with career ethics staff at the Department of Labor and the Office of Government ethics to ensure that all the Division's employees comply with all ethics rules and laws.

Question 23. Please describe your views on the role of Congress in conducting oversight of the Division.

Answer 23. Performing oversight of the executive branch is a longstanding responsibility of Congress.

Question 24. Will you commit to promptly and comprehensively answering any requests for information that you receive from any member of Members of the HELP committee?

Answer 24. If confirmed, I will answer requests from all Members of Congress.

Question 25. Will you treat requests for information from Majority Members of Congress differently than you will treat requests from Minority Members? If so, how?

Answer 25. If confirmed, I will provide responses to requests for information from all Members of Congress.

Question 26. Will you commit to maintain the public availability of all Wage and Hour enforcement data that is currently available online, including the "Wage and Hour Compliance Action Data" dataset?¹¹

Answer 26. Open data is a hallmark of good government. If confirmed, I intend to maintain the Wage and Hour Division's publicly available enforcement data.

Question 27. What ideas do you have for improving the quality, accuracy, comprehensiveness, and availability of WHD compliance and enforcement data?

Answer 27. With the guiding principle of transparency, if confirmed, I intend to learn from Wage and Hour Division staff about its data practices to improve the quality, accuracy, comprehensiveness and availability of its compliance and enforcement data.

¹¹ <https://enforcedata.dol.gov/views/data—summary.php>

SENATOR KAINÉ

Question 1. The national minimum wage was last increased in 2007 to \$7.25 an hour, an increase which went into effect in 2009.

- a. Do you believe that determinations regarding adjustments to the minimum wage and the frequency of such adjustments should take larger economic influencers such as inflation into account? Please explain.
- b. In your opinion, how frequently should the national minimum wage be reviewed?
- c. Do you support an increase in the national minimum wage? Yes or No? Please explain your reasoning.
- d. Do you think that it is appropriate for the Federal Government to set a minimum wage floor? Or do you think that this is a determination best left to the states? Please explain.

Answer 1(a)(b)(c)(d). Congress sets the federal minimum wage and it is the duty of Wage and Hour Division to enforce the set minimum wage. The Wage and Hour Administrator does not have the lawful ability to effectuate a change to the federal minimum wage. If confirmed, I will faithfully enforce the rate Congress enacts.

SENATOR HASSAN

Question 1. You have said that one of the major challenges facing the Wage and Hour Division is how to handle the provision of the Fair Labor Standards Act which permits the payment of subminimum wage to individuals who experience disabilities. Often times, this type of employment occurs in a secluded environment known as a sheltered workplace. As you and I discussed in our one-on-one meeting, in 2015, with the support of the NH business community, New Hampshire was the first state to eliminate the payment of the subminimum wage and there have been efforts in Congress to end this practice.

- a. Do you support individuals who experience disabilities being paid a subminimum wage?
- b. Would you work toward and support efforts to phase out this practice if confirmed as Wage and Hour Administrator?

Answer 1(a)(b). It is the duty of the Wage and Hour Division to enforce the laws which Congress enacts. If confirmed, I look forward to being briefed by career staff who have expertise on the 14(c) subminimum wage issues. However, I will support any effort to assisting individuals with disabilities achieve the resources, training, or other support necessary to achieve and maintain meaningful workforce participation.

Question 2. In 2008, a survey reported 68 percent of low wage workers not being paid what they were owed on at least one occasion in the previous week—a practice known as wage theft. Wage theft is estimated to rob workers of \$15 billion every year. To address this issue—which no worker should have to face in 2017—the Wage and Hour Division has proactively investigated industries with a pattern of wage violations and high numbers of vulnerable workers. The Wage and Hour Division has also worked to launch more proactive investigations rather than relying solely on complaints from workers. As of last year, 50 percent of all of the Division's investigations were proactive and the Division had recovered over \$1.8 billion for workers.

- a. Will you continue to use data and to focus proactively on industries to ensure that workers are paid the wages they are owed?
- b. Will you commit to maintaining the fifty percent threshold of proactive investigations?

Answer 2(a)(b). If confirmed, I would be responsible for enforcing the Fair Labor Standards Act and will work to enforce this and other laws under the Wage and Hour Division's jurisdiction fully and fairly. Wage and hour laws protect our nation's workforce and their abilities to provide for themselves and their families. I support strategic enforcement alongside individual complaints.

Question 3. During our meeting, we discussed how worker misclassification is often used to exploit vulnerable individuals, many times in cases of undocumented workers. In cases like these, individuals may not report when they are being mistreated or choose to not seek medical care when hurt on the job out of fear of being deported.

President Trump's aggressive tactics to deport individuals who are undocumented has resulted in lower crime reporting in a number of cities and will likely have a chilling effect on workers reporting employer violations as well.

- a. Do you believe that undocumented workers are protected by the Fair Labor Standards Act (FLSA)?

- b. If confirmed, how will you work to ensure that employers are held accountable for employee misclassification and that workers, included those who are undocumented feel empowered to report violations without fear of retaliation?
Answer 3(a)(b). If confirmed, I will work to fully and fairly enforce the laws within the Wage and Hour Division's jurisdiction. This includes ensuring that all workplace protections are enforced regardless of workers' immigration status.

RESPONSE BY DAVID G. ZATEZALO TO QUESTIONS OF SENATOR MURRAY, SENATOR BURR, SENATOR CASEY, JR., SENATOR FRANKEN, SENATOR WHITEHOUSE, SENATOR WARREN, AND SENATOR KAINE

SENATOR MURRAY

Question 1. MSHA under the Obama Administration followed a roadmap for mine safety and health that aimed to implement the Mine Act to the fullest extent possible. This resulted in the safest years in mining history with the fewest deaths and injuries, the lowest respirable dust levels and silica levels in coal mines, and the strongest enforcement of miners' rights. Under your leadership, will MSHA continue to follow this approach to full implementation?

Answer 1. MSHA has an important responsibility to promote miners' safety and health. If confirmed, I would ensure that the requirements of the Federal Mine Safety and Health Act are fully and fairly enforced.

Question 2. MSHA completes health and safety compliance inspections on underground mines in the U.S. four times annually and on surface mines twice annually. During the Obama Administration, MSHA completely satisfied this requirement. Do you commit to ensuring this statutory requirement is met?

Answer 2. Yes.

Question 3. Twelve coal miners have died on the job in 2017, already 50 percent more fatalities than in all of 2016, with three months still left in the year. Please provide specific examples of the steps you will take to ensure MSHA enforcement efforts reduce fatalities.

Answer 3. I will work with MSHA's enforcement staff to identify additional innovative strategies to reduce injuries and fatalities. These strategies will include a mix of enforcement, and compliance and technical assistance.

Question 4. In your opinion, what is the role of compliance assistance within MSHA's mission to prevent death, illness, and injury from mining and promote safe and healthful workplaces for U.S. miners?

Answer 4. Compliance assistance that includes outreach and training on MSHA's mandatory safety and health standards complements a rigorous enforcement strategy.

Question 5. In your hearing you stated that your priority, if confirmed, would be to help the industry adopt new technologies sooner. Will you expand on which technologies you think the industry needs to adopt and how you will engage with the industry to achieve this objective?

Answer 5. I believe that technology has the potential to improve miners' safety and health. For example, as I noted at my hearing, I believe that proximity detection is a technology that can improve miners' safety. If confirmed, I would work with staff to determine how this technology could be improved, for example by placing a sensor in the miner's cap lamp.

Question 6. Do you have any suggestions for amendments to the Mine Safety and Health Act that Congress should consider in order to strengthen MSHA's enforcement authority?

Answer 6. I do not have any specific suggestions at this time, but if confirmed I look forward to maintaining an open dialogue with you and your Congressional colleagues regarding all aspects of mine safety.

Question 7. MSHA has been working on a new silica rule for a number of years. If you are confirmed, how soon will you aim to issue a proposed rule addressing miners' exposure to silica?

Answer 7. If confirmed, I will meet with MSHA staff to discuss all possible policy, technology, and engineering options for addressing miners' exposure to respirable silica.

Question 8. Will you commit to adopting the recommendations of the forthcoming National Academy of Science's report recommendations?

Answer 8. If confirmed, I will commit to reviewing the forthcoming National Academy of Sciences' report recommendations and discussing all possible policy, technology, and engineering options with NIOSH.

Question 9. How will you work to align MSHA's actions on silica with OSHA's 2016 silica rule?

Answer 9. In discussing with MSHA and NIOSH staff all possible policy, technology, and engineering options for addressing miners' exposure to respirable silica, I would view OSHA's 2016 silica rule as an important consideration.

Question 10. Do you intend to propose altering or revisiting the 2013 final Pattern of Violations rule?

Answer 10. The President has directed a review of all rules and to make determinations if any rules should be revised. Though I have no present reason to disturb

this rule, if confirmed I will have an obligation to comply with the President's directive.

Question 11. Will you defend the final 2013 Pattern of Violations rule in any legal challenge?

Answer 11. If confirmed, I will consult the Department of Labor's Office of the Solicitor regarding all such matters.

Question 12. Will you commit that the effective date of the Metal/Nonmetal Examination Rule, published at 82 Fed. Reg. 7680 (Jan. 23, 2017), will not be delayed further than June 2, 2018?

Answer 12. As a nominee I cannot make an affirmative determination at this time; however, if confirmed I will strive to ensure that MSHA provides stakeholders with the requisite training and compliance assistance in advance of the June 2, 2018 date.

Question 13. Which is more likely to prevent injury to miners: 1) workplace exams that occur before miners enter a mine or 2) workplace exams that occur as miners are entering a mine?

Answer 13. MSHA has published a proposed rule that would address the timing of a workplace examination. If confirmed, I will review and give due consideration to comments and testimony received, and work with staff to determine an appropriate response to stakeholder comments.

Question 14. Do you agree that the timing for inspections of metal and nonmetal mines should be aligned with the timing of inspections of underground coal mines? Or do you believe that some mines should be inspected before workers begin work and other mines can be inspected after workers are allowed to begin working?

Answer 14. MSHA has published a proposed rule that would address the timing of a workplace examination. If confirmed, I will review and give due consideration to comments and testimony received, and work with staff to determine an appropriate response to stakeholder comments.

Question 15. Will you commit to maintaining the requirement of the Metal/Nonmetal Examination Rule that mines be inspected before work begins?

Answer 15. I believe it is important to allow the rulemaking process to conclude. If confirmed, I will review and give due consideration to comments and testimony received, and work with staff to determine an appropriate response to stakeholder comments.

Question 16. Which specific statutory purpose of the Mine Safety and Health Act is furthered by the proposed modifications published at 82 Fed. Reg. 42757 (Sept. 12, 2017)?

Answer 16. As a nominee, I am not involved in the rulemaking process, but if confirmed I will give due consideration to comments and testimony received.

Question 17. What were Rhino Eastern LLC's Eagle Mine #1 NFDL (Nonfatal Days Lost) injury incidence rates for each of the years during which you were CEO of Rhino Resource Partners? What percent larger or smaller were these rates than the national NFDL incidence rate in each year?

Answer 17. The table below compares the NFDL injury incidence rates for the mine to which you refer.

NFDL—TABLE 1.
Nonfatal Days Lost (Injury Incident Rates)

Year	Eagle Mine #1 NFDL	Coal NFDL
2009 Q1-4	17.69	3.21
2010 Q1-4	14.99	2.90
2011 Q1-4	12.27	2.83
2012 Q1-4	5.28	2.70
2013 Q1-4	0.00	2.69

NOTES:

- 1. Rhino Eastern LLC began operating Eagle Mine #1 during November 2008 after rescuing it out of bankruptcy. I became CEO in September 2009.
- 2. Eagle Mine #1 exhausted reserves and was sealed and closed during November 2013.
- 3. Data excludes contractors; includes office workers.

It is important to recognize, however, that a single mine considered in isolation does not necessarily reflect a company's overall safety record. Indeed, as a company Rhino's data for All Injury Rates and Fatalities during my tenure fell well below the industry average, as illustrated in the following table.

TABLE 2.

Year	All Rhino Properties	All Mining
2009	2.17	3.01
2010	1.53	2.81
2011	1.64	2.75
2012	1.27	2.56
2013	1.36	2.49

Question 18. Why Did Eagle Mine #1 enter PPOV status in 2010? Please explain in detail what violations led to MSHA's decision to send a PPOV letter. Did Rhino Eastern LLC change its practices after MSHA's August 25, 2011 letter informing the company that Eagle Mine #1 had entered PPOV status for the second time? If so, what changes occurred? Please describe the specific ways in which you were involved with any such changes.

Answer 18. In 2010, Eagle #1 mine was placed on a PPOV status because it met two of the three screening criteria MSHA applies. MSHA relied on enforcement data from September 1, 2009 to August 31, 2010 to determine the number and rates of enforcement actions cited to the mine during the timeframe. As a result of being placed on PPOV status I replaced the existing management. After a fatal injury in June of 2011, the VP for Rhino Eastern was unable to continue in those duties. I eventually replaced him with a retired MSHA District Manager, whereupon the mine continued on an acceptable improvement rate for safety measures.

Question 19. Why did Eagle Mine #1 enter PPOV status for the second time in 2011? Please explain in detail what violations led to MSHA's decision to send a PPOV letter.

Answer 19. In 2010, MSHA identified the Eagle #1 mine as exhibiting a PPOV, but MSHA did not issue a POV notice because the mine successfully reduced its Significant and Substantial (S&S) rates to the goals set forth in the mine's MSHA-approved corrective action plan.

In August 2011, after the previously mentioned fatal injury, MSHA found that the S&S rate for the mine again increased. As a result, MSHA issued a second PPOV letter to the mine. At that time, I made several changes in the management of the operation.

Question 20. How should MSHA deal with mine operators that repeatedly demonstrate a lack of concern for miners' safety and health?

Answer 20. MSHA should continue to use the Agency's POV process to deal with mine operators who repeatedly demonstrate a lack of concern for miners' safety and health.

Question 21. How significant a safety problem is created by advanced notice of MSHA inspections? How will you address this problem?

Answer 21. Advanced notice of MSHA inspections is a serious violation. If confirmed, I will work with enforcement staff to determine how best to aggressively address this issue, which may include the use of targeted enforcement.

Question 22. MSHA obtained an injunction against one of your mines, Cam Mine #28, in order to ensure your company not illegally tip your mines to clean up violations before inspectors arrived. This is a step that MSHA is rarely forced to take, and in fact, the injunction against your company was one of very few injunctions of this type that MSHA has had to seek since 2010. What was your responsibility for the advanced notice violation? What steps did you take in response to reports that your employees gave advanced notice of an MSHA inspection?

Answer 22. CAM Mine #28 was one of approximately eighteen mines being operated by Rhino at that time. I generally visited the mine on a quarterly basis. In an effort to improve safety performance we had previously moved the superintendent from that mine to another operation. The replacement superintendent, hired from a different company, erroneously believed advanced notice was accept-

able. After I and several other managers investigated this incident, we discharged this superintendent and conducted training for all employees of Mine #28 stressing the unacceptability of this practice.

Question 23. What are the lessons MSHA and mine operators should learn from the Upper Big Branch disaster?

Answer 23. The primary lesson from the UBB disaster is that management must remain ever vigilant in its approach to miners' safety and health, especially in regard to the mine ventilation system. In addition, management must seek input from miners, who must feel free to provide their input into improving safety and health.

Question 24. Did you apply lessons learned from the Upper Big Branch disaster at the Eagle #1 mine you ran? If yes, please provide specific provide examples.

Answer 24. After the Upper Big Branch disaster, I had our engineering and safety groups review all underground mine ventilation systems. I also instructed human resource staff to conduct spot reviews at underground mines to gauge employee relations with respect to feeling free to express concerns.

Question 25. If confirmed, will you continue to ensure that miners have a voice by aggressively enforcing whistleblower protections?

Answer 25. Yes.

Question 26. How will you protect miners who make safety complaints, complain of discrimination, or refuse to work in unsafe conditions?

Answer 26. I will work with staff to ensure that miners who make safety complaints, complain of discrimination, or refuse to work in genuinely unsafe conditions are protected from discrimination.

Question 27. Do you believe the requirement that MSHA inspect each underground mine four times a year and each surface mine twice a year is adequate, or will you advocate for increased inspections?

Answer 27. If confirmed, I will commit to ensuring that MSHA fulfills its statutory inspection mandate.

Question 28. Do you believe that MSHA's current enforcement approach adequately identifies mines that need extra enforcement attention? Please explain.

Answer 28. If confirmed, I will review MSHA's current enforcement approach to determine if it adequately identifies mines that need extra enforcement attention.

Question 29. Between 1968 and 2015, 76,000 miners died from black lung disease, and miners continue to suffer and die from this devastating disease. MSHA finalized the Respirable Dust Rule in 2014 to help prevent black lung disease in miners. Do you intend to propose altering or revisiting the final 2014 Respirable Dust Rule?

Answer 29. The President has directed a review of all rules and to make determinations if any rules should be revised. Though I have no present reason to disturb this rule, if confirmed I will have an obligation to comply with the President's directive.

Question 30. President Trump's Budget proposal for FY18 included a cut of 21 percent below last year's enacted level to the Department of Labor. If confirmed, will you publicly advocate for maintaining current funding levels and for increased resources for MSHA enforcement activities?

Answer 30. As a nominee, I did not participate in the development of the President's current budget proposal. If I am confirmed, I will work to maximize every dollar MSHA is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to MSHA.

Question 31. While you were CEO of Rhino, one of your workers was subjected to degrading and humiliating comments, taunts, and slurs based on his Polish ancestry. Rhino was subsequently sued by the Equal Employment Opportunity Commission for violating Title VII of the Civil Rights Act by subjecting this worker to pervasive national origin discrimination and for retaliating against him when he reported the harassment. How can you assure miners across the country that as the head of MSHA you will protect them from retaliation for exercising their rights?

Answer 31. Though the EEOC concluded its action approximately fourteen months after I retired as Chairman of Rhino, I am aware of the need to foster an environment in which employees feel comfortable voicing concerns without fear of retribution, and the Mine Act explicitly protects miners from retaliation when they report safety and health concerns. If confirmed, I will fully and fairly enforce Section 105(c) of the Mine Act.

Question 32. Were there other instances of worker complaints of unlawful discrimination at your company during the time that you were CEO or on the Board of Directors? Please describe your process for handling any such complaints.

Answer 32. I established a toll-free number that we posted for all stakeholders to contact the Board of Directors of Rhino directly. The Audit Committee, consisting of all outside Directors, was charged with investigating any complaints.

Question 33. Do you commit to inform the Members of this Committee if you intend to undertake any review or revision of any existing guidance?

Answer 33. I am unable to commit at this time as I unfamiliar with MSHA's existing guidance.

Question 34. What is your opinion about whether minority Members of the Health, Education, Labor, and Pensions ("HELP") Committee have the authority to conduct oversight of MSHA?

Answer 34. It is my understanding that various committees and their Members, spanning both chambers of Congress, have jurisdiction over the Department of Labor and its constituent agencies, such as MSHA, including an oversight role in addition to legislative, budgeting and, in the case of the Senate, the advice and consent role for nominations.

Question 35. If confirmed, do you agree to provide briefings on MSHA business to Members of the HELP Committee, including minority Members, if requested?

Answer 35. If confirmed, I look forward to maintaining an open dialogue with you and your Congressional colleagues regarding all aspects of mine safety.

Question 36. If confirmed, do you commit to answer promptly any letters or requests for information from individual Members of the HELP Committee including request for MSHA documents, communications, or other forms of data?

Answer 36. If confirmed, I will provide responses to all Members of Congress.

SENATOR BURR

Question 1. What would you do as Assistant Secretary of Labor for Mine Safety and Health to ensure consistency in the enforcement and interpretation of agency regulations?

Answer 1. I believe that enforcement and interpretation of MSHA's regulations must be consistent across all MSHA district and field offices. If confirmed, I will meet with staff to determine appropriate options to ensure consistent enforcement.

Question 2. What steps would you take to ensure agency inspectors are adequately trained in the mining sectors they are assigned? More specifically, what would you do to ensure inspectors who primarily served in coal mining are trained and qualified to inspect aggregate mining operations?

Answer 2. I believe that enforcement staff must be trained in the mining sectors to which they are assigned. If confirmed, I will meet with staff to determine appropriate options to ensure that MSHA's coal inspectors are trained to inspect aggregate mining operations, if required.

Question 3. It is my understanding that MSHA is required to engage in a conferencing process with mine operators prior to the issuance of a citation. What steps would you take to ensure good faith pre-assessment conferencing procedures?

Answer 3. As a nominee viewing the process from the outside, I need to better understand MSHA's conferencing process. However, if confirmed, I will meet with staff to determine appropriate options to ensure that MSHA follows good-faith pre-assessment conferencing procedures.

SENATOR CASEY, JR.

Question 1. What are your top priorities for MSHA?

Answer 1. My top priority is the safety and health of the nation's more than 300,000 miners. Therefore, my top priority will be the completion of MSHA's statutorily mandated inspections. I further believe that miners' safety and health can be improved through faster adoption of innovative technology. I also will seek to expand training and technical assistance to ensure compliance with mandatory safety and health standards.

Question 2. If confirmed, how would you measure the success of your tenure?

Answer 2. I would measure success by ensuring that MSHA has the necessary resources and tools to carry out the Agency's mission to ensure miners' safety and health. I will also apply outcome goals and measures to assess MSHA's programs and determine if the Agency's strategic objective to prevent death, disease, and injury from mining is achieved.

Question 3. What mine health and safety education have you received and from where did you receive this education?

Answer 3. My extensive lifelong mine health and safety education began in 1974 with new miner's safety and health training at Consol's Blacksville #2 Mine in Wana, WV, followed by: Safety Systems training at West Virginia University while earning my BS in mining engineering in the 1970's; Behavioral Based Safety Training; first aid and mine rescue training; and foreman's certification training at AEP during the 1980's and early 1990's. I furthered my education through NOSA Safety Systems Training in Melbourne, Australia with BHP in the late 1990's, as well as

annual refresher training on all of the above in Kentucky, West Virginia, and Ohio. I obtain additional safety training and new laws training each year at various Professional Engineering seminars.

Question 4. 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?

Answer 4. Yes. If confirmed, I would enforce the Mine Act, including mandatory inspections.

Question 5. 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 US in 40 years. Will you commit to maintain, implement and enforce this rule and its implementing guidance?

Answer 5. The President has directed a review of all rules and to make determinations if any rules should be revised. Though I have no present reason to disturb this rule, if confirmed I will have an obligation to comply with the President’s directive.

Question 6. 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?

Answer 6. As I noted at my hearing, I support efforts to reduce black lung disease and believe that the respirable dust rule has been generally successful. The President has directed a review of all rules and to make determinations if any rules should be revised. Though I have no present reason to disturb this rule, if confirmed I will have an obligation to comply with the President’s directive.

Question 7. What are your plans to further protect miners from black lung?

Answer 7. If confirmed, I will ensure that MSHA continues to work with NIOSH, and labor and industry, to reduce miners’ exposures to respirable coal mine dust.

Question 8. How will you assist families of miners impacted by black lung?

Answer 8. MSHA has and will continue to work with DOL’s Division of Coal Mine Workers’ Compensation, also known as the Federal Black Lung Program, to assist miners’ families impacted by black lung.

Question 9. What are your plans to address the rising incidents of Progressive Massive Fibrosis?

Answer 9. If confirmed, I will meet with NIOSH staff to discuss all possible policy, technology, and engineering options for addressing rising occurrences of PMF.

Question 10. Please explain whether you think that miners exercising their “walk around” rights benefits the mine inspection process.

Answer 10. Section 103(f) of the Mine Act provides that a miners’ representative must be given an opportunity to accompany an MSHA inspector “for the purpose of aiding” an inspection and “to participate in pre- or post-inspection conferences held at the mine.” If confirmed, I would ensure that the requirements of the Mine Act are fully and fairly enforced.

Question 11. Is the Compliance Assistance Program effective? Would it be more effective if MSHA were to increase its focus on Technical Support, Ventilation Surveys, and Roof Control Surveys?

Answer 11. I believe that compliance assistance, especially compliance assistance provided to small mine operators who lack resources relative to larger mining concerns, is an effective strategy to ensure increased compliance with mandatory safety and health standards. In addition, I believe effective strategies that reduce the risk of injury and disease include ensuring that roof control and ventilation plans address hazards and that equipment, materials, and structures meet MSHA’s standards. Compliance and technical assistance are complementary approaches, and both enhance enforcement to ensure compliance with MSHA’s standards.

Question 12. 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?

Answer 12. I have no present reason to disturb this rule, as I support the use of innovative technology, such as proximity detection, to prevent accidents. However, the President has directed a review of 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 13. 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?

Answer 13. DOL's Division of Coal Mine Workers' Compensation, also known as the Federal Black Lung Program, is responsible for the implementation of this rule.

Question 14. 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 14. If confirmed, I look forward to maintaining an open dialogue with you and your Congressional colleagues regarding all aspects of mine safety, including specific legislation pending in both chambers of Congress.

SENATOR FRANKEN

Question 1. Some employer practices intended to promote safety are believed by experts to actually inhibit injury reporting. These include incentive programs where workers are rewarded if they, or their work team, does not suffer (i.e. report) an accident; policies which punish injured workers for vague rule violations like "eyes not on task" and "lack of situational awareness;" as well as post-accident drug testing of injured workers whose judgement or actions could not have led to the accident.

Question 1(a). Do you support these types of incentive programs and post-accident drug testing? If so, when do you believe they are appropriate, and when are they not appropriate?

Answer 1. If confirmed, I would consider incentive programs on a case-by-case basis before making any determinations.

Question 1(b). Should you be confirmed, would you take actions regarding these practices in an effort to promote more accurate injury data reporting?

Answer 1(b). I support innovative actions that encourage accurate injury data reporting.

Question 2. OSHA recently updated its silica dust standard, cutting the permissible exposure level limit in half. When asked about the rising number of black lung cases during your interview with HELP Committee staff, you said the rise in black lung cases could be related to silica dust exposure rather than coal dust exposure.

Question 2(a). If confirmed, would you pursue a silica standard if evidence suggests miners are getting sick from silica dust exposure?

Answer 2(a). If confirmed, I will consult all valid studies and evidence, including the forthcoming National Academy of Sciences' report, before formulating possible policy, technology, and engineering options for addressing miners' exposure to silica dust.

Question 2(b). During your staff interview you also said you wish the technology existed to monitor silica dust exposure in real time, like coal dust is monitored with personal dust monitors (PDM). If confirmed, would you reach out to manufacturers to explore these types of technologies and how they could be useful in protecting miners?

Answer 2(b). Yes.

Question 3. On April 5, 2010 twenty-nine miners were killed in a coal dust explosion at Massey's Upper Big Branch mine. The mine disaster was the worst in the United States since 1970. According to the Charleston Gazette, "MSHA, the Governor's Independent Investigation Panel, the West Virginia State Office of Miners Health, Safety and Training, and the United Mine Workers all agreed that the mine disaster was caused by a longtime pattern of safety violations by Massey Energy and by the insistence of CEO Don Blankenship that the company put coal production and profits ahead of safety protections for miners."

Question 3(a). During your interview with HELP Committee staff, you said that there are a few bad operators that give the mining industry a bad name. Was Don Blankenship one of those bad operators? Is Bob Murray of Murray Energy one of those bad operators?

Answer 3(a). From what I have seen and read, it appears that Massey's leadership did not devote full attention to miners' safety and health.

Question 4. Don Blankenship was convicted and sentenced to the maximum penalty allowable for a criminal mine safety violation of one year in prison and a

\$250,000 fine. Yet he continues to deny responsibility for the Upper Big Branch mine disaster and blames MSHA for the accident via his website.

Question 4(a). Do you think that the penalty imposed on Don Blankenship of one year in prison and a \$250,000 fine was an appropriate penalty for his role in the death of 29 miners?

Answer 4(a). I am not sufficiently familiar with the specific facts in the criminal case to provide an informed conclusion on this question.

Question 4(b). MSHA has the power to request criminal sanctions for especially egregious violations. If you were the Assistant Secretary for Mine Safety and Health at the time the Upper Big Branch report was released, would you have pursued those sanctions?

Answer 4(b). I agree with MSHA's actions taken at that time.

Question 4(c). Should Congress consider raising the potential penalty to determine operators from ignoring mine safety rules?

Answer 4(c). I believe that this decision falls under the jurisdiction of Congress. If confirmed I look forward to maintaining an open dialogue with you and your Congressional colleagues regarding all aspects of mine safety, including specific legislation pending in both chambers of Congress.

Question 5. Don Blankenship runs a website he calls "The American Political Prisoner" where he criticizes MSHA, mine safety investigators, the courts, judges, and elected officials.

Question 5(a). Do you agree with Blankenship's claims that "the Mine Safety and Health Administration (MSHA) likely caused the UBB mine explosion?"

Answer 5(a). No.

Question 5(b). Do you agree with Blankenship's claims that "MSHA issued a false investigation report following the UBB mine Explosion?"

Answer 5(b). No.

SENATOR WHITEHOUSE

Question 1. In litigation over MSHA's 2013 POV rule, the Ohio Coal Association and Kentucky Coal Association and other industry groups have argued in court that between 27% and 33% of all "serious and substantial" citations issued by MSHA inspectors are later vacated or modified. In your staff interview you said that you believe the error rate is more along the lines of 10%-is this still your view?

Answer 1. Yes.

Question 2. In the same suit, industry groups claim that because the rule allows MSHA to use citations instead of final orders as the basis for a pattern of violations mine owners are deprived of their due process rights. Citations are frequently challenged by owners in administrative proceedings that can take over a year to complete. If MSHA had to wait until citations were fully litigated to use them as a basis for its POV enforcement authority, dangerous conditions could linger for months without a corrective action plan. In your staff interview you indicated that you believe it is appropriate for MSHA to use citations to determine whether a mine should be subject to corrective action under the rule-is this still your view?

Answer 2. Yes.

Question 3. The prior rule required MSHA to give mine owners a warning, or "potential pattern of violation" notice, a procedural hurdle not required by law that in many cases would delay effective remediation of a mine. In your staff interview you disagreed with the argument that the 2013 rule, which eliminates the potential pattern of violation notice, would undermine incentives for mine owners to address safety concerns-is this still your view?

Answer 3. Yes.

Question 4. Do you commit to maintaining public access to all information currently available in the online Mine Data Retrieval System?

Answer 4. Yes.

Question 5. Do you commit to not using non-commercial airplane or helicopter travel paid for at taxpayer expense?

Answer 5. If confirmed, I will fully comply with all Federal Government travel policies.

Question 6. In your staff interview you said that you had no role in the decision to file the lawsuit against MSHA regarding the 2013 PPOV rule by the Ohio Coal Association or the Kentucky Coal Association-is that still your recollection?

Answer 6. Yes.

Question 7. Will you recuse yourself from all matters related to Rhino Resource Partners LP or any of its or partly or wholly owned subsidiaries before MSHA?

Question 7(a)1. Will you do so even if you are not required to under the ethics agreement you have with MSHA?

Answer 7,7(a). If confirmed, I will fully comply with all Federal Government ethics policies, including conflict of interest policies, and will rely on the Department's Designated Agency Ethics Officer for guidance.

SENATOR WARREN

Question 1. A September *Intelligencer/Wheeling News-Register* story about your nomination reported that you view running MSHA as a "natural extension of [your] formal work in running a coal company." Is that an accurate portrayal of your views on this position?

Answer 1. I believe that my leadership and operations expertise complements my earlier hands-on experience as a coal miner, mining engineer, and veteran of coal mine rescues.

Question 2. Do you view the obligations of a mining executive and the MSHA Administrator as substantially different when it comes to miners' health and safety? Please explain.

Answer 2. I believe both the mining executive and the MSHA Administrator have an obligation to ensure miners' safety and health.

Question 3. If you are confirmed, what metrics will you use to assess the effectiveness of your enforcement efforts?

Answer 3. If confirmed, I will use outcome goals and measures to assess MSHA's programs and determine if the Agency's strategic objective to prevent death, disease, and injury from mining are achieved.

Question 4. MSHA recently expressed openness to settling a lawsuit by industry groups over MSHA's 2013 Pattern of Violations rule. Do you believe that the rule should be modified from its current form? Why or why not?

Answer 4. The President has directed a review of all rules and to make determinations if any rules should be revised. Though I have no present reason to disturb this rule, if confirmed I will have an obligation to comply with the President's directive.

Question 5. Considering that Rhino Resources received two Potential Pattern of Violation letters while you were CEO of the company, your involvement in future related rulemaking would create the appearance of impropriety, especially considering that the 2013 Pattern of Violations rule was designed to address problems like those at Rhino mines. In addition, the Kentucky Coal Association and the Ohio Coal Association challenged that rule in court while you were in the leadership of both organizations. If MSHA promulgates a new Pattern of Violation Rule, will you commit to recusing yourself from that rulemaking process?

Answer 5. If confirmed, I will fully comply with all Federal Government ethics policies, including conflict of interest policies, and will rely on the Department's Designated Agency Ethics Officer for guidance.

Question 6. Will you commit to advocating to President Trump and the Secretary of Labor on behalf of the MSHA budget?

Answer 6. As a nominee, I did not participate in the development of the President's current budget proposal. If I am confirmed, I will work to maximize every dollar MSHA is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to MSHA.

Question 7. If you believe that MSHA is underfunded or in any way under-resourced during your tenure, will you commit to informing the Members of the HELP Committee?

Answer 7. Again, if I am confirmed, I will work to maximize every dollar MSHA is appropriated. My top priority will be the completion of MSHA's statutorily mandated inspections, and if I ever conclude that funding levels jeopardize this priority, I will be sure to alert the relevant stakeholders.

Question 8. You referred in both your staff interview and your confirmation hearing to the importance and usefulness of research published by the National Institute for Occupational Safety and Health (NIOSH) for mine safety. But earlier this year, the Trump administration proposed a massive, 40 percent cut to NIOSH. Will you commit to advocating to President Trump and the Secretary of Health and Human Services on behalf of the NIOSH budget?

Answer 8. As you indicate, NIOSH is part of the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services (HHS); accordingly, those agencies are responsible for working with the Administration and Congress to ensure adequate funding to fulfill their mission.

Question 9. If you believe that NIOSH's work related to mine safety is underfunded or in any way under-resourced during your tenure, will you commit to informing the Members of the HELP Committee?

Answer 9. As part of the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services (HHS), NIOSH officials are responsible for communicating their resource needs directly to the relevant policy-makers.

Question 10. Now that 22 miners have died on the job in 2017, there appears to be a major uptick in mining deaths this year, considering that there were no more than 30 fatalities in 2015 and 2016, respectively. At what point would you consider a rise in fatalities to be a trend that requires corrective action the part of MSHA?

Question 10(a). What are your plans to address such an increase in fatalities?

Answer 10,10(a). If confirmed, as an immediate priority I will meet with MSHA's enforcement staff to discuss trends in all injuries and fatalities to determine appropriate next actions.

Question 11. As part of MSHA's new compliance assistance initiative, there are reports that inspectors have been required to leave behind their Authorized Representative cards while conducting inspections. Do you support this practice?

Answer 11. The Obama Administration, though MSHA, created the Compliance Assistance Program after my retirement from the industry; accordingly, I do not have firsthand experience with it.

Question 11(a). If so, why? If not, will you commit to ending it by publicly clarifying inspectors' responsibilities and authorities to issue violations when they observe unsafe conditions?

Answer 11(a). It appears that the CAP initiative has not impeded MSHA's ability to conduct its statutorily mandated inspections of coal and metal/non-metal mines, which will be my top priority if confirmed.

Question 12. Please describe your views on the role of Congress in conducting oversight of MSHA.

Answer 12. It is my understanding that various committees and their Members, spanning both chambers of Congress, have jurisdiction over the Department of Labor and its constituent agencies, such as MSHA, including an oversight role in addition to legislative, budgeting and, in the case of the Senate, the advice and consent role for nominations.

Question 13. Will you commit to promptly and comprehensively answering any requests for information that you receive from any member of Members of the HELP committee?

Answer 13. If confirmed, I will provide responses to all Members of Congress.

Question 14. Will you treat requests for information from Majority Members of Congress differently than you will treat requests from Minority Members? If so, how?

Answer 14. If confirmed, I look forward to maintaining an open dialogue with you and your Congressional colleagues regarding all aspects of mine safety.

Question 15. Will you commit to maintain the public availability of all MSHA enforcement data that is currently available online?

Answer 15. Yes.

Question 16. What ideas do you have for improving the quality, accuracy, comprehensiveness, and availability of MSHA compliance and enforcement data?

Answer 16. I believe that MSHA must ensure that the Agency's compliance and enforcement data are accurate, comprehensive, and available to the public. If confirmed, I will meet with MSHA staff to determine appropriate options to improve the quality, accuracy, and comprehensiveness of MSHA's data.

SENATOR KAINE

Question 1. Pattern of Violations was put in the Mine Act in 1977. In 2013, MSHA issued a rule to implement the law as it was intended and eliminating the Potential Pattern of Violations (PPOV). Now certain mine operators want to roll back the MSHA Pattern of Violations rule. Some want to relax its criteria for screening mines that might be placed on a Pattern of Violations sanction. In your staff interview you said that PPOV would not incentivize operators to come into compliance. Will you commit to keeping the MSHA Pattern of Violations rule and the criteria that has been developed?

Answer 1. The President has directed a review of all rules and to make determinations if any rules should be revised. Though I have no present reason to disturb this rule, if confirmed I will have an obligation to comply with the President's directive.

RESPONSE BY PETER ROBB TO QUESTIONS OF SENATOR MURRAY, SENATOR
WHITEHOUSE, SENATOR KAINE, AND SENATOR HASSAN

SENATOR MURRAY

Question 1. If confirmed, in what ways would you as the General Counsel of the National Labor Relations Board (NLRB or Board) seek to strengthen worker protections?

Answer 1. I would enforce the NLRA as enacted by Congress and interpreted by the NLRB and courts.

Question 2. Since your previous tenure at the NLRB, we have seen huge changes in the economy, including increased numbers of part-time workers, contract workers, and temporary workers and more recently, the gig/on-demand economy. In your view, what if any challenges do these changes present to making sure workers' rights are protected under the National Labor Relations Act (NLRA), and how would you approach those challenges as General Counsel?

Answer 2. The changing workplace often presents new challenges to the interpretation and application of the NLRA. If unfair labor practices involving such issues are filed, I would strive to ensure the charges are appropriately investigated, the laws applied to the facts and a proper disposition is achieved in a timely manner.

Question 3. What is your view on the role of, and importance of, unions in our economy today? Do you believe that unions are crucial to our economy and fairness in the workplace?

Answer 3. Unions have a central role under the NLRA in collective-bargaining after an appropriate group of employees has freely chosen the union as their exclusive representative. As I have told the Committee, I view the NLRA as part of the foundation of the country's successful economic system.

Question 4. You stated in your testimony that you hope to bring modern law firm practices to the NLRB. Please elaborate on the practices you would seek to bring to the agency.

Answer 4. Modern technology has enabled private law firms to avoid duplication, inefficiency and unnecessary administrative actions. If confirmed, I plan to review current practices including sharing legal research, the use of forms and the ability to shift resources to meet short term demands to ensure best practices are utilized.

Question 5. You have been a management-side attorney in private practice for the past several decades. During that time, you have represented employers who worked to maintain a positive relationship with their employees' union as well as employers who have hired you to help challenge and delay organizing drives and elections. You were also Chief Counsel to an NLRB member who was widely viewed as anti-union. Given this history, what do you point to as evidence that you will vigorously defend and enforce employees' rights to organize and engage in collective bargaining?

Answer 5. Leaving aside the characterization of my "history," my public sector experience at the Board as well as at the FLRA demonstrates that I have been, and can be, an effective advocate for enforcing rights protected by the Act. My private sector experience in negotiating labor contracts and resolving labor disputes shows that I have been, and can be, a proponent of collective bargaining.

Question 6. During your years in private practice have you ever represented a worker or a union in a labor or employment case?

Answer 6. Not to my recollection.

Question 7. What is your view of precedent, and when is it appropriate for the NLRB to change precedent?

Answer 7. In making determinations, the General Counsel should review legal precedent and give weight as appropriate in each circumstance. The Board sets precedent and decides when precedent should be changed.

Question 8. Do you believe that it is ever proper for the General Counsel to ask the Board to overturn pro-worker precedent and thereby take rights away from employees? If so, under what circumstances?

Answer 8. I have not prejudged any application of Board precedent, and it would be inappropriate for a candidate for the position of the NLRB General Counsel to comment on or set forth specific opinions on legal precedent or fact situations. Employees, unions and/or employers should not refrain from filing unfair labor practice charges where they have a legitimate belief that a violation has occurred because of general comments made by a candidate for the position of NLRB General Counsel.

Question 9. If the Board were to change precedent, how will you protect the rights of all employees who have relied upon existing Board precedent?

Answer 9. I will enforce the NLRA as written by Congress and interpreted by the Board and courts. As to specific applications please see my response to your question 8, above.

Question 10. As General Counsel, you may be called upon to represent the Board in court to defend a decision whose rationale you do not agree with. How do you intend to handle this situation?

Answer 10. I will represent the Board consistent with the ethical responsibilities all attorneys have in representing clients.

Question 11. Will you commit to recuse yourself from the defense of any Board decision that you are simultaneously seeking to have overruled?

Answer 11. I will review all potential recusal situations with the Board's ethics attorneys and make an appropriate decision.

Question 12. At times, the NLRB has found itself in conflict with the Solicitor General's office or other agencies with respect to what position the government should take before the Supreme Court. Do you believe that the NLRB has authority to represent itself before the Supreme Court?

Answer 12. I've not had occasion to examine this issue and consequently have no opinion.

Question 13. Will you commit to defending the positions of the NLRB before the Supreme Court, even where the Solicitor General's office has refused to do so?

Answer 13. Please see my answer to your question 12, above.

Question 14. Current Board law holds that mandatory arbitration agreements are invalid where they prohibit joint, class or collective litigation in any forum. Will you commit to awaiting the outcome of the current Supreme Court case before advocating a departure from current law?

Answer 14. I have not prejudged this issue or any other issue that is or may be come before the NLRB General Counsel or the Board, and therefore express no view.

Question 15. Do you intend to retain the current practice of maintaining a list of priority issues that should be submitted to headquarters by the regional offices before issuing a complaint on those issues? If so, how will you make decisions regarding issues that should be added to or removed from the current list?

Answer 15. If confirmed, it is likely the Division of Advice will continue to be used to provide guidance to Regions. I have not developed a list of priority issues or criteria for determining such a list. If confirmed, I will review any current list of priority issues.

Question 16. The NLRB General Counsel is responsible for ensuring the smooth and efficient functioning of the agency and overseeing the management of the agency's 1,500 employees. However, the Trump Administration has proposed cuts to the agency budget. Will you publicly advocate for restoration of funding and increased resources for the NLRB?

Answer 16. If confirmed, I will provide information to the Administration and Congress to enable them to evaluate the impact of any proposed budget, as other NLRB General Counsels have.

Question 17. The NLRA has frequently been criticized for weak remedies that do not deter employers from committing unfair labor practices. What steps will you take to ensure the NLRA effectively remedies and deters unfair labor practices?

Answer 17. If confirmed, I will evaluate each case and strive to develop an effective remedy within the framework of the Act for violations.

Question 18. Do you believe the investigative timelines currently in place are appropriate?

Answer 18. If confirmed, I plan to examine the timeliness of case processing. I'm not yet in a position to judge whether cases are being processed appropriately.

Question 19. Do you believe that investigative subpoenas are an important investigative tool for the NLRB's field offices?

Answer 19. Investigative subpoenas are appropriate in some circumstances. It depends on the facts of each case.

Question 20. What criteria do you intend to use in determining whether to seek preliminary injunctions against unfair labor practices?

Answer 20. Generally, 10(j) relief has been sought in cases where the Board believes it will be left without an effective remedy if immediate relief is not secured. If confirmed, I would generally follow that doctrine and review all other criteria developed by the Board in seeking Board approval for 10(j)s.

Question 21. One of the most important functions of the NLRB General Counsel is to investigate situations where employers have broken the law and workers are suffering immediate harm. In recent years, the NLRB General Counsel has successfully sought relief in cases where employers illegally fired union activists. These include cases like El Super in California, where the NLRB won an injunction

to get union activist Fermin Rodriguez his job back, and Affinity Medical Center in Ohio, where the NLRB won an injunction to get a nurse and union activist—Ann Wayt—her job back. What is your view of the importance of the 10(j) program? Will you commit to vigorously pursuing cases under that program? Under what circumstances is it necessary to seek 10(j) relief?

Answer 21. The ability to security 10(j) relief is part of the framework of the Act and should be used where appropriate. Please see also my response to your question 20, above.

Question 22. Do you intend to continue the initiatives of the past three General Counsels in seeking more injunctions in organizing-drive and first-contract-bargaining cases?

Answer 22. I do not know how often such injunctions have been utilized. I have not formulated my own initiatives.

Question 23. Do you believe that it is important for the NLRB to engage in public outreach about its activities and initiatives? If confirmed, which outreach programs or initiatives do you intend to promote?

Answer 23. If confirmed, I would make public initiatives and activities of the General Counsel's office as appropriate. I have not developed any specific plans in this area.

Question 24. Do you think that when an employer shares or has the ability to co-determine an employee's essential terms and conditions of employment that it matters whether the control is actually exercised?

Answer 24. I believe it would be inappropriate for me to answer this question because it involves issues that are before the General Counsel and/or the Board and are likely to be considered in the future. I have not prejudged any issues.

Question 25. Upon the filing of meritorious charges, will you continue to issue complaints against employers possessing only indirect control over workers who have filed the unfair labor practice charges unless and until current Board law (articulated in *Browning Ferris Industries*) is modified?

Answer 25. Please see my answer to your question 24, above.

Question 26. Currently, there are a number of high-profile joint-employer cases pending, including the NLRB's consolidated complaint against McDonalds. If confirmed, how do you intend to prosecute these cases going forward?

Answer 26. I have no knowledge of the status of these cases. Please see also my answer to your question 24, above.

Question 27. Upon the filing of meritorious charges, will you continue to issue complaints against employers who prohibit non-worktime use of their email systems for protected activity unless and until current Board law (articulated in *Purple Communications*) is modified?

Answer 27. Please see my answer to your question 24, above.

Question 28. Current precedent on deferral of unfair labor practice charges to collectively bargained procedures is set forth in *Babcock & Wilcox Const. Co.*, 361 NLRB No. 132 (2014). Do you agree with the analysis of the Board in this case?

Answer 28. Please see my answer to your question 24, above.

Question 29. You have referred to the NLRB's 2014 rule that streamlined the union election process as the "long-dreaded ambush election rules." In the past two-plus years, elections held before the NLRB have occurred at a noticeably faster pace because of the NLRB's recent changes to its election rules. Under the Government Performance and Results Act, the NLRB currently reports the percentage of elections held within 56 days of the filing of a petition. Do you intend, in consultation with the Board, to revisit and lower this number?

Answer 29. I have no intentions one way or the other on this issue at this point.

Question 30. Do you intend to instruct regional offices to change, in any respect, the way in which they process representation cases? If so, please state the intended changes.

Answer 30. Please see my answer to your question 29, above.

Question 31. Will you commit to continuing the efforts of your predecessor to supervise the effective implementation of the recent changes to the Board's election rules?

Answer 31. I have not reviewed and analyzed General Counsel Griffin's efforts.

Question 32. You represented Dominion Energy in an organizing campaign by the workers at Millstone Power Station in Connecticut. Your firm's website states that "the employer won the election which took place more than two years after the day the petition was filed." It also notes that you led an effort to delay this campaign, including 34 days of hearings that contested 80 different employee classifications.

Question 32(a). Given your personal experience with slowing down elections, please explain what steps you will take to hold companies accountable if they violate workers' rights during an organizing campaign?

Answer 32,32(a). If confirmed, I will apply the decisions of the Board and courts after review and consideration of all the facts including appropriate remedies for alleged unfair labor practices.

Question 32(b). Do you believe that this election would have occurred more quickly under the NLRB rules that are currently in effect?

Answer 32(b). No.

Question 32(c). Do you believe that would have been unfair to the employer in this case?

Answer 32(c). Not applicable.

Question 32(d). What in your mind does it mean to “win” an election?

Answer 32(d). Unions typically consider they win an election if a majority of the eligible voters have voted yes for union representation. Employers typically consider that they have won an election if a majority of the eligible voters have not voted yes for union representation.

Question 33. According to its public filings, Dominion Energy paid \$138,658 to consultants from Labor Information Services during the union organizing drive.

Question 33(a). Were you aware of these expenditures?

Answer 33,33(a). No.

Question 33(b). Did you provide any services to Dominion Nuclear in connection with their reporting obligations for “persuader” consultants under 29 U.S.C. §433?

Answer 33(b). No.

Question 33(c). Did you collaborate in any way with the Labor Information Services consultants?

Answer 33(c). I’m not familiar with the name Labor Information Services. I was aware that the company used consultants. I was retained to provide legal services in connection with the representation proceedings before the Board. The attorney-client relationship prevents me from providing specific information about that representation.

Question 33(d). Did you encourage or discourage Dominion to employ these consultants?

Answer 33(d). Please see my answer to your question 33.c., above.

Question 33(e). Did you ever discuss the work of the Labor Information Services consultants with any Dominion official? Please describe any such discussions in detail.

Answer 33(e). Please see my answer to your question 33.c., above.

Question 34. Have you ever provided legal services to an employer that also employed the services of “persuader” consultants for which the employer was required to file a report pursuant to 29 U.S.C. §433?

Answer 34. Yes.

Question 35. What is your view as to the appropriate role of appellate court precedent in cases before the Board?

Answer 35. In processing cases, the General Counsel should consider all precedent and argue as appropriate to the Board.

Question 36. Do you believe that the NLRB should continue or change its current policy of declining to acquiesce in the ruling of a single court of appeals on a labor-law issue? If you believe that policy should be changed, please explain what position you believe the agency should take.

Answer 36. I have not had occasion to review that policy in decades and therefore have no opinion.

Question 37. Do you agree with current case law that nonunion workers have the right to strike?

Answer 37. Employees do not have to be members of a union to engage in activity protected by the Act or to refrain from such activity. I have not pre-judged any Board cases, and it would be inappropriate for me to comment on specific issues.

Question 38. Assume fast-food workers go on a one-day strike on January 1, then another one-day strike on February 1. Aside from the timing of the strikes, there are no facts that could render either strike unprotected. In your opinion is the second strike protected or unprotected?

Answer 38. I have not pre-judged any Board cases, and it would be inappropriate for me to comment on specific cases or issues that have been, or may be, placed before the General Counsel.

Question 39. Please state your view on whether the NLRA prohibits unions from enacting stationary displays in front of “secondary” targets, and, if so, why such a prohibition on speech is constitutional.

Answer 39. Please see my answer to your question 38, above.

Question 40. Please state your view on whether the NLRA prohibits unions from non-coercively asking the employees of “secondary” employers to engage in strikes, and, if so, why such a prohibition on speech is constitutional.

Answer 40. Please see my answer to your question 38, above.

Question 41. Do you believe employers should be permitted to discharge employees for “disloyalty” even when the employees’ speech is truthful, accurate, and discloses no confidential employer information?

Answer 41. Please see my answer to your question 38, above.

Question 42. The current General Counsel has opined that misclassification of employees is an unfair labor practice in an advice memorandum in the Pacific-9 Trucking case. Do you agree? Why or why not?

Answer 42. Please see my answer to your question 38, above. In addition, I have not reviewed and analyzed that memorandum.

Question 43. Do you agree with current Board law with respect to assertion of jurisdiction over Indian tribal enterprises?

Answer 43. Please see my answer to your question 38, above.

Question 44. Congress is currently considering legislation that would change the law on NLRB jurisdiction over Indian tribal enterprises. Will you commit to respecting the results of that legislative process and not seeking to alter current law administratively?

Answer 44. I will follow the laws properly enacted by Congress. As to specific legislation, please see my answer to your question 38, above.

Question 45. The NLRA has been held to preempt most state laws in the field of labor relations. Are there any current state or local laws that you believe are preempted?

Answer 45. I have not had occasion to review any preemption issues in decades and have no opinion. Please see also my answer to your question 38, above.

Question 46. Do you believe that states may grant collective-bargaining rights to workers not covered by the NLRA?

Answer 46. I believe states have done so, but I have not analyzed such laws.

Question 47. Undocumented immigrants are protected by the NLRA, but simultaneously barred from receiving backpay. What initiatives do you intend to pursue to deter employers from committing unfair labor practices against such employees?

Answer 47. I have not developed a set of initiatives.

Question 48. The current General Counsel has undertaken several initiatives to provide remedies for undocumented workers, including providing assistance to obtain visas and seeking conditional reinstatement of employees, which would take effect when they obtain valid work authorization. Will you commit to continuing these initiatives?

Answer 48. Please see my answers to your questions 38 and 47, above.

Question 49. In a memorandum, the current General Counsel has asked the Board to hold that employers may no longer unilaterally withdraw recognition from unions based upon alleged loss of majority support, but must instead petition the Board for an election. Do you agree with this analysis? If not, why not?

Answer 49. I have not analyzed that memorandum and have no opinion.

Question 50. Under which circumstances should the General Counsel or Regional Directors seek a Gissel bargaining order?

Answer 50. Please see my answer to your question 38, above.

Question 51. You have indicated your intent to continue to hold certain individual securities pursuant to the de minimus exemption found at 5 CFR 2640.202. While this exemption generally applies to holdings under \$15,000, it is possible that if you are confirmed as General Counsel of the NLRB some of these entities could come before you. Do you agree to recuse yourself from any matter involving a party in which you hold a financial interest pursuant to this regulation?

Answer 51. If confirmed, I will consult with the Board’s ethics attorneys and make an appropriate decision.

Question 52. Do you commit to inform the Members of this Committee if you intend to undertake any review or revision of any existing guidance?

Answer 52. I’m not aware that the NLRB General Counsel is required to inform Congress before issuing guidance. If confirmed, I will seek guidance and formulate an appropriate response to any requests from Congress.

Question 53. What is your opinion about whether minority Members of the Health, Education, Labor, and Pensions (“HELP”) Committee have the authority to conduct oversight of the NLRB?

Answer 53. I have not analyzed that issue and have no opinion.

Question 54. If confirmed, do you agree to provide briefings on the NLRB to Members of the HELP Committee, including minority Members, if requested?

Answer 54. If confirmed, I will seek guidance and formulate an appropriate response to any requests from Congress. I recognize the important oversight role Congress performs and intend to be responsive to requests from both majority and minority Members.

Question 55. If confirmed, do you commit to answer promptly any letters or requests for information from individual Members of the HELP Committee including request for NLRB documents, communications, or other forms of data?

Answer 55. Please see my response to your question 54, above.

SENATOR WHITEHOUSE

Question 1. Please list the most significant case in which you successfully advocated for the rights of employees or a union that brought a claim before the NLRB. Why was that case significant to you?

Answer 1. The cases I have litigated as counsel for General Counsels based on unfair labor practice charges filed by employees and unions were numerous and many years ago. I have no access to those records and cannot rank them by significance.

Question 2. Do you commit to not using non-commercial airplane or helicopter travel paid for at taxpayer expense?

Answer 2. If confirmed, I will follow the rules and regulations with respect to travel and expense reimbursement.

SENATOR KAINE

Question 1. In hearing cases on unfair labor practices and union representation, the National Labor Relations Board (NLRB) must enforce the National Labor Relations Act in light of the prior decisions of the board and the present-day circumstances of the case at issue. While precedent is often a guiding force in such determinations, the board does occasionally overturn or clarify aspects of prior decisions. For example, in *Browning-Ferris*, the NLRB reversed a decades old standard regarding when two or more businesses should be considered “joint employers” for the same set of employees, modifying the standard to include “indirect control” over the terms and conditions of employment or the capability for exerting such control. In discussing the rationale for this decision, the NLRB noted that the previous joint employer standard was anachronistic and needed to be updated to reflect new economic conditions and the increased prevalence of contingent employment relationships.

The general counsel of the NLRB has significant discretion over how vigorously the decisions of the board, including the new joint employer standard, are enforced. The general counsel is also the chief prosecutorial officer at the NLRB and the key decision-maker regarding the issuance of complaints, enforcement priorities, the legal theories that should be pursued in a given case, and the content of legal memoranda for staff and the public. Given these responsibilities, the general counsel also plays an important role in setting legal policy for the NLRB regional directors and influencing the manner in which employers and employees seek to comply with the law.

Question 1(a). What factors would you consider in deciding whether or not to issue a complaint?

Answer 1,1(a). I would expect Regions would fully investigate all unfair labor practice charges, review all applicable decisions of the Board and courts as well as General Counsel guidance, seek guidance from the Division of Advice as appropriate, and attempt to effectuate an appropriate settlement before deciding whether a complaint should issue.

Question 1(b). More specifically, what factors would you consider in deciding whether or not to name a company as a joint employer in a complaint?

Answer 1(b). I have not pre-judged any Board cases, and it would be inappropriate for me to comment on specific cases or issues that have been, or may be, placed before the General Counsel or the Board.

Question 1(c). If confirmed as general counsel, would you advocate for a review of the new joint employer standard? Do you feel that the board’s approach to this issue in *Browning-Ferris* was appropriate? Please explain.

Answer 1(c). Please see my answer to your question 1.b., above.

Question 1(d). What would be your top five enforcement priorities in your role as general counsel?

Answer 1(d). I have not developed any enforcement priorities.

Question 2. Do you feel that interpretations of the NLRA that could potentially increase the amount of collective bargaining in a business or industry through allowing for the unionization of subsets of employees (i.e. “micro units”) within the larger employee pool or expanding the scope of the definition of an employer would make collective bargaining more or less effective for employers and employees?

Answer 2. The impact of the scope of the definition of employer on collective bargaining would depend on the facts and circumstances of each case.

Question 2(a). What challenges could arise from more liberal interpretations of what constitutes an appropriate bargaining unit or an employer?

Answer 2(a). The impact of the Board's determination of an appropriate unit for collective bargaining will depend on the facts of each case.

Question 2(b). In your opinion, would such interpretations of the NLRA ultimately put employees in stronger or weaker bargaining positions?

Answer 2(b). A union's bargaining strength will depend on the facts of each case.

Question 2(c). In your opinion, what effect, if any, would such interpretations of the NLRA have on franchises, staffing agencies, and the way that such entities approach business operations?

Answer 2(c). I have not analyzed franchise or staffing agency employer issues and have no opinion.

SENATOR HASSAN

Question 1. Mr. Robb, as I'm sure you know, the issue of misclassification of employees as "independent contractors" has come up over and over again. We have seen misclassification lawsuits regarding drivers who were told they were independent contractors, and not employees; in many of these cases, the drivers were actually found to be employees.

Question 1(a). More recently, the NLRB's General Counsel made public that the Agency had settled a case with a company which had continued to misclassify its employees even in the face of multiple administrative decisions finding its drivers were employees.

Question 1(b). If confirmed, you will have ability to determine whether similar complaints of employee misclassification is brought before the NLRB.

Answer 1,1(a),1(b). I am not familiar with the settlement referenced in the statement.

Question 2. Have you represented any employers facing allegations of misclassification, either at the NLRB or elsewhere?

Answer 2. I have represented employers in cases involving whether workers should be considered employees within the definition of the Act.

Question 3. I understand that you can't speak to any specific cases, but do you agree that misclassifying employees as independent contractors illegally interferes with workers' right to form unions or act collectively?

Answer 3. I have not pre-judged any Board cases and it would be inappropriate for me to comment on specific cases or issues that have been, or may be, placed before the General Counsel or the Board.

Question 4. If you are confirmed, what steps will you take as the General Counsel to curb the practice of misclassification?

Answer 4. I have not developed specific steps that I would take if confirmed.

Question 5. Worker misclassification is often used to exploit vulnerable individuals, many times in cases of undocumented workers. In cases like these, individuals may not report when they are being mistreated or choose to not seek medical care when hurt on the job out of fear of being deported. They may also choose to not engage in employee organizing, though they have the right to do so.

Question 5(a). President Trump's aggressive tactics to deport individuals who are undocumented has resulted in lower crime reporting in a number of cities and will likely have a chilling effect on workers reporting employer violations as well.

Answer 5,5(a). I have no comment on this statement.

Question 6. Do you believe that undocumented workers are protected by the National Labor Relations Act?

Answer 6. Please see my answer to your question 3, above.

Question 7. If confirmed will you work to ensure that these workers are knowledgeable of their rights under the law?

Answer 7. If confirmed, I will review the ways in which workers may become aware of the Act and consult with the Board if I believe changes are indicated.

[Whereupon, at 4:30 p.m., the hearing was adjourned.]