

reaching \$840 billion in the year 2020. That is \$311 billion more than we spend on education, roads, and all other non-security discretionary spending. That is just to pay the interest on the debt.

Overall spending will remain well above the historical average as a percentage of GDP. By the end of the 10-year budget window, debt will consume 77.2 percent of our economy. As Congressman PAUL RYAN, ranking member on the House Committee on the Budget, pointed out recently, even European Union countries—hardly exemplars of fiscal rectitude—are required to keep their debt levels below 60 percent of their GDP.

I wish to mention a finding from a new paper entitled “Growth in a Time of Debt” by two economists, Kenneth Rogoff of Harvard and Carmen Reinhart of the University of Maryland. In their paper, they study the relationship between GDP growth and debt, and they find that nations carrying an excessively large debt burden of more than 60 percent of GDP produce a negative effect on short-term economic growth. They write:

When gross external debt reaches 60 percent of GDP, annual growth declines by about 2 percent. For levels of external debt in excess of 90 percent of GDP, growth rates are roughly cut in half.

This only makes sense because you have less money to spend on those things which provide capital, which provide growth in your economy, because you are paying more and more of your income to service the debt.

Remember, our debt will consume 77.2 percent of our economy by 2019. This is important because there are really only four ways to pay down or pay off your debt. The first is to raise taxes. You do not do that when you are in the middle of a recession, and, in fact, it is counterproductive to economic growth in the first place. Second, you cut spending. Well, that is very hard for Congress to do. Third, inflate the currency. Of course, that wipes out savings. It is the least good of the bad alternatives. Fourth, you can grow your way out. Growing your way out is the way to do it, obviously. It is like your family: If you have a lot of debt, you can cut some on spending, sometimes you can make a little more money. You cannot inflate your way out the way the government can. But the preferred way is to grow your way out of debt by, over time, making more money and by being able to pay it down. But there is a point at which, according to these studies, even that does not work—when you have so much debt that you do not have enough money to put back into the system to create the growth we are talking about. And that is what this debt burden and interest cost does.

The administration has been touting a spending freeze worth about \$250 billion over a decade to help allay concerns about spending and debt, but it does not start until next October. Therefore, to me, it is a little bit like

the alcoholic who says: Well, I am going to quit drinking right after I have my next drink. If it is a good idea—and it is—we should begin now. I applaud any move toward fiscal responsibility, but this proposal will really do little to seriously attack the debt and will not even erase the massive debt accumulated during President Obama's first year in office. As columnist Robert Samuelson put it recently, “Any savings would be mostly a rounding error in the decade's projected deficits.”

The point is, we have to do a lot more than this. Let's remember that the proposed spending freeze only applies to 17 percent of the budget. Programs targeted for the freeze have already seen a 22-percent increase in their annual appropriations in the past 2 years, plus another 25 percent increase including the stimulus. So it is hard to argue that tough choices are being made when you increase these programs by 22 percent, plus another 25 percent, and then say: OK, now I am going to stop.

Finally, of course, why propose a budget in February with a more than \$1.5 trillion deficit and a spending freeze that will not even take effect until October? Maybe another analogy is, it is like the dieter who wants to start the diet tomorrow but never today. The spending freeze is a good idea. So let's not start it in the future, let's start it with this year's appropriations bills.

I would also suggest other stronger measures right now. We can start with the TARP money, for example. Rather than using the TARP money to pay for another stimulus bill, as some of my colleagues have suggested, let's use it to pay down the debt. That money, remember, was borrowed in the first place. We did not have \$700 billion lying around. We went to the markets to borrow that, and we have to pay interest on it. A lot of it came from China. We have to pay it back. Let's do that—pay the money back. Do not use it to pay for yet another stimulus program. Remember, it will ultimately have to be paid back.

Second, let's end unlimited funding for government-sponsored enterprises such as Fannie Mae and Freddie Mac. Right now these two entities can spend as much as they like even without congressional authority. I find it interesting that when the President, in his State of the Union speech, said we are going to impose a tax on the banks, he was talking about banks that either never took TARP money or banks that have paid it back. The tax does not apply to Fannie Mae or Freddie Mac. They haven't paid back the money. It does not apply to AIG. It does not apply to General Motors. None of them have paid the money back.

If we are going to have a tax, impose it on those who haven't paid the money back. Don't put it on those who either never needed the money or didn't take it, but, in any event, who have paid it back.

Third, let's rescind unobligated stimulus money. The stimulus has already proven, by most accounts, to be a failure in terms of creating jobs for the money spent. That is even using the administration's own standards to measure its success. Let's use the money that has not yet been spent or obligated to pay down the debt. Again, remember, most of that money has to be borrowed and, therefore, let's not spend it in the first place, thus reducing future debt included in the President's budget.

These are just three specific ways, three relatively easy ways that we could employ to start getting hold of spending and debt. I would also like to suggest that those who continue to evoke the spending policies of the last administration become more focused on the future. That is what Americans want us to do. It makes little sense to complain about high spending from a previous era and then make the situation worse, creating a deficit that is four times as much as the biggest deficit in the previous administration and creating a debt burden that is equal to all of the Presidents from George Washington through George Bush.

Americans want this administration to confront the massive spending and massive debt it is accumulating in a meaningful way. The budget the President sent to Capitol Hill this morning does not do the job.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is now closed.

#### EXECUTIVE SESSION

#### NOMINATION OF M. PATRICIA SMITH TO BE SOLICITOR FOR THE DEPARTMENT OF LABOR—Resumed

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of M. Patricia Smith, of New York, to be Solicitor for the Department of Labor.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. HARKIN. Mr. President, at 5:30 today, under a previous order, the Senate will be voting on cloture on the nomination of Patricia Smith to be Solicitor for the Department of Labor. I

will be addressing the Senate about this and about the key role the Solicitor plays, about the qualifications of Patricia Smith to assume this position, and sort of to bring people along as to why we are here and why it has taken so long.

This nomination has been before us since last April and, quite frankly, this should have been disposed of many months ago. But, nonetheless, we are in a situation where the Republican side has objected, and so we have had to file cloture, which was done on Thursday. It ripens at 5:30 p.m. today. We will have a vote at 5:30, and then we will be in a postcloture position on the nomination of Patricia Smith to be the Solicitor for the Department of Labor.

On Friday, the Commerce Department announced that the Nation's GDP surged at a 5.7-percent annual rate in the fourth quarter of 2009. Well, that is good news, and it is yet more evidence that the Recovery Act is having the positive impact we expected when we passed it last year. But in my book, the most important economic statistic is the unemployment rate, which remains stuck at about 10 percent. I wish to be clear, a jobless recovery, as people are calling it, is a contradiction in terms. There is no meaningful recovery until that unemployment rate is coming down and people on Main Street are feeling the benefits of a stronger economy.

Today, more than 6 million workers have been looking for a job for more than 6 months and cannot find one. Hard-working people have seen their hours cut back, their benefits reduced, and millions more are simply not looking because they have given up, and they are not even counted in the unemployment figures. Family budgets are stretched to the breaking point. Workers are desperate to get a job and keep a job and pay for the basic necessities of their families.

The Obama administration has implemented an aggressive agenda to restore economic security for working families and to get our economy back on track. We will be offering jobs bills on the Senate floor in the near future. But a key part of restoring economic security in this country is reaffirming our commitment to strong labor standards and a revitalized, strong Department of Labor.

In these tough times, when so many families are suffering, it is sad to think some unscrupulous employers might choose to pad their profits by violating our labor laws, cutting corners on safety, firing workers illegally, refusing to pay workers the wages they have earned. But the harsh reality is, these practices are far too common now in our economy.

A recent survey of workers in very low-wage occupations found, in a single week, 26 percent of low-wage workers were paid less than the minimum wage—one out of every four paid less than the legally required minimum wage—and 76 percent worked overtime

without receiving their proper overtime pay; 76 percent—three out of every four people—who did overtime did it without receiving proper overtime pay.

These acts of theft—and that is what I call it; let's be clear about it, it is theft from America's most vulnerable workers—represent a major loss of income for families struggling to make ends meet.

We like to think these things do not happen in the United States. We like to think sweatshops do not exist. We like to think employers do not cut corners in ways that endanger the life and limb of employees. But these things do exist, sadly, and they are even more common when times are tough and when enforcement is lax or nonexistent.

That is not fair to our workers, it is not fair to their families, and—this is very important—it is not fair to the overwhelming number of honest and reputable businesses that play by the rules and treat their workers fairly.

That is why—now more than ever—we need a strong Department of Labor to stand for America's workers. We need leaders at the Department who understand the challenges workers are facing and are prepared to tackle these challenges aggressively.

Secretary Solis, our Secretary of Labor, has put an excellent team together at the Department, and they are working hard to reinvigorate that agency after years of neglect. But they are still missing a vital player on their team. For more than 9 months, Republicans have been blocking the confirmation of a key Department official, the Solicitor of Labor.

The Solicitor of Labor has the critical responsibility of enforcing almost 200 Federal laws that affect American workers every day, such as safety and health, wages and work hours, equal employment opportunity, veterans' protections and retirement and health benefits. Again, I have a series of charts to show what the Solicitor does, how important this position is.

For example, the Solicitor of Labor was critical in the investigation of a major explosion at BP Products' Texas City refinery that killed 15 workers and seriously injured over 170 others. The Solicitor secured a settlement that included over \$21 million in penalties.

The Solicitor of Labor also helps to protect workers' paychecks. The Solicitor of Labor launched an investigation of Walmart that resulted in the payment of \$41 million in back wages to workers who had been underpaid. Again, these wages would not have been paid had it not been for the Solicitor of Labor taking these actions because those workers do not have the wherewithal to bring these cases themselves, so it had to be done by the Solicitor of Labor. Mr. President, 41 million in back wages would have been underpaid at Walmart.

The Solicitor of Labor defends workers' retirement security. The Solicitor

of Labor launched an active investigation into Enron Corporation's—remember Enron—Enron Corporation's management of workers' pensions that resulted in the recovery of more than \$220.8 million for workers' pensions plans. That is \$220.8 million that would not have gone to these workers' pensions had it not been for the Solicitor of Labor.

Because workers cannot bring private lawsuits under many of these laws, the Solicitor is the only official who can defend their rights.

The Solicitor is also a vital member of the Secretary's management and leadership team. The Solicitor provides legal advice and guidance on virtually every policy, legislative, regulatory, and enforcement initiative at the Department of Labor. The Department simply cannot perform its mission effectively without a strong Solicitor in place.

The President has nominated Patricia Smith of New York to perform these critical responsibilities, and there is no question she is superbly qualified for this job. Patricia Smith—Commissioner Smith, I should say—is an accomplished attorney with a detailed knowledge of our labor laws and a deep commitment to improving the lives of working families. At present, she is commissioner of the New York Department of Labor. Since becoming commissioner of the New York Department of Labor, she has played a prominent role in helping New York's working families weather the current economic crisis.

She has implemented creative, new work-sharing programs to help employers avoid layoffs. She has revamped the State's unemployment insurance system to help workers access benefits more easily. She has created a new program to help low-income workers train for careers in high-demand fields, such as green technology, construction, and health care. Through these initiatives, Commissioner Smith has demonstrated impressive leadership skills. She has built positive working relationships with legislators, worker advocates, and the business community.

In a letter urging her confirmation, the Business Council of New York State—the Business Council of New York—had this to say:

Ms. Smith has shown a clear ability to balance her duty as a public official to enforce the law and her obligation as a public official to ensure that the law provides for reasonable application and reasonable solutions.

It is those critical skills—listening, interpreting, and balancing—that make Ms. Smith an ideal candidate to serve as the United States Department of Labor's Solicitor. . . .

That is the Business Council of New York State.

Another letter from the business community, this one from the Manufacturers Association of Central New York:

The Department of Labor under the leadership of Commissioner Smith—

Now they are talking about the Department of Labor in the State of New York—

has been fully supportive in our mission to enhance and improve our sector's workforce. Commissioner Smith and her team have been informative, helpful, and involved every step of the way. . . . It is Commissioner Smith's dedication, leadership, and innovative thinking that make her an exceptional candidate for Solicitor for the United States Department of Labor.

That is the Manufacturers Association of Central New York.

Mr. President, I ask unanimous consent that both these full letters, along with five other letters of support from business organizations, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE BUSINESS COUNCIL  
OF NEW YORK STATE, INC.,  
*Albany, NY, August 14, 2009.*

Re Nomination of M. Patricia Smith, US Department of Labor Solicitor General.

Hon. MICHAEL B. ENZI,  
*U.S. Senate, Senate Russell Office Building, Washington, DC.*

DEAR SENATOR ENZI: On behalf of the 3,000 members of The Business Council of New York State, I write in support of President Obama's nomination of Ms. Patricia Smith for the position of Solicitor General at the United States Department of Labor. As the president and CEO of a statewide business trade organization, I believe Ms. Smith is superbly qualified to assume the responsibilities of Solicitor General and urge the Committee's favorable disposition of her nomination.

As the Committee has the broadest access to Ms. Smith's resume and credentials, I write to add a perspective which often does not translate well from written documents or background checks. Ms. Smith's long tenure as an Assistant Attorney General of New York leading its Labor Bureau showed her to be thorough, fair and judicious in the use of the tools at her disposal to ensure compliance with New York's Labor Law. She carefully balanced the disparate issues before her and sought resolution as opposed to prosecution, when that result would serve the best interests of New York's citizens. And where blatant fraud, abuse and disregard for New York's Labor Law was evident, she did not rush for headlines and photo opportunities, but rather worked closely with appropriate officials to build a legal case which would withstand scrutiny and higher level appeals.

In her tenure as New York's Commissioner of Labor, Ms. Smith continued her vigilance and diligence on behalf of New York's citizens, again balancing the many different roles the Department of Labor serves in New York State. To those not familiar with the responsibilities of that Department, they may not understand the challenge it can be to manage an agency which issues unemployment benefits; must be vigilant about fraud in that \$2.5 billion unemployment system; engages with businesses and individuals to help put people back to work; manages a workforce development system designed to improve skills of our workforce; and, enforces rigorous minimum wage, safety and health, and various labor standards' statutes. At times, a Commissioner is asked to decide between what may seem to be conflicting goals and objectives; Ms. Smith always demonstrated to the business community a willingness to listen, to reflect and to respond.

To be sure, our organization did not always agree with the policy direction taken under Ms. Smith's tenure. But there are well-established processes through which we can pursue changes to policies with which we disagree. What is important to note is that under Ms. Smith's leadership, she made an extra effort to communicate directly with the business community, to elicit feedback, to provide us with a heads-up, and to balance our comments as she framed policy and practice within her Department. Her outreach to us and communication with us was open, honest, candid and frequent. While some may view her tenure as one of strict enforcement, with little regard to practical day-to-day business realities, our membership would disagree, as we believe she offered an opportunity to the business community to be a part of the solution, rather than just reacting to the problems.

New York's Labor Laws date back a century and reflect the seriousness with which policymakers then and now feel the law should protect workers and be responsive to their needs. That is the statutory and regulatory environment within which New York employers must operate. Where employers engage in fraud and abuse of employees, enforcement of the law is a duty, not an option. Ms. Smith has shown a clear ability to balance her duty as a public official to enforce the law and her obligation as a public official to ensure that the law provides for reasonable application and reasonable solutions.

It is those critical skills—listening, interpreting, and balancing—that make Ms. Smith an ideal candidate to serve as the United States Department of Labor's Solicitor General and I would ask that the Committee move on her nomination upon its return in September.

Should any Committee members benefit from further discussion on her nomination to which I can contribute, please feel free to contact me at your convenience.

Sincerely,

KENNETH ADAMS,  
*President and CEO.*

MANUFACTURERS ASSOCIATION  
OF CENTRAL NEW YORK,  
*Syracuse, New York, September 11, 2009.*  
Re nomination of M. Patricia Smith as Solicitor General, United States Department of Labor.

Hon. JEFF MERKLEY,  
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR MR. MERKLEY: On behalf of MACNY, the Manufacturers Association and its members, I fully give my support to the nomination of Patricia Smith as Solicitor General of the United States Department of Labor.

MACNY is a trade association representing over 330 member companies with over 55,000 employees within a 19-county region, and we serve and advocate for the growth and development of the manufacturing sector of New York State. Founded in 1913, we pride ourselves on not only being the largest association of manufacturers in New York, but also one of the oldest and most widely recognized associations in the nation.

For Central and Upstate New York to retain its manufacturing base, manufacturers must be able to compete in the global economy. Manufacturing strength is contingent upon the quality of the region's workforce. Manufacturers often cite the quality of the workforce as a key reason for business expansion and the lack of it as a reason for closing and/or relocating. Expanding the trained and educated manufacturing workforce is therefore crucial to the Upstate New York economy. As such, one of MACNY's

core mission areas remains workforce development. Training programs help manufacturers educate workers and remain in Central and Upstate New York.

The Department of Labor under the leadership of Commissioner Smith has been fully supportive in our mission to enhance and improve our sector's workforce. Commissioner Smith and her team have been informative, helpful, and involved every step of the way, ensuring our membership has the tools, education and skills they need in order to succeed.

One such example is the partnership between MACNY and DOL on the successful Shared Work Program. Since its inception, MACNY has lent its support and continued to promote this beneficial DOL program. Through this unique and successful partnership, over 34 member companies have utilized and benefited from the Shared Work program, including Revere Copper Products, Endicott Interconnect and Manth Brownell, Inc.

In another similar partnership, in May of 2009, MACNY hosted a Workforce Development partnership meeting for the planning of reemployment services on behalf Magna Power train, a longtime MACNY member and major market manufacturing employer located in Dewitt, New York. The meeting, in partnership with the Department of Labor, focused on the company's employees and the anticipated downsizings and possible future plant closure. Since economic and labor pool questions are regular inquiries from our membership, MACNY holds a vested interest in the related progress. As a result of this meeting, and with thanks to the expertise and hard work of the Department of Labor, MACNY remains readily available to promote an applicant pool and highly qualified resumes to their membership.

Commissioner Smith has also spent her tenure advocating on the federal level for funding in workforce development initiatives and continued Federal workforce training dollars, a cause that has greatly benefited MACNY's membership. Meeting with editorial boards and local officials, New York's Congressional delegation, as well as key Congressional committee members and staff, Commissioner Smith was able to draw attention to and oppose the 50% cut in New York's Workforce Investment Act (WIA) dollars since 2000. In recent years, MACNY has been grateful in securing federal funding for workforce and training initiatives, allowing members to receive discounted advanced skills training as a way to keep their costs down and advance their workforce. Without Commissioner Smith's tireless efforts in this capacity, this critical program would not be possible.

As earlier stated, for over 95 years MACNY has been tirelessly working to ensure we have the most up-to-date services and information needed to allow our manufacturing community to grow and prosper. In examples as cited above, plus many more, our collaborative partnership with the Department of Labor allows us to learn and educate our membership on how the state's workforce development programs can best help them. The continued leadership of Commissioner Pat Smith in such instances has been exemplary, and our collective membership is grateful for both her and the Department of Labor's years of dedication to the state's manufacturing community.

It is Commissioner Smith's dedication, leadership, and innovative thinking that make her an exceptional candidate for Solicitor for the United States Department of Labor, and on behalf of MACNY, I fully support her nomination for this position.

If you have any other questions in this capacity, please do not hesitate to contact me.  
Sincerely,

RANDY WOLKEN,  
*President, MACNY.*

PARTNERSHIP FOR NEW YORK CITY,  
*New York, NY, September 1, 2009.*

Hon. MICHAEL B. ENZI,  
*U.S. Senate, Senate Russell Office Building,  
Washington, DC.*

DEAR SENATOR ENZI: I am writing in support of President Obama's nomination of M. Patricia Smith for Solicitor General of the United States Department of Labor.

The Partnership for New York City is an organization whose members include many of the nation's most prominent business leaders. Our mission is to work with government, organized labor and the not-for-profit sector to build a stronger city and state, with a focus on education, infrastructure and the economy.

During the past year, we have been particularly concerned about the threat that the global financial crisis and recession have had on the financial services industry, which is a key source of jobs and tax revenues for New York. Thousands of city businesses and workers, either directly or indirectly, have been casualties of this crisis. As New York State Labor Commissioner, Patricia Smith has been a strong voice and essential partner in addressing the issues arising from this crisis and helping to insure that New York remains the financial capital of the country and the world.

Ms. Smith acted decisively to mobilize New York, Connecticut and New Jersey to collaborate as a region with a shared interest in the recovery of the financial services industry and keeping top talent here. She led efforts to secure a \$20 million National Emergency Grant that is currently helping thousands who have been laid off to train for new careers. She established a New York Early Alert/Retention Team to respond to small businesses in danger of closure, relocation, or financial crisis that would result in mass layoffs.

She has aggressively promoted programs that help employers retain productive workers during downturns and fund employer-sponsored worker training initiatives. She increased employer participation in the federal Work Opportunity Tax Credit (WOTC), which provides incentives to employers to hire people who are hard to employ. The Partnership strongly supports these programs, and every one of them has seen unprecedented success in New York City under Commissioner Smith's leadership.

As an advocate for businesses and economic development in New York for more than twenty-five years, I have had the opportunity to interact with many public officials. Ms. Smith stands out as one of the most dedicated and effective of our state commissioners and I consider her to be an excellent choice for the post that the President has selected her for.

We hope you will support her nomination and would be happy to answer any questions you might have about her work with the New York business community.

Sincerely,

KATHRYN, S. WYLDE,  
*President & CEO.*

LONG ISLAND FORUM FOR TECHNOLOGY,  
*August 21, 2009.*

Re Nomination of M. Patricia Smith, U.S. Department of Labor Solicitor.

Hon. MICHAEL B. ENZI,  
*U.S. Senate,  
Washington, DC.*

DEAR SENATOR ENZI: As the President of the Long Island Forum for Technology I am

writing in support of the nomination of Ms. Patricia Smith for the position of Solicitor General at the United States Department of Labor.

Founded in the 1970's, LIFT is a not-for-profit organization whose focus is on technology-driven economic development throughout the Long Island region. Our success is evidenced by the recognition and responsibilities conferred on us by our partners in the State and Federal Government including:

LIFT serves as the U.S. Department of Commerce Manufacturing Extension Partner (MEP), one of nearly 350 MEP locations across the country;

LIFT serves as the NYS Foundation for Science, Technology and Innovation (NYSTAR) designated Regional Technology Development Center (RTDC) for the region;

LIFT serves as the NYS DOL Sector Intermediary in the Advanced Manufacturing Sector and on the National Governors Association (NGA) Sector Policy Academy.

It was in the last role that we have come into contact and worked with NYS Department of Labor Commissioner Smith and the programs she sponsored on work force transformation in the Manufacturing and Healthcare sectors.

Under Commissioner Smith's able and visionary leadership, the New York State Department of Labor conceived, launched and funded a program known as Regional Workforce Transformation (I3N). This program broke new ground in the connectivity between industry and education. With its industry-driven initiative structure it created an environment for innovation, and increasing skill growth, focused on creating Long Island's future workforce.

This program is now entering its 2nd year, with over 600 individuals having gained a wide variety of new and upgraded skills training. This has led to the transformation of many individual lives with the results borne out in job placements and position upgrades.

With a strong record of achievement and leadership, Patricia Smith has been and outstanding Commissioner of the NYS Department of Labor. With her vision and her energy, we believe she will make an outstanding addition to the U.S. Department of Labor's Leadership team and we urge her earliest confirmation by the United States Senate.

Yours truly,

C. KENNETH MORRELLY,  
*President.*

U.S. WOMEN'S CHAMBER OF COMMERCE,  
*August 25, 2009.*  
Re Nomination of M. Patricia Smith, U.S. Department of Labor Solicitor General.

Hon. EDWARD M. KENNEDY,  
*U.S. Senate,  
Washington, DC.*

DEAR SENATOR KENNEDY: On behalf of the U.S. Women's Chamber of Commerce, our 500,000 members and the millions of women nationwide, I am writing to send our strong support for President Obama's nomination of Ms. Patricia Smith, and I urge the Committee to confirm Ms. Smith as Solicitor General at the United States Department of Labor. Ms. Smith has demonstrated that she is well prepared and qualified for the position, and will act on behalf of those who are facing unfair labor practices.

The U.S. Women's Chamber of Commerce represents both working women and women business owners. While one would think that these two constituencies would be contradictory in viewpoint, they are not.

From 1997-2006, the number of women-owned firms grew by 42.3% largely due to

women leaving Corporate America in droves in search of equal pay, opportunities for promotions and a family friendly work environment. What they found instead was more barriers to opportunity. In fact, during this same time period, the revenues for all women-owned small businesses grew only 4.4%—representing a 38% overall decrease in revenues.

Clearly, women found that business ownership came with a whole new set of challenges including the inability to fairly access federal contracts, capital and affordable health care. And, most profoundly, they are faced by the growing challenge of competing with businesses that undercut their competitiveness by engaging in unfair labor practices.

Those that pay fairly and play fairly do not fear Ms. Smith's no-nonsense approach to labor law enforcement. They, in fact, see that they are being protected.

After learning of Ms. Smith's qualifications, expertise and the laws she has worked to uphold, I can clearly see that she is someone who would work with conviction to enforce the laws of the United States of America. Additionally, I am impressed with her out-of-the-box thinking in creating programs that will keep jobs. We especially need these attributes in this time of economic challenge.

Please accept Ms. Patricia Smith's nomination, and confirm Ms. Smith as Solicitor General at the United States Department of Labor.

Sincerely,

MARGOT DORFMAN,  
*CEO.*

SHEET METAL AND AIR CONDITIONING  
CONTRACTORS' NATIONAL ASSOCIATION, INC.,

*Chantilly, VA, June 22, 2009.*

Hon. EDWARD M. KENNEDY, Chairman,  
Hon. MICHAEL B. ENZI, Ranking Member,  
*Health, Education, Labor & Pensions Committee, U.S. Senate, Washington, DC.*

DEAR SENATORS KENNEDY AND ENZI: I am writing on behalf of the Sheet Metal and Air Conditioning Contractor's National Association in support of Patricia Smith's confirmation as Solicitor of the Department of Labor. As one of the oldest and well respected national trade associations with over 1800 members in the United States and Canada, we wholeheartedly endorse this appointment based on her past demonstrated commitment for enforcement of labor laws and the rights of workers.

In her past role as New York State's Secretary of Labor, she brought a high degree of professionalism and equity for many of our contractor members in New York State. Ms. Smith was a strong advocate for protecting workers rights and worked aggressively against the misclassification of workers—an all too common problem for unionized contractors not only in New York State, but nationwide.

SMACNA supports her appointment as the Solicitor of the Department of Labor and urges her immediate confirmation. We appreciate your consideration.

Sincerely,

VINCENT R. SANDUSKY,  
*Chief Executive Officer.*

PLATTSBURGH NORTH COUNTRY  
CHAMBER OF COMMERCE,  
*Plattsburgh, NY, August 10, 2009.*

Re Nomination of Patricia Smith to be DOL Solicitor.

Hon. MICHAEL B. ENZI,  
*U.S. Senate,  
Washington, DC.*

DEAR SENATOR ENZI: Our Chamber is the largest business and economic development

alliance in northern New York and one of the five largest in our state, representing more than 3,250 companies. I have had the pleasure of serving as President and CEO since 1993, having previously served as Executive Assistant to former Congressman Gerald Solomon (R-NY 23) for fourteen years.

During my sixteen years of engagement in business and workforce development in this region, I have had many occasions to work with our New York State Labor Department in various efforts to assist employers and to design and implement meaningful workforce training programs. I am writing to tell you first hand that until Patricia Smith was named Commissioner, we enjoyed an excellent working relationship with our local State Labor Dept. officials but enjoyed little leadership, engagement or even interest from the Commissioner's office.

Since she assumed leadership of the New York State Labor Dept. in 2007, we have enjoyed not only attention and engagement from Patricia Smith but a genuine working partnership.

This includes the design, funding and implementation of a three-year Aerospace, Transportation Equipment & Green Tech Workforce Strategy for our region, our first multifaceted approach to the creation of a capacity in our region to attract and support employers in these targeted sectors. The creative approach features everything from support for the start-up of Plattsburgh Aeronautical Institute, an FAA-certified A&P mechanics' school, to further development of a new Global Supply Chain Management school at our local university, to the launch of new electronics and alternative energy technology programs at our community college, and more.

And although we are just beginning the second year of implementation under the three-year plan, the results are already tangible. Plattsburgh Aeronautical Institute is set to fully open its doors next month, and is already putting us in play in terms of marketing the former Plattsburgh Air Force Base for future aerospace activities. And Volvo/Nova Bus has just opened a new plant in our community with 300 employees for the production of transit buses in the U.S., a venture that would not have been feasible without the programs she helped us get up and running.

In these and other ways, Patricia Smith has worked with us to give true life to the notion of wedding economic and workforce development. But at the same time, she has also been a partner in serving the current needs of our employers.

A prime example is a major workplace safety training program administered through our Chamber under contract with the State Labor Dept., bringing meaningful safety training to hundreds of small employers who could never access it otherwise.

Even in current tough situations, in which some of our manufacturers have needed to reduce production, she and her team have been there with creative solutions. This includes a Shared Work program now being used by a major railcar assembly plant. Rather than fully lay off a percentage of their workers, they are using this program to reduce their hours, with NYSOL allowing them to access unemployment insurance benefits for the percentage of hours they are not working while being paid by the company for the remainder. The obvious result is a better economic interim for the employees, and the ability for the company to hold onto skilled employees they want to bring back to fulltime when orders pick up.

I could cite additional examples, but the bottom line is this. Patricia Smith has been an outstanding partner as Commissioner of the New York State Labor Dept., and will be

an outstanding Solicitor for the U.S. Labor Department. We strongly encourage her earliest possible confirmation by the Senate.

Please let me know if there are any questions we might be able to answer, and thank you for your consideration.

Sincerely,

GARRY F. DOUGLAS,  
*President and CEO.*

Mr. HARKIN. Commissioner Smith has a keen appreciation for the reality that challenging economic times put vulnerable workers even more at risk. Under her leadership, the New York Department of labor has ramped up enforcement efforts to protect workers who are being mistreated and has leveled the playing field for responsible employers who play by the rules but face unfair competition from the lawbreakers.

It is another point I wish to emphasize. By going after the lawbreakers, what Ms. Smith has done is help level the playing field for the responsible employers who are not engaging in these kinds of bad activities.

Commissioner Smith has developed an innovative new approach to protecting workers. Her strategy—which involves targeting problem industries and increasing focus on low-wage and immigrant workers—has become a model for other States. Her fair and effective approach to enforcing the law has won her the strong endorsement of the New York State District Attorneys Association.

Mr. President, I ask unanimous consent that endorsement letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DISTRICT ATTORNEYS ASSOCIATION  
OF THE STATE OF NEW YORK,  
*September 22, 2009.*

Hon. TOM HARKIN,  
*Chairman, Senate HELP Committee,*  
*Washington, DC.*

CHAIRMAN HARKIN: As an association of the 62 elected District Attorneys, we represent very distinct and diverse regions of New York. However, we are united in our efforts to enforce the law and protect the people of our great state. When the membership was polled whether to support the nomination of Commissioner Patricia Smith to become United States Solicitor of Labor, District Attorneys from across the state and party lines enthusiastically agreed, because she shares our commitment to law enforcement and has shown a dedication, fairness and professionalism that would make her a tremendous asset to the Department of Labor. The New York District Attorneys Association strongly endorses the appointment of Commissioner Patricia Smith for Solicitor of Labor.

Commissioner Smith's thirty year record of accomplishment proves that she is uniquely qualified to serve and has the experience and expertise to serve as Solicitor of Labor. Beyond her exemplary work as Commissioner, she has served both in the New York State Office of the Attorney General as the Assistant Attorney General in charge of the Labor Bureau and as the Deputy Bureau Chief and Section Chief of the Labor Bureau. In these positions, she conducted and oversaw labor law litigation in both state and federal courts. Under both Democratic and Republican Attorney Generals, she effec-

tively brought together management, unions, employers and employees, to solve disputes and ensure the effective and fair application of labor and employment laws.

Commissioner Smith built a proactive labor docket, enforcing labor laws with innovative approaches: developing a Code of Conduct, partnering with advocacy groups, targeting enforcement efforts on an industry-wide basis, and focusing on low-wage and immigrant workers. She actively cooperated with District Attorneys in bringing criminal cases arising out of wage violations on public work cases. She enhanced effectiveness of the minimum wage law by obtaining the first criminal felony conviction in a garment case, the first felony indictment in a minimum wage case, the first criminal prosecution for failure to maintain payroll records, and the first case brought under a joint employer theory.

Moreover, she successfully argued two Employment Retirement Income Security Act cases before the United States Supreme Court in 1996 and 1997. Her sound legal arguments for New York State Conference of Blue Cross & Blue Shield Plans vs. Travelers was noted by the Office of the Attorney General and the legal community. As a result, she was awarded the Louis Lefkowitz Award for outstanding service to the State of New York.

In addition to those cases, she has had extensive labor law experience. She has been lead and co-counsel in over 100 cases in state and federal court primarily in the areas of labor standards (minimum wage, prevailing wage, and overtime); unemployment insurance, workforce development, employee benefits, occupational health and safety, federal preemption of state laws, constitutional issues, and workers' compensation. She has defended the jurisdiction, procedures and determinations of the Department of Labor, the Unemployment Insurance Appeals Board, and the Workers' Compensation Board and successfully defended State labor laws against claims of ERISA, NLRA and IRCA pre-emption.

Most significant is her body of work as Commissioner of the New York State Department of Labor. After being confirmed in 2007 by the New York State Senate, Commissioner Smith set about to create the Office of Special Investigations (OSI) that identifies and prepares unemployment fraud and wage and hour cases for criminal prosecution. This innovative enforcement office has developed relationships with all the District Attorneys, educating prosecutors about criminal prosecutions under the labor law and referring "prosecution ready" cases. To date, OSI has referred 1,735 unemployment insurance fraud cases representing overpayments of over \$77 million. These criminal referrals are increasing every year with a 60% increase from last year.

Commissioner Smith overhauled wage and hour enforcement at the Department by strategically targeting enforcement to either low-wage industries such as apparel, grocery stores, car washes and race courses, or to poor neighborhoods, each time bringing national attention to the plight of workers. In 2008, the Department collected and disbursed \$24.6 million for 17,000 workers across the State, resulting in a 37% increase in collections from previous years and significantly increased compliance by employers.

Commissioner Smith spearheaded the first-of-its kind Joint Enforcement Task Force on Worker Misclassification that brought together various state and federal agencies to focus on misclassification of workers as independent contractors and off the book work, which result in tax violations, workers' compensation fraud, and unreported wages and unemployment taxes. To date, the

Task Force has identified over 25,100 instances of employee misclassification and over \$292 million in unreported wages. Many of these investigations uncovered criminal violations, and the Office of Special Investigations worked with District Attorneys throughout the state to ensure that corrupt business practices were prosecuted. Three of these cases resulted in criminal convictions. Several more are currently under investigation by prosecutors. Many states are now following New York's lead and creating task forces to tackle this national problem.

It is for these reasons, the District Attorneys Association of the State of New York strongly endorses the nomination of M. Patricia Smith as the United States Solicitor of Labor.

KATHLEEN B. HOGAN,  
*DAASNY President.*

Mr. HARKIN. Under her leadership, New York State has strategically targeted enforcement efforts among low-wage employers, such as apparel manufacturers, grocery stores, and car washes. This has resulted in a record recovery of unpaid wages that were stolen from workers' pockets. In 2008 alone, 17,000 workers across the State of New York received more than \$24.6 million in back wages thanks to these enforcement actions.

There are real faces and real families behind these numbers. They include 170 janitors on Long Island who were being paid less than \$100 a week, despite working 12-hour days, and garment workers in Queens, working in sweatshop conditions for \$3 less than the minimum wage.

Patricia Smith led the New York Labor Department to investigate minimum wage and overtime violations at the Jin Shun factory in Queens, NY. Employees were paid \$250 for working a 66-hour work week. That is \$3.79 an hour, far below the minimum wage. Well, that investigation revealed \$5.3 million in wage violations in one of the worst sweatshops in the United States—\$5.3 million.

Another one that came in is New York State Labor Commissioner Patricia Smith revealed illegal practices at a Long Island cleaning service. Again, I referred to this. The employees worked 12 hours a day, 60 hours a week, bringing home less than \$100 a week, and 170 workers were paid far less than they actually earned. The illegal deductions amounted to \$238,581.

Again, this is what Patricia Smith has done. These are real people whose hard lives—and they have hard lives anyway—were made a little bit easier because Patricia Smith went to bat for them and that made a difference.

In light of Commissioner Smith's very impressive record, I had hoped all of my colleagues would agree that she will be a tremendous asset to the Department of Labor and that she deserves to be confirmed as quickly as possible. Unfortunately, some of my colleagues on the other side of the aisle have raised concerns about Commissioner Smith's nomination. These were brought up last year in our committee, and these concerns are focused on a program at the New York Department

of Labor called Wage and Hour Watch. This was a small pilot project which allowed the department to partner with worker advocates, community organizations, and others, to educate workers about their rights, such as: You do have the right to the minimum wage. You do have the right to overtime pay. Frankly, that sounds like a pretty good idea to me.

I think it is clear from what I have just pointed out there are far too many violations of our labor laws, especially among low-income workers. That is where it hits—low-income workers, minimum-wage workers and others such as that. I think the more education people such as that can have about their rights, about what the law is, the better off we all are.

Some of my Republican colleagues do not agree with New York's approach. Well, that is an issue we can certainly debate, if you like. But beyond these policy concerns, my colleagues have also suggested that Commissioner Smith's statements about this program raised questions about her integrity and her management skills. Some have gone so far to suggest that she is not qualified for this position or that she has not been truthful with Senators.

These are very serious accusations against a sitting, dedicated public servant. I take them very seriously. I took them very seriously last year. So I asked my staff to get me all of the documents. We investigated this from the beginning to the end with every relevant document. I spoke personally with Commissioner Smith and walked through this whole thing with her from beginning to end. After doing all of that, I can say with complete confidence that concerns expressed by my Republican friends are totally misplaced.

Did Commissioner Smith misspeak on two occasions at her hearing? Yes, and we talked about that with Commissioner Smith. She admitted that. First she said she hadn't had any "conversations" about expanding the Wage and Hour Watch program. Well, I went back and looked at the record and the kinds of questions that were asked. Quite frankly, you know, when you are asking questions and you have a witness on the stand, maybe what they hear is not what you ask. That happens all the time. As a Senator, sometimes I ask a question of a witness and they give me an answer and I think, they didn't even hear my question. That happens all the time, so you have to repeat it. She was asked this question in which she basically said she had not had any conversation. When she looked at the record, she clearly—and then repeatedly explained afterward in writing that she intended to say she had not authorized the expansion. There was no pilot program. After the pilot program they were then going to look at the results and think about what they wanted to do next. In fact, that is what is happening right now. The pilot pro-

gram has ended and is being assessed at this point in time. Again, Commissioner Smith clarified this response on this issue in writing to the committee.

Commissioner Smith also testified at the hearing that the idea for the Wage and Hour program came from the New York Department of Labor, the department she oversees. Again, going back through the record and talking with Ms. Smith, it is clear her testimony was correct to the best of her knowledge at that time. What she later found out is that one of her deputies had consulted with an outside group in the early stages of the program. Commissioner Smith was not aware of this fact at the time of her testimony. She subsequently corrected her testimony after she had learned about the prior communications by her staff with an outside group.

Commissioner Smith's explanations are completely consistent with the documents the HELP Committee has. In my view, that should be the end of it. She made innocent errors, she corrected them, and there is absolutely no evidence of any underlying wrongdoing or any intention to mislead our committee. I will come back to this point again and again and again in the ensuing discussion, if there is one; however long it takes, I will come back to this point, and that is this: No one is alleging that the Wage and Hour pilot program was illegal or unethical or in any way nefarious. It was perfectly legal, perfectly ethical, aboveboard. It was documented. There were pieces of paper and stuff. It was all out in the open. No one is alleging that. So if Ms. Smith made an incorrect statement, she wasn't trying to cover up some wrongdoing; she wasn't trying to cover up something that was being done that was sort of under the table.

This was perfectly legal. So why would you want to cover up? Why would you want to either mislead the committee or cover up something which was perfectly legal, perfectly open, perfectly aboveboard? I think what those who have kind of accused her of misleading the committee are trying to do is to cloak it as though there was something wrong with this, that there was something she was hiding. There was nothing to be hidden. Again, I will put in the RECORD the documentation that when people went through this training program for the Wage and Hour Watch, they got a nice little piece of paper and they got a little badge, a little card. There was nothing under the table about this whatsoever.

So when you hear things such as she misled the committee, keep in mind, she didn't mislead them about anything at all; she incorrectly made a couple of statements which she then corrected in writing. But there was nothing illegal or unethical about what she was testifying about, so there was nothing to mislead the committee about. These were simply innocent mistakes.



My Republican colleagues have argued that Commissioner Smith's misstatements are a problem because they were based now on misinformation from her staff and thus reflects on her ability to manage a large organization. Again, let's look at it this way: We are all busy public officials. As Senators we have large staffs here and we have them in our State. We try to keep everything going, but every once in a while someone makes a mistake, or someone does something. And we delegate. We delegate to our Chiefs of Staff. As committees, we delegate to our staffs to do certain things. Let's put this in perspective as it pertains to Commissioner Smith. She runs an \$11 billion—billion with a “b”—agency in the State of New York with over 4,000 staff. How big was this Wage and Hour Watch? A \$6,000 pilot project out of an \$11 billion budget. I have to tell my colleagues—let's be honest about it. We all deal with our staffs, we deal with our budgets. This would be like something worth maybe \$5 or \$10 in our budget. Do I pay attention to it? I would ask my staff to take a look at it, but me, personally? I can't. We don't have the time to do that. That is why we have our staffs to do that. So for her not to have known intimately every little detail of a \$6,000 pilot project—a pilot project—well, to me, that makes sense.

In the meantime, while they were doing this, she is out there going after all of these people whom I mentioned here getting back wages for people who were cheated out of overtime, who were being paid less than the minimum wage. That is where her focus was: helping families get their due recompense from their work. This was all during, as we know, an unprecedented economic crisis. So we have to keep that in focus.

It seems to me that the real concern of Ms. Smith's critics with the Wage and Hour Watch program is that it was an innovative approach to enforcing the law. Historically, it has been very difficult to protect the rights of workers in low-wage industries because they are so vulnerable to abuse, and they are often afraid to approach the government for help. They can be fired for nothing. They can be dismissed. These are low-income workers or minimum wage, or barely above minimum wage. So calling on community groups, religious groups, and others to play a role in reaching out and bridging this gap I think is an important idea. Quite frankly, I think it merits further consideration.

It is important to understand how this pilot project worked in practice. Participants did not have any special authority or any enforcement power. They could not come onto private property without permission. They could not interfere with business operations. These were ordinary citizens who volunteered—volunteered—to distribute flyers, to sit at information booths, educate workers about their rights

under the law. This program was not by any stretch of the imagination radical. It is simply a way to ensure that our working people are not unknowingly victimized by reaching out to the community. For many of these people English is a second language. They may be new immigrants to this country. They have their green cards or maybe they are now citizens, but they are at the bottom of the ladder and they don't know all the laws. They don't understand all the intricacies. It would be I think logical to reach into that community, whether it is a Hispanic community, a Latino community, it could be Somalians who are here or it could be some who have come here from Bosnia, some Asian immigrants who come here from Vietnam or from Cambodia, all of these people who have come into this country to work hard and to raise their families here and contribute to our American society. They are at the bottom. It seems logical to me that you would go to that community, people in the community who speak the language, who understand the customs, who are intimately knowledgeable of many of these families, to work with them to let them know what their rights are. Surely no one is going to come here to the floor and argue these people should be kept in the dark about what their rights are. Again, this was on a volunteer basis.

I applaud Commissioner Smith for having this type of program. It is the kind of innovative thinking we need to protect the most vulnerable workers during these very tough economic times.

It is my knowledge, my information, that this pilot program has ended and is now being assessed to see if it needs to be changed or fixed, what needs to be done, and do they need to expand it even more. Those decisions are being made by the State of New York right now.

There are so many things we need to be doing to build a brighter future for working families: fostering new industries, investing in our communities, building skills, shoring up the safety net, but too often we neglect to mention the importance of simply enforcing our laws. That is all we are talking about. We are not talking about doing anything other than that. When the law says you have to pay the minimum wage, you ought to be paying the minimum wage, not less. When the law says you should pay time and a half over 40 hours, you should pay time and a half over 40 hours, not less than that. This should not be a matter for controversy or any partisanship. Fair treatment is the foundation of real security and opportunity for American workers, and ensuring this fair treatment starts with a strong Solicitor of Labor.

Patricia Smith is a seasoned, dedicated public servant with an exceptional record of achievement and unimpeachable integrity—unimpeachable integrity. Her nomination should be

confirmed by the Senate as quickly as possible so she can get to work helping working families to succeed during these very tough economic times.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alaska is recognized.

Ms. MURKOWSKI. Mr. President, I ask unanimous consent to speak as in morning business for up to 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

REMEMBERING DR. WILLIAM G. DEMMERT

Ms. MURKOWSKI. Mr. President, I rise today to honor Dr. William G. Demmert, known by many as Kaagoowu (a man with the strength of a stump) of the Tlingit “Naasteidi” Eagle clan—a pioneer in the cause of improving Indian education and the Nation's leading researcher on Native language immersion and culturally based education.

I am saddened to report that Dr. Demmert, an invaluable pioneer in the cause of justice for Indian education, died January 19, 2010, in Bellingham, WA, at the age of 75.

He was a man beloved by indigenous peoples of Alaska, the Southwest, the Arctic nations, and New Zealand—especially the Tlingit and Lakota, by Hawaiians, and by Maoris. He will be sorely missed. In particular, I would note that we in Alaska honored and cherished Kaagoowu. Residents of southeast Alaska say of his departure that he “Walked into the Forest,” but his spirit and memory live on. He was tied to the lands of Alaska as a fisher and gatherer; he studied and recorded the landscapes of ancestors as a scholar and as clan member. He served Alaska as superintendent, principal, and teacher for Klawock City School; a teacher in Fairbanks; a professor of education at the University of Alaska Southeast; as a Commissioner of Education for the State of Alaska; and as a trustee of the Sealaska Heritage Institute. Throughout his life, he united Alaskans with the Lakota and, through his work strengthened our bonds with Indian tribes across the Nation and with other indigenous Peoples throughout the Arctic and South Seas. He contributed to the Nation by ensuring that the richness of our cultural and linguistic diversity survived in the schools and in our daily lives.

Throughout his professional life, Dr. William Demmert championed three important education issues: 1) early learning and preschool programs; 2) meeting the educational needs of at-risk youth; and 3) improving the academic performance of American Indian, Native Hawaiian, and Alaska Native children.

The focus of Dr. Demmert's research was the education of American Indian, Alaska Native, and Native Hawaiian students. His work was invaluable in the exploration of educational programs and schools serving Native communities, helping educators and policy

makers to better understand the role of traditional knowledge in instructional practice, and assessing what works in providing a school environment that values academic performance, citizenship, and the traditional ways for Indian children. His research on Native language immersion education has proven unequivocally that heritage language acquisition strengthens critical thinking, college preparedness, and overall academic success.

Dr. Demmert was born in Klawock, AK, to William and Florence (Allman) Demmert. He was of Tlingit and Oglala Lakota heritage and a member of the Demmert family of southeast Alaska, many of whom made important and positive contributions to their communities and to Alaska at large through their work as teachers, education researchers, and leaders. "Dr. Bill," as he was known by many in southeast Alaska, lived up to his heritage and his ancestors' examples.

Bill's experiences growing up within the Alaska education systems in the 1940s and early 1950s ran the gamut of the kind of educational opportunities available to young Alaska Native people at that time. He attended a BIA school, a territorial school, and boarding schools both in and out of State. These experiences, and the support he received from his extended family, stayed with him and informed his view of Indian education.

Bill was not one of those ivory tower academics with no roots in the real world. After earning his bachelor's and master's degrees and teaching in Washington State, Bill returned to Alaska, teaching in Fairbanks, Craig, and Klawock, where he also served as both principal and superintendent. He spent the 1960s learning how to educate from the ground up.

In 1969, he and few friends attending a conference on Indian education decided to form a new group, one they thought would represent the unique needs of Indian educators, students, and communities. The group they formed was the National Indian Education Association. The NIEA has become, since that initial conversation over coffee, a powerful voice for Indian students and educators across the country.

Soon after, Bill was asked to work with Senators Kennedy and Mondale to help write the Indian Education Act of 1972, legislation that was intended to respond to the U.S. Senate's report, "Indian Education: A National Tragedy, A National Challenge." Today, we know the Indian Education Act as title VII of the Elementary and Secondary Education Act. Thousands of Indian educators and countless children and parents have found a voice and benefited from programs created by Bill's work to create solutions to the tragic shortcomings in Indian education.

In 1973, having earned his doctorate in education from the Harvard Graduate School of Education, Bill returned to the world of public policy, working

for the U.S. Department of Health, Education, and Welfare as Deputy Commissioner of Education for the U.S. Office of Indian Education and as Director of the Office of Indian Education Programs at the Bureau of Indian Affairs.

After 5 years with the Federal Government, Bill returned to academia at the University of Alaska Southeast and finished the 1980s as Commissioner of Education for the State of Alaska. As Commissioner from 1986 through 1990, Dr. Demmert is credited with "changing the conversation" on education. Today, many of the issues he championed have become mainstream in Alaska education.

In 1991, after Dr. Demmert left office as Commissioner, President George H. W. Bush named him and former U.S. Secretary of Education Terrell H. Bell cochairmen of the prestigious Indian Nations at Risk Task Force, which issued an influential report to the President and Congress entitled, "Indian Nations at Risk: An Educational Strategy for Action." A principal writer of the report, this effort gave Bill the opportunity to assess nearly 20 years of work and progress in the education of Native American children. Among other elements, the report published an Indian Student Bill of Rights. It reads:

The Indian Nations at Risk Task Force believes that every American Indian and Alaska Native student is entitled to:

A safe and psychologically comfortable environment in school.

A linguistic and cultural environment in school that offers students opportunities to maintain and develop a firm knowledge base.

An intellectually challenging program in school that meets community as well as individual academic needs.

A stimulating early childhood educational environment that is linguistically, culturally, and developmentally appropriate.

Equity in school programs, facilities, and finances across Native communities, and in schools run by the federal government and public schools in general.

In writing and speaking about this report, he reflected upon his grandparents', his parents', and his own education in BIA schools, whose mission it was to assimilate Natives into the "American way of life and culture." He felt blessed that his grandfather and parents were fluent in both Tlingit and English, and that they encouraged him to be so as well. He reflected with sadness that so many young people he knew were fluent in neither. He expressed concern that over the course of his life, too many young people were educated in schools that reflected no respect for their language and culture, and was surprised that he survived this.

Dr. Demmert spent the remaining years of his life researching and teaching at Western Washington University. Before retiring in 2008, he served as a principal investigator, in partnership with Northwest Regional Educational Laboratory and other major partners from Arizona to Hawaii working to develop and test assessments in schools

using Native language immersion and culturally based instruction.

Not only recognized as an expert in indigenous education here in the United States, Dr. Demmert lent his expertise to education policymakers and practitioners of many nations, serving as cochair of a coalition of the Ministers of Education of northern nations, including Norway, Sweden, Finland, Greenland, the Russian Federation, Nunavut Territory, Northern Quebec, and the Yukon Territory.

Recognized for his long experience and vast expertise in Native education, particularly with regard to Native language instruction, Dr. Demmert was called to testify in 2000 before the Senate Indian Affairs Committee in support of the Native American Languages Act Amendments Act. Bill celebrated the fact that "Native language, the traditional mores and cultural priorities, the importance of tribal identity and lineage have all become higher priorities as we build a contemporary culture and context of the school that supports Native students' identities." That bill passed the U.S. Senate by unanimous consent.

In addition to his professional accomplishments, Dr. Demmert was a good man. He had a great ability to put people at ease. He understood his role as mentor, and built bridges between academia, policymakers, and everyday people. He was a teacher of teachers, and a leader of leaders.

Dr. William G. Demmert was responsible for great strides in Indian education, and had great hopes for its future. Now, as we celebrate a life well lived and his innumerable contributions to the education of Indian children, we must all rededicate ourselves to ensuring that every child among our first peoples has the opportunity to learn in an atmosphere of respect where his language, culture, and history are taught and celebrated, and where every Indian child can achieve his or her highest aspirations. We must ensure that his legacy—the Indian Education Act and indigenous language education as a means to preserving the sacred languages of our first peoples—is kept vibrant and meaningful for the future.

Bill Demmert, Kaagoowu, is survived by his wife of 42 years, Nora Demmert; sons William and Philip; daughters Nora and Melanie; brothers Lee and Ted; his sister, Justna; five grandchildren, two great-grandchildren, and a multitude of other relatives.

On behalf of the U.S. Senate, I am proud to recognize and thank Dr. William G. Demmert for his long years of service. I extend my condolences and sincere sympathy on his passing to his family, friends, colleagues, and students.

I ask unanimous consent that the attached poem and resolution written in tribute to Dr. Demmert from the Native people of Hawai'i be printed at the end of my statement in the RECORD.



There being no objection, the material was ordered to be printed in the RECORD, as follows:

KA MAKUA BILL DEMMERT

(By Professor Larry L. Kimura)

For you is our aloha and highest regard, Bill Demmert,

A close friend, a teacher and a champion of Native peoples.

You worked for laws to secure the wellbeing of our Nations,

Providing direction from the essence of our ancestors for a vibrant education.

You are with us, the progeny, the advocates for the language of our homeland,

For you are a soaring hawk on a tranquil day in the clear sky over these islands,

Coming to settle upon a branch of that venerable 'ōhi'a tree of mountains.

Your memory and good deeds shall live on in our hearts.

Nou ko mākou aloha e ka makua Bill Demmert,

He makamaka, he kumu a he me'e nui o nā 'ōiwi.

Nāu i huli nā kānāwai e pa'a ai ka pono o nā lāhui,

I mau nā wehiua kupuna ke ka'i o ka na'auao ola.

Me mākou 'oe, nā pua, nā lehua pai 'ōlehalo o ka 'āina,

He 'io kīkaha o ka lā mālie i ka la'i o nā Kai 'Ewalu,

A kau mai i ka lā'au he 'ōhi'a kūmakua o ka mauna.

E pūlama me ka ho'omana'o mau 'ia nā pono āu.

Adopted on January 22, 2010 by the Senate of Ka Haka 'Ula O Ke'elinōlani College of Hawaiian Language, University of Hawai'i at Hilo to be included with its resolution in memory of Dr. William Demmert.

FOR DR. WILLIAM G. DEMMERT JR./UNUHI 'IA NA KALIKO (V1.1)

Acting together as a Committee of Aloha, we, its undersigned members, do herewith extend to you our aloha and with heartfelt sorrow express our collective grief at the announcement of loss that has so recently reached us and informed us that the Wise Tlingit, Oglala Sioux Warrior, the mortal, Dr. William G. Demmert Jr., has fallen unto his carefree sleep as his last breath left him, and has departed to travel on that lonely path from which one does never return. That same grief has affected all of Hilo's Hawaiian language consortium partners, who now stand together shouldering this burden of sadness.

Whereas the aforementioned Dr. Demmert was a native of that same land where his Tlingit ancestors' *piko*, or umbilical cords, lie secreted away in the birthlands of Klawock, the place known well for the running salmon, a fish so favored by Hawaiians; and whereas he was an esteemed descendant of the nation from which came the two great logs that are now at sea as the robust hulls of the canoe Hawai'iloa; and

Whereas the aforementioned Dr. Demmert was, even in his early years, and following in his father's footsteps, a child thirsty for knowledge, always keen to drink heartily from the many rippling tributaries of instruction until he in the fullness of time became one of those in the first group of Native American students to graduate with a doctorate degree from Harvard University in 1973; and

Whereas the aforementioned Dr. Demmert was one of the founding members of the association put together to fight for the education of Native Americans, the National Indian Education Association, in 1970; and

Whereas the aforementioned Dr. Demmert became a friend to the Hawaiian people in

the year 1993, for his efforts to improve the status of the many native languages of the United States including the Hawaiian language; and

Whereas the aforementioned Dr. Demmert was both an advisor and confidant for us as we continued to work through the multitude of tasks involved in the revival of the Hawaiian language; including here his role as a co-defender of the plans and resources of the 'Aha Pūnana Leo; his role as a co-architect of the foundational P-20 framework upon which the Hawaiian language college, Ka Haka 'Ula o Ke'elikōlani, was built—his hands digging in the very same soil as did our own; and as co-investigator as we examined ways to improve the abilities and the standing of our young Hawaiian language speakers at Nāwahiohalani'ōpu'u Hawaiian Language Immersion School;

Therefore upon taking all of this into consideration, we resolve that we are united with you, we as Hawaiian language friends and families of the 'Aha Pūnana Leo, Ka Haka 'Ula o Ke'elikōlani, and Ke Kula 'o Nāwahiohalani'ōpu'u, now and together alongside you as we enter this place of sadness at the loss of the man whom we now praise to the highest.

Furthermore, we have resolved that we shall be standing as you do in spirit and in prayer, packed shoulder to shoulder against each other, coming from all corners of our land, in order to best send our dearly departed friend to meet the Holy Trinity in the heavens.

We have also together resolved that our loving embraces will encircle and warm the bereaved family which has experienced such loss at the recent departure this beloved man took as the start of his infinite journey.

And finally, we resolve that our prayers, wishes, and blessings shall go hand in hand with those of the Episcopal Church in Bellingham on the 25th of January, and so too with the Tlingit of Craig, Alaska, in their February ceremonies: that the man may return to the land of his birth and ancestors; that his hair may once again be blown by the soft breezes of that area; that he may once again inhale the fresh cool fragrances so yearned for and held in fond memory; and that he may heed the distant call of his ancestors to return to be with them in the peaceful calm of love's warm embrace.

*... life appears as does a whisp of steam, but is so quickly dissipated . . .*

With love and aloha everlasting, those of the Fellowship of Hilo, Hawai'i Island of the Verdant Green Back.

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

#### THE BUDGET

Mr. McCONNELL. Mr. President, this morning, we received the administration's budget for the next fiscal year. While there are plenty of issues raised by this budget, the fundamentals are clear: this budget is more of the same—more spending, more taxes and more debt.

I think everyone can agree that last year's budget spent too much. With the trillion-dollar stimulus bill and massive increases in optional spending, the administration and Democrats in Congress simply spent too much and took us into record territory. But the administration assured us that it was an anomaly—that we just needed to get through the year and then we would get serious about our spending in 2010. Fiscal hawks on the other side of the

aisle told us the same thing every time we raised the issue.

But now they have produced yet another massive budget filled with even more spending than last year's record totals. The President proposes to increase spending by another \$100 billion—despite having already increased the size of the Federal Government to unprecedented levels. Even though the administration claimed that the current funding was unique due to the economic crisis, they show no sign of slowing spending.

And while spending is going up, taxes are going up even faster. Taxes on Americans will increase by over \$400 billion—nearly 20 percent—next year alone, with no improvement in sight. Does anyone truly believe this is a good time to raise taxes on job creators or anyone else?

This budget provides a startling figure that should stop us all in our tracks. According to the administration's budget, the interest on the Federal debt is expected to be nearly \$6 trillion over the next decade. We have all heard about interest-only loans, but this is the equivalent of an average of \$600 billion in interest every year. That is an astonishing number.

In fact, in just 4 years the administration predicts the Government will have to spend more just to pay interest on the Federal debt than it spends on the Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, HUD, Interior, Justice, Labor, State, Treasury, and the Corps of Engineers, Environmental Protection Agency, GSA, NASA, National Science Foundation, Small Business Administration and the Social Security Administration—combined.

In just 4 years, the interest the government will have to pay on our Federal debt will be more than it spends on the Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, HUD, Interior, Justice, Labor, State, Treasury, and the Corps of Engineers, EPA, GSA, NSA, National Science Foundation, Small Business Administration, and the Social Security Administration—combined.

The Senate will have an opportunity to write a new budget this year. Our leader on this issue, Senator GREGG, will have much more to say on the matter as we work to do what so many Americans are doing, and that is to get our budget in order. And I will have much more to say on the individual pieces of this blueprint, including the administration's priorities on our national and homeland security. But now it is crystal clear that this budget is more spending, more taxes, and more debt—more spending, more taxes, more debt. Anyone listening to the American people knows this is not what they support, it is not what our country needs, and it is not the way to grow good jobs.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Mr. FRANKEN. Mr. President, I rise today to urge my colleagues to support the nomination of Patricia Smith to be Solicitor of Labor. Ms. Smith is a well qualified, might I say exemplary, nominee and I enthusiastically support her confirmation.

Most recently, Ms. Smith served effectively as New York's commissioner of labor, frequently bringing business leaders, workers groups, and government officials together at the table. She has earned the support of business groups in her State through her willingness to engage in an ongoing working partnership. She has earned the support of labor groups in her State by upholding and enforcing New York's labor and workplace laws.

Ms. Smith not only has support from labor and business but bipartisan support as well. The entire New York congressional delegation signed a letter endorsing her nomination. She has worked under both Democratic and Republican administrations during her long tenure in public service. Republicans and Democrats alike acknowledge her willingness to engage both sides of the aisle and to do so effectively.

Most important to her position at the department of labor is her strong track record of protecting workers. She has demonstrated that all workers, regardless of wage, occupation, or gender, deserve the fullest protection of New York's labor laws. As commissioner of labor there, she targeted enforcement toward the industries and geographic areas most susceptible to abuse and managed to increase compliance among employers and raise awareness about recurring workplace problems. For example, Ms. Smith has led New York's Department of Labor in shutting down exploitative sweatshops. Last year, her department's investigation turned up an instance where sweatshop operators were requiring employees to fraudulently use two sets of timecards, thereby avoiding paying overtime. Workers were often required to work 80 hours a week, often working 7 days a week, and then were coached to lie to labor department investigators. These employers who ignore workplace laws cheat taxpayers out of money. The taxpayers are forced to make up the difference when taxes on overtime wages are not paid, not to mention that this treatment of workers is both illegal and immoral. Ms. Smith worked to fix these problems.

Based on her exemplary work, Ms. Smith has won support from countless civil rights groups, including the National Conference on Civil Rights, the National Women's Law Center, the American Association of University Women, and the Business and Professional Women's Foundation.

Unfortunately, there are some who have been trying to delay Ms. Smith's confirmation. Further delay is detrimental to America's workers. The Department of Labor has been deprived of a critical member of its leadership

team. We should see that it is filled as soon as possible. The Solicitor of Labor leads an office of over 600 people who work to enforce 200 of our Nation's labor laws. The Solicitor also sets long-term planning strategy, participates in shaping legislative policy, and interprets legislative language. These are all essential elements to the full functioning of our Department of Labor. Delaying her confirmation is a disservice to the American workforce.

For these reasons, I urge all of my colleagues to support the nomination of Patricia Smith to be Solicitor of Labor.

Mr. President, I yield the floor.

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KAUFMAN). The clerk will call the roll. The bill clerk proceeded to call the roll.

Mr. ISAKSON. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ISAKSON. Is the current business the nomination of Patricia Smith?

The PRESIDING OFFICER. The Smith nomination is before the Senate.

Mr. ISAKSON. Mr. President, I reluctantly rise to oppose moving forward with the nomination of Patricia Smith. I do not do so easily nor happily because I believe the President of the United States has the right to make appointments, and I think within reason those appointments should be confirmed. The question before the Senate, with this nomination, is not whether wage and hour laws should be enforced. They should be.

The question is not whether Ms. Smith has done a good job in New York State because Republicans and Democrats said she has. The question is whether the Senate will tolerate a nominee intentionally misleading a standing committee of this body. My guess is the Democratic majority would not have stood for that under the previous administration, and we should not today.

Unfortunately, Ms. Smith has been consistently evasive in response to numerous questions from members of the committee, specifically with regard to a program called Wage Watch, which deputized private activist groups to inspect small businesses to look for and seek to find wage and hour law violations.

For 5 years I have served as the senior Republican on the Employment and Workplace Safety Subcommittee that maintains the oversight responsibilities over the Department of Labor. I am a vigilant, longtime supporter for fair and fully enforced wage-and-hour laws.

The program in question, Wage Watch, is a program that empowered pro-union special interests to enforce the myriad of labor laws that cover small employers. This approach is simply inappropriate. It can at worst be

entrapment and at best an improper attempt to enforce the law. One can imagine the outcry if the Minutemen who patrolled on their own on our border to the south had somehow been deputized by our immigration department under the last administration. There would have been outrage, and there should have been.

The "Wage Watch" program specifically targeted small- and medium-size businesses. In discussing the success of the program, Ms. Smith bragged that one business was closed as a result of this program, telling the New York Times that she had "made the determination that it would be better for workers to lose their jobs than to continue working there."

Ms. Smith stated the program would not be used for union organization; however documents obtained by the HELP Committee from the New York State Labor Department and a union newsletter show plans specifically to use the program for union organizing throughout New York.

Worse than the program itself was Ms. Smith's refusal to provide the committee with accurate and complete information about the program. In April of 2009 I wrote to Ms. Smith to ask if she foresaw "the possibility of instituting similar efforts on a national level." On May 12 she replied in writing that she had "not considered or advocated expanding it across New York to other parts of the country, to the Federal level or to other laws." However, documents procured by the HELP Committee revealed that Ms. Smith wrote in January 2009, 4 months before the letter I just mentioned, that she would like to double the number of organizers involved, "while laying the foundation to expand the program to various parts of Long Island and upstate New York."

She continued:

We're creating a movement here, and the more the merrier.

Clearly she had both considered and advocated expansion of the program, thus her statement to me was inaccurate. Her deceit on this issue forced me to write the President on September 10, 2009, and request that Ms. Smith withdraw her name. I asked the President that a new nominee, one who would both look out for the interests of workers and be honest with the Congress, be nominated.

We now see a similar program like Wage Watch, now called We Can Help, developing in the U.S. Department of Labor. In fact, one of the pro-union special interest groups Ms. Smith deputized to implement her New York program, the so-called National Employment Law Project, has been chosen by Secretary Solis to assist in the enforcement of Federal workplace laws.

On a personal note, I ran a business for 22 years, and it was a small business. I employed golf course superintendent workers, I had independent contractors who were real estate agents, I did a lot of construction where we were subject to the Americans with Disabilities Act. We were

subject to all types of labor laws. I vigorously made sure that whatever the case might be, we worked hard to see to it we obeyed not only the letter of the law but the spirit of the law.

But I, too, in my experience, from time to time encountered the kind of organizations Ms. Smith used in "Wage Watch." They tried to entrap me and punish me. I think the proactive enforcement of labor law should be vigilantly looking for violations and vigilantly looking for correction, not vigilantly looking for someone—as in the case of Ms. Smith and the businesses in New York—you can put out of business and cost the jobs of many employees of that small business.

As such, I reluctantly rise today to oppose the nomination of Ms. Patricia Smith.

I yield the floor and suggest the absence of a quorum. I withdraw the request for a quorum call.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I am very pleased to rise in support of President Obama's nominee to serve as Solicitor of Labor, Patricia Smith. I am very confident that she is the right person for this critical job. The work she is going to do to protect our workers is more important now than ever before.

American workers are facing incredible challenges today. They are struggling with record unemployment and a devastating economic crisis. They need and they deserve strong leaders in the Department of Labor who are passionate about public service and committed to fighting for them.

The Department of Labor is charged with a critical mission in our Nation's government. Their role is to foster and to promote the welfare of America's workers by improving their working conditions, advancing their opportunities for profitable employment, protecting their retirement and their health care benefits, helping employers find workers, and strengthening free collective bargaining. I believe during these challenging economic times it is absolutely critical that the Department has the leadership it needs to make those goals a reality. That is why I was very pleased that President Obama nominated such a strong candidate for the position of Solicitor of Labor.

Patricia Smith has been the Commissioner of the New York State Department of Labor since 2007. She is cochair of the New York State's Economic Security subcommittee, and she oversees 3,700 employees in 80 offices, with an annual budget of \$4 billion.

For the previous 20 years, Tricia worked in the Labor Bureau of the New York Attorney General's Office, and she served on the Obama administration's transition team for the Department of Labor.

I have received many letters of support for Patricia Smith from people who admire her work, from people she

has worked with, and from workers she has helped. I want to take a moment this afternoon to read some excerpts from some of those letters because I believe they do demonstrate Patricia's broad support and why she deserves to be confirmed by the Senate.

I have received a letter of support from the CEO of the Plattsburgh, NY Chamber of Commerce. He knows Patricia well. He said:

Patricia Smith has been an outstanding partner as Commissioner of the New York State Labor Department and will be an outstanding solicitor for the U.S. Labor Department. We strongly encourage her earliest possible confirmation by the Senate.

That was the CEO of the Plattsburgh, NY Chamber of Commerce.

I also heard from the United States Women's Chamber of Commerce. They said:

After learning of Ms. Smith's qualifications, expertise, and the laws she has worked to uphold, I can clearly see that she is someone who would work with conviction to enforce the laws of the United States of America. Additionally, I am impressed by her out-of-the-box thinking in creating programs that will keep jobs. We especially need these attributes in this time of economic challenge.

I also received a letter from a group of professors and scholars of labor and employment law and labor relations, from over 50 scholars of highly respected institutions across the country such as the Georgetown University Law Center, Columbia Law, Thomas Jefferson School of Law, Yale Law School, and Cornell University School of Industrial and Labor Relations. They too urged speedy confirmation, saying that Tricia has:

consistently demonstrated the highest integrity and commitment to ethical standards. She is experienced, intelligent, thoughtful and energetic. We believe this is exactly what the U.S. Department of Labor needs in a Solicitor. Once confirmed, she will be among the best Solicitors of Labor the Department has known.

Her support transcends party lines. Former New York Attorney General Dennis Vacco, a Republican, had this to say about his former employee:

Patricia Smith has proven herself as one of the foremost experts in the nation in the realm of labor law, which is why President Obama saw fit to nominate her. . . . She was an asset to the New York Attorney General's Office and I am confident. . . . She will be an asset to the Department of Labor.

I am here this afternoon as Chair of the Subcommittee on Employment and Workplace Safety. I know the challenges American workers are facing right now. That is why they deserve a Solicitor of Labor such as Tricia Smith who will fight every day to protect them. If she is confirmed as the Department's top legal counsel, she will have the profound responsibility of enforcing more than 180 Federal laws and managing more than 450 attorneys nationwide.

She will be responsible for defending the Department in litigation as well as providing legal advice and guidance on nearly every policy, legislative, regu-

latory, and enforcement initiative of the Department. Most importantly, she will be responsible for defending the rights of workers when they are not able to speak for themselves.

Tricia has a big job ahead of her, but we need to act now to allow her to get started. We owe it to our country's workers to have a confirmed Solicitor of Labor in place. I have had a number of conversations with Tricia and I wanted my colleagues to know I am confident she is highly qualified and very eager to get to work. I will be voting with confidence to confirm Patricia Smith. I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I rise in opposition to the nomination of Patricia Smith to serve as the Solicitor of the Labor Department. I have got to tell you, this is my 14th year in the Senate, and this is the first time I have taken the lead in opposition to a nomination that has come through my committee.

I take this very seriously. When the Founding Fathers drafted our Constitution, they were very concerned about concentrating too much power in any branch of the government. That is why they carefully crafted the system of checks and balances to ensure that each branch of the government has a method of checking the work and operations of the other.

Here in the Senate, one of our great checks has been our duty to provide our advice and consent to the nomination of the executive branch. That is a responsibility I take seriously. That compels us to ensure that nominees who were brought before us are qualified and they have presented their credentials to us completely, thoroughly, and honestly.

Each nominee must pass the vetting process to ensure he or she possesses the strength of character and the experience to ensure that the public can trust in his or her ability to carry out the duties of the office for which they have been nominated. My Senate colleagues know I rarely oppose Presidential nominees. I believe the President is ultimately responsible for the conduct of his administration and is also answerable to the Nation's voters, so he has the right to select the members of his team, up to a point. That is where the advice and consent comes in.

Before I elaborate on her nomination, I do want to recognize her accomplishments as the Commissioner of Labor in New York and the commitment she has shown to serving the people of New York. Her prior service would ordinarily have earned her our support and make her a bipartisan choice to lead one of our most important offices in the Labor Department. Unfortunately, there are other considerations which must be taken into account in reviewing her credentials for this position, which I believe disqualify her for this position. I have released a ranking

member's report detailing my concerns with Ms. Smith's nomination and posted them on the HELP Committee's Web site. Today I will explain the factual inconsistencies between what Ms. Smith said before the HELP Committee, for the record, compared to what is recorded in the official documents I have received from the State of New York.

The Solicitor of Labor is an important role. He or she is the chief legal officer of the U.S. Department of Labor, the third ranking official in that Department, General Counsel to the Secretary, and is asked to manage one of the largest legal offices in the Federal Government, with more than 400 attorneys serving on the Solicitor's team.

Unlike most legal offices in Cabinet agencies, the Solicitor of Labor has independent litigating authority from the Department of Justice and exercises that authority on behalf of the Department of Labor. The Solicitor is also responsible for ensuring that all stakeholders, including small businesses, are treated fairly.

In the course of conducting a thorough review of Ms. Smith's background and qualifications, the committee discovered a program in New York State called Wage and Hour Watch that she announced in January of 2009. The program was established to recruit and train union organizers and public interest groups to leaflet businesses with compliance literature and to interview employees in an effort to find violations of the law that could be used to bring State actions against businesses.

As part of the program, Ms. Smith committed to providing the groups with a direct pipeline to senior State enforcement personnel to report any violations found. Participants were given official cards by the State of New York identifying them and their group as being part of the program. Here is a copy of one of the cards. You will find down there across from "date" that this is for a 2-year period starting on February 7, 2009. You got one of those cards after 1 day of training.

According to the New York State Department of Labor's press release on January 26, 2009, Wage and Hour Watch is:

modeled in part after Neighborhood Watch, [the program] will help promote labor law compliance through formal partnerships between the New York State Labor Department and community groups and

provide ordinary people with a formal and systematic role in the fight against wage theft.

That sounds good, except Neighborhood Watch was set up so that people would notify law enforcement authorities of things they thought were strange and should be looked at. They did not have permission to go into people's homes and investigate unannounced.

The release also identifies the six groups, two labor unions and four com-

munity organizing groups, chosen by Ms. Smith for the program and explains that they have been active in labor issues and referred cases to her agency.

Upon the conclusion of my remarks, I will ask unanimous consent that all documents referenced be made part of the RECORD.

In addition to her May 7 confirmation hearing, Ms. Smith also participated in a committee staff interview and answered questions for the record. In her responses, Ms. Smith suggested the committee seek relevant documents from New York, which I did obtain through a Freedom of Information request.

My staff reviewed the several thousand pages of documents eventually produced by New York, and we sent Ms. Smith some additional questions that she answered in late July, and former Chairman Kennedy sent questions that she answered in September.

My concerns with the nomination relate primarily to four areas where Ms. Smith provided at best incomplete and factually inaccurate testimony to the HELP Committee, both during her May confirmation hearing as well as in the followup questions.

The first inconsistency I wanted to highlight is with Ms. Smith's plan to expand this program. In the May 7 hearing, Ms. Smith was asked by Senator BURR about her plans to expand Wage and Hour Watch. She responded that there were no such plans.

His question was: Have you had any discussions relative to your being at the Department of Labor that would extend Wage Watch in any fashion on a Federal level?

Ms. Smith said: No, we have not had any discussions of that. I have not had any discussions with the Department of Labor in New York about whether we would extend it across New York State. Again, it is a pilot program which we just did in January. We specifically limited it to a small number of groups, and we limited it to a small geographic area. We limited it to basically New York City, Long Island, the lower Hudson Valley, so we could assess what the successes would be, what the problems would be.

On May 13, 2009, Ms. Smith made a similar statement in writing in response to three separate questions from committee members, including me. She said:

This initiative was designed as a local model in a limited geographic area in a state, for a particular issue under a particular statute. It was not designed for other laws or to be used on the Federal level. Until the pilot is completed and evaluated—

As she said up here—

I would not advocate expanding it to other areas in New York, to other areas of the country, to the Federal level or to other Federal or state laws.

That is what she said. The problem here is that many documents, including press releases, Ms. Smith's talking points for her own speeches, and e-

mails she was copied on, show there were plans in place to expand the program in virtually every instance, many with June 2009 deadlines. Documents show that in April 2009, the State was maintaining lists of possible new entrants into the program.

I have a copy up here of groups that were being solicited with the Wage Watch expansion, and that is in April of 2009. That is before she testified. The State even sent out applications to a number of groups to join Wage and Hour Watch during May, when Ms. Smith had just testified to the HELP Committee there were no plans to expand the program.

This was the plan to expand the program:

Dear friend, we are preparing to expand Wage and Hour Watch beyond the original groups in the pilot program. We are writing to you because you have expressed an interest in becoming or joining a Wage and Hour Watch group, as are a number of other organizations and individuals.

Later on it says:

In order to allow us to plan for the next stage of the program, please return the completed application form with the reference letter by Monday, June 15.

The records show that Ms. Smith's department also planned to expand the scope of Wage and Hour Watch into investigating occupational safety and health matters from day one. That is not the original intent. The original intent was a Wage and Hour Watch group. But we can show where it was intended to investigate occupational safety and health matters.

Of course, originally it was not sold as enforcement of wage, it was sold as an educational program. But it changed to enforcement, infiltration, and spying, and then added investigating occupational safety and health matters.

In a January 15, 2009 e-mail from Ms. Smith to dozens of staff announcing the program, she states:

After 6 months, once we have had the chance to get the program rolling, we would like to expand to other groups (particularly upstate), including community based organizations, student groups; churches and other faith-based organizations and labor unions. . . . This is an exciting new initiative and one which we could potentially replicate elsewhere in the country.

In the press release issued to announce the program, Ms. Smith's agency states:

After a six-month pilot period . . . , the Labor Department will begin seeking additional groups who wish to participate statewide. . . .

The release also directs the public to contact her agency by telephone or through a dedicated e-mail address to establish additional New York Wage and Hour Watch groups. In an article, the New York Times noted the plans for expansion. They said:

After the first experiment in New York City and on Long Island, the Labor Department will seek additional groups for the program. The groups must be nongovernmental and nonprofit and can include religious organizations, student groups, labor unions, business associations and neighborhood groups.

Here is a sampling of other program expansion activities before Ms. Smith testified on May 2009: A December 1, 2008, e-mail to Ms. Smith listed potential expansion groups in upstate New York. A February 2, 2009, e-mail from Ms. Smith's deputy to two individuals explained how to set up a Wage and Hour Watch group. A February 18, 2009, e-mail from Ms. Smith's deputy to an outside group noted plans to expand the program. A February 23, 2009, e-mail from Ms. Smith's deputy memorialized a meeting with the six pilot groups and included a paragraph on training in June in both New York City and upstate for purposes of expansion. An April 9, 2009, e-mail exchange among Ms. Smith's subordinates listed several groups for expansion.

After Ms. Smith testified and answered written questions in May denying expansion plans, her department continued to promote expansion and looked to recruit new members. For example, a May 15, 2009, e-mail to over 20 outside individuals requested that application forms be submitted by June 15; a June 1, 2009, e-mail to outside parties announced preparations to expand Wage and Hour Watch; a June 3, 2009, e-mail from an outside public interest group offered over 40 individuals the opportunity to join Wage and Hour Watch; a June 9, 2009, formal application was submitted to Ms. Smith's department by the Laborers International Union of North America's Organizing Fund to conduct wage watch activities in the construction industry.

Contrary to Ms. Smith's responses to written questions that the program was only about wage and hour laws, her subordinates expanded the program to occupational safety and health enforcement. It says:

Thank for your offer to insert something about safety and health enforcement in the training the DOL is conducting on Saturday. Unfortunately, given the late notice and training schedules and grant deadlines, we will not be able to put it together by Saturday. However, what we would like to do for you is to announce that we will contact each of the participating groups and offer their organization a training on what safety and health issues they should be looking for while conducting the oversight for wage and hour issues. If that works for you, it would be great for us.

It wasn't supposed to be oversight. It was supposed to be education so that people would know what they were supposed to get and be able to take the kinds of actions that individuals could take. But you can see it has changed dramatically.

An e-mail from the New York Committee on Occupational Safety and Health, a safety and health public interest group closely tied to organized labor, sent to Ms. Smith's deputy on February 6, 2009, notes that:

We will contact each of the participating groups and their organization training on what safety and health issues they should be looking for while conducting the oversight for wage and hour issues.

In response, Ms. Smith's deputy solicits a list of things to train wage and

hour watchers to look for, and they respond, as well as suggesting that the groups take pictures of working conditions they believe unsafe. Sounds like an investigation.

Ms. Smith's own public pronouncements contradict her testimony to the Senate. A May 19, 2009, National Public Radio article quoting Ms. Smith and her deputy states:

New York's Wage Watch is just a few months old, and officials say it is too soon to measure success. But the pilot program is set to expand across the state this summer.

A set of talking points for Ms. Smith to deliver to an upstate coalition group sometime after January 2009 but before she testified at her confirmation hearing states that the program "will" be expanding and solicits volunteers.

We have it here:

They are currently expanding with six distinct labor unions and advocacy organizations in New York City and plan to roll it out across the state in the coming months and years. We will be expanding this program and when it does come upstate, we will need the help of many of you to roll it out.

There also does not appear to be any document that supports Ms. Smith's statement that there were no plans for expansion. Indeed, I am told the public documents actually contain more than 50 specific references to expanding the Wage and Hour Watch Program. All of these red tabs are references to expanding the program. All of the red tabs talk about expanding the program. It doesn't look incidental.

Concerns about the factual inconsistencies in Ms. Smith's testimony are not solely held by the minority. Former Chairman Kennedy's staff submitted questions about the expansion of the program. Ms. Smith responded at the time of the confirmation that she had had "no discussions about a potential expansion with anyone, other than generally indicating that if it were proved successful, my goal would be to expand to it other areas of New York."

Despite all of this evidence, Ms. Smith's defenders have claimed that she misspoke and that she delegated a small program to a deputy. However, the documents show Ms. Smith herself promoting expansion and recruiting members in her own speeches and media interactions.

In addition, I question Ms. Smith's ability to lead the Solicitor's Office if her subordinates, including her deputy, were allowed to act outside of their authority as suggested by earlier explanations. It is difficult to see how it would be appropriate to blame a breakdown between Ms. Smith and her deputy for inaccuracies regarding program expansion plans. Ms. Smith worked with her deputy for more than 5 years. When Former Governor Spitzer appointed Ms. Smith to the New York Labor Department, news articles noted that she brought her deputy and protégé with her. I find the explanation even more surprising because of Ms. Smith's pedigree. Her prior boss,

former attorney general and Governor Eliot Spitzer, was known for his aggressive prosecution of corporate officials, including some who were accused of not overseeing their subordinates properly. I find it unlikely that the State of New York would accept ignorance as an excuse if an executive on Wall Street tried to use it as a defense. Why should we accept a similar excuse now?

A little more information about her background and the Spitzer education program and her participation there. Some have also suggested that this program was reasonably beneath Ms. Smith's notice, noting that her agency has an \$11 billion budget with almost 4,000 staff. If confirmed, Ms. Smith would be in charge of legal compliance for a department whose budget projects spending 10 times what she oversaw in New York, \$104.5 billion in 2010. Leaving aside the extensive documentation showing she was heavily involved in this program, I ask my colleagues, why would we consider expanding her responsibility tenfold if she was unable to oversee her subordinates effectively in New York?

Former President Harry Truman had a sign on his desk that read "The buck stops here" to show that responsibility for the conduct of subordinates ultimately rested with him. Ms. Smith ought to own up to the responsibility that ultimately rests with her.

With regard to the second inconsistency, Ms. Smith stated that the program was developed internally and only then did the New York Department of Labor approach or recruit outside groups. However, e-mails obtained by the committee directly contradict this statement, instead showing much of the driving force and even legal research for a program model came from organized labor and its allies. Here are a couple of examples: an April 16, 2008, e-mail from Mr. Jeff Eichler, coordinator for retail organizing projects for the Retail Wholesale and Department Store Union, RWDSU, to Ms. Smith's deputy regarding an "Enforcers" program, with four pages of attached research explaining potential models for their "concept of wage and hour enforcers;" an August 18, 2000, e-mail in which Ms. Smith's deputy responds to Mr. Eichler's ideas that the State consider allowing participants to infiltrate businesses that are part of the program.

Most disturbing, however, to me about this inconsistency is the fact that Ms. Smith admitted in her response to a question that she apparently saw the e-mails contradicting her testimony in July but did not correct the problem until directly asked in September about this issue by majority staff; that is, 2 months later.

A third inconsistency is that Ms. Smith also characterized Wage and Hour Watch as an educational program in testimony. However, the record shows it was designed and intended to be enforcement from the very beginning, with the union organizers and

community organizer participants serving as amateur investigators and informants. The very first documents discussing the program describe potential participants as “community enforcers.” I refer to the previously introduced April 2008 e-mail from union official Mr. Eichler describing this as an enforcers program and a November 28, 2008, e-mail from one of Ms. Smith’s subordinates disseminating draft training material stating:

The one day session [of training] will not turn enforcers into labor law experts but will assist them in identifying labor law violations and make the referral of greater value. The “role of community enforcer” is where we will have to come up with original material . . .

Notably, Ms. Smith is personally copied on that e-mail.

Ms. Smith’s own words, her subordinates’ internal and public statements and deliberations, the media, and the groups involved in the program all emphasized and portrayed wage and hour watch as an enforcement from its very beginning. It was only when she was questioned by HELP Committee members about the program that Ms. Smith chose to portray the program’s substance as educational in nature. Quite a difference.

Finally, Ms. Smith stated that the two unions that were selected for the pilot program, United Food and Commercial Workers Local 1500 and RWDSU, were told not to use the program for organizing. However, the agreement created by Ms. Smith and entered with the unions and special interest groups specifically allows the pilot groups to make use of information gathered for “community organizing,” which Ms. Smith also admitted in response to a written request.

The committee has a copy of the United Food Commercial Workers, UFCW, Local 1500 work plan sent to Ms. Smith’s deputy which also directly contradicts Ms. Smith. The plan states that the union intended to use wage and hour in “all of our organizing campaigns,” including those outside their designated Wage and Hour Watch area. UFCW Local 1500 also published plans to target nonunion workplaces as part of the program in its publicly available union newsletter.

It is difficult for me to believe Ms. Smith and her department did not know union organizing was intended by those joining the pilot program. All the participants and signatories from two labor unions involved appear to be employed as full-time organizers. Other individuals and groups purely responsible for union organizing also applied to join when the program was expanded.

It is clear that Ms. Smith’s testimony and responses to follow-up questions are repeatedly contradicted by documents I received from the State of New York. It is particularly troubling that inconsistent statements to the committee were in each instance an attempt to downplay concerns about the

Wage and Hour Watch Program raised by Republican members. At best, the inconsistencies in her testimony lead me to question her ability to interact with Congress in a candid manner and manage the enforcement of labor laws by the Office of Solicitor in an even-handed and fair manner.

I have tried for months to resolve these concerns. In August, I asked President Obama to withdraw Ms. Smith’s nomination and offered my assistance in ensuring a replacement would be confirmed quickly. I also joined all my nine Republican colleagues on the HELP Committee in urging Chairman HARKIN to refrain from approving this nominee in committee and made the same offer to him of assistance in ensuring a qualified replacement being given swift review and confirmation. I mentioned I joined all nine. As to a couple people on there, I do not know that they have ever opposed a Presidential appointment.

Because the President and the majority did not consider it a problem that Ms. Smith provided factually inconsistent information to the Senate, I am forced to insist on a full debate on her nomination. Giving my consent to a Presidential nominee is not something I take lightly, even with the benefit of the doubt I have always given to the candidates sent over to us by the White House. However, the integrity of the Senate committee process and the responsibility of advice and consent demands honest and accurate testimony when the witnesses come before us.

For that reason, I have lost confidence in Ms. Smith’s ability to manage the Solicitor’s office. I urge my colleagues to oppose this nomination, and I ask unanimous consent that documents referred to in my speech be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LABOR DEPARTMENT INITIATIVE EMPOWERS ORDINARY PEOPLE TO JOIN THE FIGHT AGAINST WAGE THEFT

NEW YORK WAGE WATCH, THE ONLY ONE OF ITS KIND IN THE NATION, TO ROLL OUT IN NEW YORK CITY AND LONG ISLAND

ALBANY, NY (January 26, 2009).—At a press conference in New York City, State Labor Commissioner M. Patricia Smith today announced the formation of New York Wage Watch, a new tool in the fight against labor law violations in New York State. New York Wage Watch will focus on a variety of illegal practices, jointly referred to as wage theft, including payment of subminimum wages; nonpayment of wages; failure to pay overtime; tip stealing; and other such violations. Modeled in part after the Neighborhood Watch program, New York Wage Watch will help promote labor law compliance through formal partnerships between the New York State Labor Department and community groups. The effort will start with a pilot program with several groups in New York City and Long Island for the first six months, and then be opened up to interested groups from throughout the state.

The first model of its kind, New York Wage Watch will provide ordinary people with a formal and systematic role in the fight against wage theft. Participating groups will

select a geographic zone for their efforts, and within that zone, they will participate in a range of activities aimed at improving labor law compliance, including holding know-your-rights training; providing employers with information about compliance; and distributing literature to workers in supermarkets, laundromats, nail salons, and other community settings. When they encounter workers facing serious violations of the law or employers with detailed questions about compliance, New York Wage Watch groups will have a designated point person for referrals in the Labor Department’s Division of Labor Standards, which enforces wage and hour laws. The Department will provide training and materials to participating groups.

“Just as no one wants to live in an area riddled with crime, nobody wants to live in a neighborhood where workers are paid sweatshop wages,” said Commissioner Smith. “New York Wage Watch will increase labor law compliance by giving regular people a formal role in creating lawful workplaces statewide, and thereby improving the quality of life in their communities. It will also help law-abiding employers, who struggle to compete with businesses that undercut them by violating the law.”

In recent years, the Labor Department has uncovered widespread labor law violations in a broad range of industries and locations throughout the state. An industry-based investigation of car washes in 2008 revealed that over 78% of New York City car washes inspected were not paying minimum wage or overtime. Nearly half of 303 employers visited on joint enforcement sweeps in Buffalo, Albany, the Bronx, and Queens required followup for wage and hour violations. The Labor Department found serious violations at ordinary stores, restaurants, and offices statewide, as well as at state icons like the Saratoga Race Course, where over a hundred backstretch workers interviewed reported a pattern of illegal wages, and at the Erie County Fair, where bathroom attendants were paid no wages and were even forced to give half of their tips to a subcontractor.

“These violations are far more common than many people realize, but they plague our communities and diminish the quality of life for New York’s workers,” said Commissioner Smith. “We are enforcing the law as creatively and aggressively as we can, but the government cannot do it alone. We need concerned members of the public to help raise awareness about wage theft, to educate workers and employers about the law, and to help serve as a bridge between our agency and workers who might be unlikely to come to us on their own.”

Over the past few years, the Department of Labor has forged informal partnerships with advocacy groups and grassroots organizations on behalf of workers. A more proactive approach by the Division of Labor Standards, combined with efforts of the newly created Bureau of Immigrant Workers’ Rights, has resulted in more sustained and effective partnering. One such relationship, with the Retail, Wholesale and Department Store Union (RWDSU), and Make the Road New York, led the Department to investigate a commercial strip in Bushwick, Brooklyn. During the course of this investigation, the Labor Department found \$350,000 in wage underpayments were owed to 60 workers. In the ensuing weeks and months, the RWDSU and Make the Road New York maintained a presence in the area, talking with businesses and workers about labor law. A labor law seminar was also conducted for employers in the area. Labor law compliance appears to have increased in Bushwick as a result of this joint effort. New York Wage Watch aims to



replicate the enhanced effectiveness resulting from the coordination of law enforcement efforts with ongoing presence and involvement of community members.

This pilot program will begin with a small number of groups who are already working on labor issues. Each group has referred a number of cases to the Department of Labor in recent years. The groups are Centro del Inmigrante in Staten Island; Chinese Staff and Workers' Association; Retail, Wholesale and Department Store Union (RWDSU); Make the Road New York; United Food and Commercial Workers (UFCW) Local 1500; and The Workplace Project in Long Island.

Next month, each of these groups will receive language-specific training from Department of Labor staff. The first trainings will be held on Saturday February 7 at the Murphy Center for Labor Studies in Manhattan, in English, Spanish and Chinese, and will cover basic labor laws affecting workers such as minimum wage, overtime and meal periods. The Department of Labor will also be providing multilingual outreach materials to each Wage Watch group to hand out to workers and businesses.

After a six-month pilot period with these groups, the Labor Department will begin seeking additional groups who wish to participate statewide. Each group should be a non-governmental, non-profit entity, such as a community group, religious organization, student group, labor union, business association, or neighborhood association. Groups must have at least six members and must select a geographic region to focus upon—this may be as small as several blocks in an urban setting or as large as several counties elsewhere. Groups need not have prior labor-related experience.

Stuart Appelbaum, President of the 100,000 member Retail, Wholesale and Department Store Union said, "New York Wage Watch is labor law enforcement at the purest, most grassroots level. This program will allow unions, community groups and churches to engage in the fight against the exploitation of workers in our neighborhoods. It is critical that employers do not take advantage of workers and their families during these difficult economic times."

Amy Carroll, Supervising Attorney for Workplace Rights at Make the Road New York said, "Wage theft is rampant in many low-wage industries and immigrant neighborhoods, in large part because workers are afraid to come forward and file a complaint when their rights are violated. New York Wage watch allows the State Department of Labor to partner with organizations, like Make the Road New York, that already have workers' trust. In our experience, community monitoring of employer conduct is crit-

ical to ensure that employers caught violating the law today actually pay their workers correctly tomorrow. Employers will be dramatically less likely to violate wage and hour law when they know that trained community members are on the ground as the eyes and ears of the DOL's wage enforcement units."

Bruce W. Both, President of United Food and Commercial Workers Union Local 1500, New York State's Largest Grocery Workers Union said, "UFCW Local 1500 commends the New York State Department of Labor for its innovative approach to promote labor law compliance among New York State's employers. UFCW Local 1500 is excited to participate in the Wage Watch program, as we see it as both a creative yet fiscally efficient way to educate workers and employers about their labor rights and obligations during these difficult economic times. Our long history of working with the DOL, Commissioner Patricia Smith and her dedicated staff has taught us that grocery workers, especially Gourmet Grocery Workers, will greatly benefit from such a program. Workers in this industry have high rates of not being paid according to New York State Wage and Hour laws. UFCW Local 1500 looks forward to making Wage Watch a successful collaborative effort."

Gonzalo Mercado, Director, El Centro del Inmigrante said, "El Centro del Inmigrante applauds the New York State Department of Labor for the creation of the Wage Watch Program. Thousands of workers every year are victims of wage and hour violations and this initiative is a great tool to help enforce the labor laws that most of the time are not known by the workers nor by their employers. Immigrant workers are the most exploited and most vulnerable and we look forward to collaborating in this endeavor."

Nadia Marin-Molina, Executive Director of the Workplace Project said, "During this time of economic crisis, it is more important than ever that the wages of workers, immigrant and non-immigrant alike, are protected, so that workers can pay rent and feed their families. On Long Island, the Workplace Project has shown that, with education, organizing, and support, community members—day laborers, domestic workers, and factory workers, for example—are willing to stand up and fight exploitation on the job at great personal risk. The Wage Watch program will now allow us to link a trained community team to work closely with the New York State Department of Labor, so that employers will not be able to abuse workers with impunity. The Workplace Project is excited to participate in this innovative partnership with the DOL and looks forward to engaging many more community

members to stop wage theft through this collaboration."

To find out what you can do to establish a New York Wage Watch group in your community, send an email to [NewYorkWageWatch@labor.state.ny.us](mailto:NewYorkWageWatch@labor.state.ny.us) or call 1-888-52-LABOR.

#### NEW YORK STATE DEPARTMENT OF LABOR— WAGE AND HOUR WATCH

DEAR FRIEND: We are preparing to expand Wage and Hour Watch beyond the original groups in the Pilot Program. We are writing to you because you have expressed interest in becoming or joining a Wage and Hour Watch group, as have a number of other organizations and individuals.

We have not yet determined the precise extent or timetable of the initial expansion of the program, and we want to be sure to expand in a planned and methodical way which will ensure the continued quality of the program.

However, regardless of the precise plan we develop for expansion, our first step is to gauge the level and location of interest throughout the state. This will allow us to determine training needs and a realistic schedule for expansion. Therefore, we have developed the attached Application form for groups who are interested in becoming Wage and Hour Watch participants.

For efficiency and quality control, all groups who wish to become a Wage and Hour Watch group must have at least six members, and must have a host or sponsor organization—either a nonprofit organization, an educational institution, a trade association, a labor union, or a religious/faith-based organization.

If you are an individual without such an affiliation, please complete the form to the best of your ability and return it to us. If there is a Wage and Hour Watch group forming in your region, we will try to connect you to the group.

Please note that the application form asks for a reference letter. This reference letter would be for the lead person, or contact person, for the proposed Wage and Hour Watch group.

In order to allow us to plan for the next stage of the program, please return the completed application form with reference letter by Monday, June 15, 2009.

If you have any questions, please contact email [wageandhourwatch@labor.state.ny.us](mailto:wageandhourwatch@labor.state.ny.us)

Thank you for your interest and we look forward to hearing back from you.

TERRI GERSTEIN,  
Deputy Commissioner for Worker  
Protection & Immigrant Service.



New York State Department of Labor  
Division of Labor Standards

### Wage and Hour Watch Partner Application

Any group that wants to become an official Wage and Hour Watch partner must complete this form. Each group must have a sponsoring or host organization. Completing this form is the first step and does not mean the group will automatically be invited to participate in Wage and Hour Watch. Please attach a reference letter for the contact person. For questions 6 and 7 below you may write your answers in a separate page if the space provided is insufficient.

1. Name, full address, area code and telephone number, and e-mail address of contact person:
2. Name, full address, area code and telephone number, and e-mail address of host organization:
3. Type of organization: ☐ Educational institution  
☐ 501(c)(3) nonprofit organization  
☐ Labor union  
☐ Trade association  
☐ Religious/faith-based organization
4. Names of proposed New York State Wage and Hour Watch members. There must be at least six, and they all must attend a day-long training session by the New York State Department of Labor.  
A.  
B.  
C.  
D.  
E.  
F.  
G.  
H.
5. Will any proposed members require training in a language other than English? ☐ Yes ☐ No  
If "yes, list the languages:
6. Statement of Interest: Why does your group want to become a Wage and Hour Watch partner?
7. Describe any past experience working with social issues or labor issues by members of the group:
8. The region you propose covering:
9. The industry, if any, you propose covering:
10. Would all of the members be willing and able to travel to any of the following locations for training by the Department of Labor? ☐ Yes ☐ No  
A. ☐ New York City  
B. ☐ Albany  
C. ☐ Buffalo  
D. ☐ Syracuse  
E. ☐ White Plains  
F. ☐ Garden City

Signature of person completing form

Date

**Mail** completed form to: New York State Department of Labor  
Division of Labor Standards - NYS Wage and Hour Watch Coordinator  
State Office Campus  
Bldg 12, Room 185 B  
Albany, NY 12240

or **fax** to (518) 485-6001

or **e-mail** to wageandhourwatch@labor.state.ny.us

LS 51 (03/09)

From: Gerstein, Terri (LABOR)  
 Sent: Wednesday, April 16, 2008 4:49 PM  
 To: Boylan, Lorelei (LABOR)  
 Subject: FW: Enforcers  
 Attachments: Auxiliary Police Fact Sheet;  
 Volunteer Ambulance Corps Fact Sheet;  
 Neighborhood Watch Fact Sheet

FYI. I told Jeff I will be on vacation and won't get back to him until I get back. (I think I mentioned to you I'm going away from tomorrow through Fri apr 25 and then I will see you at somos el futuro). I also told Jeff I would forward you these so you can read and think about them in the meantime.

TERRI GERSTEIN,  
*Deputy Commissioner  
 of Labor for Wage  
 Protection and Im-  
 migrant Services,  
 New York State De-  
 partment of Labor.*

From: Jeff Eichler  
 Sent: Wednesday, April 16, 2008 4:13 PM  
 To: Gerstein, Terri (LABOR)  
 Subject: Enforcers

Hi TERRI: I hope all is well.  
 Attached are short fact sheets prepared by Lindsey exploring the Auxiliary Police and Ambulance Volunteers. Since both of these voluntary organizations are governed by statutory authority I don't think they will provide a useful example for our concept of voluntary wage and hour enforcers. Nonetheless, you should take a look at Lindsey's work and see if anything appears useful. I do believe that the neighborhood watch concept might be the appropriate model. Lindsey also has short overview of the neighborhood watch and it too is attached. Once you have reviewed these documents lets arrange a time to talk.

JEF.

From: Boylan, Lorelei (LABOR)  
 Sent: Friday, November 28, 2008 11:45 AM  
 To: Raj Nayak; Gerstein, Terri (LABOR);  
 Gardner, Colleen C (LABOR); Trivino,  
 Geovanny (LABOR); Amy Carroll; Deb  
 Axt

Cc: Smith, Patricia (LABOR)  
 Subject: RE: Wage Watch

Here is a proposed outline for the one-day training. I figured Amy and I could use input from the rest of the group on whether we should be covering other topics before we delve into it.

The one day session will not turn the enforcers into labor law experts but will assist them in identifying labor law violations and make the referral of greater value. The "role of the community enforcer" is where we will have to come up with original material but the other sections we have plenty of usable material at the DoL.

LORELEI BOYLAN,  
*Director of Strategic  
 Enforcement, Labor  
 Standards Division,  
 New York State De-  
 partment of Labor.*

To: Terri Gerstein/LoreleiBoylan  
 From: Aly Waddy  
 Re: Wage & Hour Watch Program Work  
 Plans

#### STRUCTURE

Aly Waddy  
 Responsible for all communications to  
 DOL. Will prepare all necessary reports: Par-  
 ticipate in meeting will DOL.

Alex Lazaro  
 Will supervise field operation. Participate  
 in meetings with DOL etc.

#### FULL LIST OF PARTICIPANTS

1. Aly Waddy
2. Alex Lazaro

3. Diana Robinson
4. Brendan Sexton
5. Vilmarie Solivan
6. Rafael Hernandez
7. Jose Rosendo

#### JURISDICTION

Gourmet, Grocery and Retail sector in 5  
 Boroughs. This will be the focus.

We will however utilize the program in all  
 of our Organizing Campaigns. This may at  
 times be outside of the five boroughs.

#### ACTIVITIES

We will introduce Wage & Hour Watch  
 Campaign into all our Organizing Efforts.

We will have dedicate 4 days per quarter to  
 Wage & Hour.

We will introduce program at our Union  
 membership meetings.

Mr. ENZI. I yield the floor.

Mr. HARKIN. I suggest the absence of  
 a quorum.

The PRESIDING OFFICER. The  
 clerk will call the roll.

The assistant legislative clerk pro-  
 ceeded to call the roll.

Mr. HARKIN. Mr. President, I ask  
 unanimous consent that the order for  
 the quorum call be rescinded.

The PRESIDING OFFICER. Without  
 objection, it is so ordered.

Mr. HARKIN. Mr. President, I listened  
 very carefully to the statement  
 made by my friend and ranking mem-  
 ber, Senator ENZI. Many of the points  
 raised by the Senator have been gone  
 over before by the committee. These  
 were things we looked into. So I think  
 I would like to respond a little bit, al-  
 most point by point, to some of those  
 concerns that were raised in the state-  
 ment made by Senator ENZI.

But before I do that, I, again, wish to  
 make one thing very clear. We are  
 talking about something—this Wage  
 Watch. Is that what it is called? Wage  
 Watch. We are talking about some-  
 thing that is perfectly legal. Almost,  
 listening to my friend's comments on  
 it, you would think there was some  
 subterfuge going on. This was perfectly  
 open and above board and everything.  
 No one is alleging anything was ever  
 done illegally. No person—none of the  
 Wage Watch people—did anything ille-  
 gal. In fact, all the things they were  
 engaged in—and I say "were"; I use the  
 past tense because it was a pilot pro-  
 gram and it has now ended and they  
 are now assessing it—but all the things  
 they were engaged in, they can engage  
 in today. Anyone can. I can. You can.  
 Staff can. Anybody can do this. It is  
 not illegal. It is perfectly legal. So let's  
 keep in mind what we are talking  
 about is a perfectly legal, open, trans-  
 parent pilot project that was started  
 by the New York Department of Labor.

Again, as I indicated earlier with my  
 charts, why were they doing this? Be-  
 cause so many people had been found  
 who were not being paid the minimum  
 wage; they were working overtime and  
 not being paid overtime. A lot of times  
 these low-income workers—many of  
 whom are recent immigrants to this  
 country—do not know what their  
 rights are. They are fearful of losing  
 their job. It is the only thing they have  
 to keep their families together, and if

the employer decides to shave a little  
 bit off their overtime, what are they  
 going to do? They have no one to go to.

So that is why I pointed out in my  
 charts how much money and how many  
 times Commissioner Smith had gone  
 after bad actors, bad employers, to get  
 money back for workers, for their fam-  
 ilies, for their retirement systems they  
 were cheated out of.

As she said to me, the good employ-  
 ers—the good employers—the business-  
 people in New York wanted her to do  
 this because the bad actors who were  
 shaving, who were not paying the min-  
 imum wage, who were not paying over-  
 time, were taking unfair advantage of  
 the honest employers that were meet-  
 ing their legal obligations. That is why  
 it is no surprise to me we have all  
 these letters of support for Ms. Smith  
 from the business community. I al-  
 ready mentioned the Business Council  
 of New York, the Manufacturers Asso-  
 ciation of Central New York, the entire  
 New York congressional delegation—  
 all these writing letters in support of  
 her, talking about how fair she is and  
 how she would listen and work things  
 out.

When she started—she did not start  
 it—but when the department started  
 this Wage Watch, that was the intent  
 of it. It was information. My friend  
 says they started out from the begin-  
 ning for enforcement. Well, sure, what  
 do you think? Do you think someone is  
 going to find out someone is not paying  
 someone the minimum wage, and they  
 are not going to tell anybody, they are  
 not going to tell the Department of  
 Labor, they are just going to say: Well,  
 that is just the way it is. Of course, the  
 end result is to enforce the law, to let  
 people know their legal rights so that  
 law can be enforced. Of course, that is  
 the end result of it.

But the implementation of that was  
 an informational program, to get infor-  
 mation and guidance out to people,  
 again, who—we are not talking about  
 Members of Congress. We are not talk-  
 ing about our educated staff who have  
 been to the best schools and have all  
 these fancy degrees. We are not talking  
 about accountants. We are not talking  
 about people working on hedge funds in  
 New York or on Wall Street. We are  
 talking about people working in  
 Queens at the minimum wage in the  
 garment industry—janitors, home-  
 makers, others out there who are  
 working in food service who are at the  
 minimum wage or slightly above it. So  
 we are talking about people who do not  
 have all that knowledge base we kind  
 of assume workers would have. I wish  
 to make that point clear before I start  
 to talk about some of the points that  
 were made.

Again, a lot has been made about the  
 plans for expansion and about Senator  
 BURR's question. I looked at Senator  
 BURR's question. I looked at her re-  
 sponse. I was there that day. It did not  
 register. But then later on we began to  
 look at this when issues were raised by  
 my Republican colleagues.

Well, quite frankly, the e-mails that were shown by my colleague were not e-mails from Patricia Smith. They were e-mails from Terri Gerstein, not Patricia Smith. Quite frankly, to expand it to include occupational safety and health training, there was an e-mail to Terri Gerstein from Joel Shufro. Well, much was made of this. Again, I will respond in two ways. Much was made of expanding it to occupational safety and health issues training. My response is, yes; so? Shouldn't people also know not only what their rights are in terms of what their wages are, but shouldn't they also have the right to know whether something is unsafe, whether their health is being endangered? It would seem to me this also has to get out there, to know what their rights are to protect their health and their safety. I don't have any problem with that, that they should have that kind of training also, as well as to be on the lookout for that.

Sure, if they are working in hazardous conditions and with hazardous materials that can affect their lives and their livelihood and their future health, somebody ought to know about it. Someone should know about it.

On the expansion of the program beyond just the wage-and-hour expansion in the State, it looks as though the deputies may have gotten a little ahead of her when they were doing this. Again, keep in mind, I know the buck stops here. I saw that chart. The buck always stops here. We are responsible.

As I pointed out, Ms. Smith was running an agency with an \$11 billion budget—\$11 billion, 4,000 employees. This was a \$6,000 pilot project, hardly the meat and potatoes of what she was doing in her job every day. Plus, she was focusing on one of the worst economic crises New York and this country has faced. So keep that in mind.

Ms. Smith was clear in her response to us about the fact that she had no discussions about a potential expansion with anyone other than generally indicating that:

... if it proved successful, my goal would be to expand it to other areas of New York State. At that time, I had not authorized my staff to proceed with a statewide expansion of the program, nor had I discussed with them any steps that were preliminary to a possible expansion. My first—

And I am reading from her response to our written questions. Ms. Smith says:

My first substantive discussion about the steps needed to be taken to evaluate any potential expansion of Wage and Hour Watch occurred in late May 2009 with my Executive Deputy Commissioner. . . . At that time he informed me that the Deputy Commissioner for Wage Protection and Immigrant Affairs had recently discussed with him what to do about the additional requests to join the program to which we had never responded. He told me that he had authorized her sometime in mid May to send out e-mails to groups in New York that had expressed interest in the program in case we judged the pilot a success. He had not personally seen the e-mail. Therefore, within days, I asked to review the

text of the e-mail the Deputy Commissioner for Wage Protection and Immigrant Affairs was using. I told her that it could give the impression that a decision to expand the pilot had been made, which it had not, and made appropriate changes to the text. I directed her to use my corrected version in all future e-mails.

So, again, rather than saying this has to be expanded, she said let's look at the results and see what the results are, and she took it upon herself to correct those mailings that went out from her office.

The other thing that was said had to do with unions and that she misled the committee. There is a claim in response to a written question that she instructed unions participating in the Wage and Hour Watch Program not to use their status as wage watch groups as a union organizing tool. In fact, the New York Department of Labor tacitly condoned this practice.

Those are the charges that were made.

Well, first of all, again, there is nothing improper or unlawful about unions using their Wage and Hour Watch activities as part of organizing campaigns. There is nothing illegal about that. I would like to have someone show me where that would be illegal. There is nothing illegal about that. However, Ms. Smith, in order to be fair, took all appropriate steps to discourage that activity because business groups had raised concerns about this issue with her. She responded immediately, specifically prohibiting unions from distributing their own organizing literature while they were performing wage and hourly watch activities.

This was a written question to her:

Were you personally aware of any instance when a labor organization participating in the Wage and Hour Watch program engaged in labor activities? If so, how did you respond? If not, how would you have responded to such activity?

Here is what Ms. Smith responded in writing:

I am not personally aware of any instance when a labor organization participating in the Wage and Hour pilot program engaged in organizing functions while performing Wage and Hour Watch functions. If I had been aware of such behavior I would have decided to terminate them from the pilot.

Here is another question:

In your response to a question submitted by Senator Enzi on May 12, 2009, you describe a March 2009 meeting with numerous retail trade organizations where these organizations requested that groups participating in the Wage and Hour Watch pilot program be prohibited from giving out information about their group while doing Wage and Hour Watch activities. How did you respond to that request, and what actions did you take to follow up on that request?

This has to do with labor unions too.

I told the trade associations that their request was reasonable, that I would make sure the participating groups would be specifically instructed to refrain from giving out their own materials while doing Wage and Hour Watch activities. I also told the trade associations that their request would be explicitly incorporated in any future written agreements. Within a week of that meet-

ing, I instructed Lorelei Boylan, Director of Strategic Enforcement . . . to call each of the groups participating in the Wage and Hour Watch pilot and give them that instruction. Within a week after our conversation, she reported back to me that she had contacted each of the groups, explained the specific prohibition, and that they agreed to it. Since then, I have, from time to time, asked my staff if they were aware of any problems with the groups' complying with that particular instruction, and they have reported no problems.

Again, here is her e-mail. Some talked about how these people would go in and use authority to do something. It was compared to the Neighborhood Watch program. As my friend said, in the Neighborhood Watch program, people can't go into people's homes. Well, under this program, the Wage and Hour Watch Program, they could not go into a private employer's business either. They couldn't go into somebody's office, somebody's business. They could go into a store where the general public could go, yes. They could go into Wal-Mart or they could go into a retail establishment where the public generally could go, but they could not go into, let's say, a manufacturing concern where the public was not allowed to go, the same as Neighborhood Watch. You couldn't go into somebody's home. You could sure go into a community center. You could go into a shopping center. You could do a lot of things. You could go to the public park as Neighborhood Watch.

But here is a letter from Patricia Smith dated January 15, 2009, long before any of this stuff ever came out:

Dear Labor Standards Staff:

I want to let you know about a new pilot program we will be announcing on Friday called "Wage Watch." The goal of the program, as with all of our enforcement efforts, is labor law compliance throughout the state.

Complying with the law. Anybody opposed to that? But here is the important paragraph:

Please note that the groups and individuals who participate as Wage Watchers will not be agents, employees, or official representatives of the Labor Department. They are not replacing staff and they are not going to be conducting investigations of any kind. Their role is limited to doing outreach and community education, and to reporting any violations they encounter to the Division.

I don't think you can get much clearer than that. That went out on January 15.

There was one other thing I guess I have to respond to, and that is that there is some confusion as to whether the idea for this came about internally or whether it was external. Again, I don't understand what the big problem is. Who cares where it came from? Again, it is a legal operation, ethical, aboveboard, not nefarious in any way.

There is some problem about whether it came from internally or outside. When Patricia Smith testified at the hearing, she was being accused of misleading us because she said it was "an internally crafted group" and that "it

was only after we sat down and crafted it ourselves that we reached out to groups to see if they would be interested."

Well, I have met with Ms. Smith. We have talked about this. We went through all the records. At that point in time when she testified that was to the best of her knowledge, that it had come from the people in her department and that they had suggested this and then they were going to go to outside groups to get people involved.

What she didn't know is that some people on her staff had been meeting with outside groups in terms of coming up with this kind of an approach. Then she corrected it later on when she said: Yes, I found out later that some people on my staff had done this.

But, again, let's keep in mind there was nothing inappropriate about this. There was nothing inappropriate about her staff meeting with outside groups to talk about this. Absolutely nothing. She just happened to make a mistake in front of the committee in saying they hadn't gone to outside groups before it came up, and actually it had been discussed with outside groups with her staff.

What is the big deal? Is someone saying there is something illegal? No, there is nothing illegal about that. Again, there is nothing inappropriate about it. It was simply a mistake she made in her testimony because she didn't have full knowledge of what her staff had been doing at that point in time in that Wage and Hour Watch.

Lastly, I know it will be said: Can she manage a large organization if she doesn't know about what one staff person may have done in terms of talking to an outside group? Well, as I point out, she ran an \$11 billion agency, 4,000 employees. Her focus more than anything—and I have talked to her about this, and I talked earlier about it with the charts I had—was going after these employers who were cheating people out of their minimum wage, taking away retirement benefits, working them overtime and not paying them overtime. She was getting money back for these families. This was a \$6,000 pilot project in an \$11 billion agency. So she may have missed a little bit here or missed something there or missed one person talking to somebody.

I would be more upset about it if it were illegal activity. If, in fact, these things had been going on and they were not legal, they were not ethical, yes, then I would say the buck stops here, you bet. But that is not the case. This is perfectly legal, perfectly ethical.

So I can understand if something went on in that agency in a small pilot project and she didn't know every single thing about it and who talked to whom and when something occurred. That is the essence, as I understand it, of the arguments on the other side. That seems to be the essence of it.

I think it is making a mountain out of a molehill. She is perfectly qualified

to be the Solicitor, and I hope the vote coming up shortly will confirm that.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, in light of the 20 minutes that we just heard in defense, and he had spoken previously before I spoke, I ask unanimous consent for an additional 5 minutes to briefly comment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ENZI. Mr. President, there are so many places that a person needs to go if Ms. Smith does make it through the cloture vote. Of course, I have a lot more documents and information I will be sharing with people. I don't even know where to begin on the rebuttal to what has been said.

Internally crafted, no. It was brought to them by the unions. We can show where that came from. The Senator from Iowa mentioned that she met with small businesses in March. The program started in January with no input from small business. This is going to affect small business. They should have had the opportunity to comment on how the program would work, because there are a lot of privacy and other related issues in this.

When somebody comes to you with a State card from the Department of Labor of New York, they could probably go anywhere in the business they want to. They have only had 1 day of training in order to be able to do this. Does that make them an expert in OSHA and in wage and hour law? I don't think so. But there are safety and security and invasion of privacy issues that were ignored, or it was consciously decided they weren't important.

We asked about background checks on those who were trained and gave the State identification cards to:

There is no formal vetting process for the New York Department of Labor to partner with an entity. Instead, the Department relies primarily on prior experience working with the group. For the Wage and Hour Watch pilot, the Department selected the groups that were asked to join based on prior experience working with them on a more informal basis.

They did consider the possibility of a background check on the groups but ultimately rejected that idea after inquiring as to whether Neighborhood Watch groups are subjected to background checks. The Department was informed that the groups participating in this more sensitive crime prevention partnership were not subject to a background check.

In her Senate response, Ms. Smith in part explains the lack of a background check because the program is modeled on the National Sheriff Association's Neighborhood Watch program. Notably, however, unlike Wage and Hour Watch, Neighborhood Watch is purely an observe and report program. Participants do not investigate crimes and are strongly cautioned against doing so, nor are they allowed to enter pri-

vate property or businesses in conducting their operations. Calling the police about suspicious activity in a public area is significantly different than investigating the wages and hours of individual employees and recording their personal contact information.

This decision to allow those who may have criminal records—no backgrounds check—or may not be legal residents—no background check—in the United States to be trained and gather information under cover of New York State authority is also compounded by the types of information being gathered. That is a little different than Neighborhood Watch too. Ms. Smith authorized the training provided to participants that directed them to gather the personal telephone number, vehicle license plate, and home address of business owners they visited. As noted above, the State also allowed that information to be kept and used for other purposes outside of Wage and Hour Watch.

I have more things I could go into. For instance, in a memorandum to Ms. Smith in January 2009, NYDOL officials point out that all pilot groups would be taught "guidance on what level of information is needed for 'anonymous' Wage and Hour Watch tip." They wouldn't be able to tell if an anonymous tip was inaccurate. In other words, it could be used for harassment.

There are a lot of problems with the program. I will be going into them tomorrow if cloture is successful.

I yield the floor.

Mr. LEAHY. Mr. President, today, the Senate will try to end yet another Republican filibuster and invoke cloture on the nomination of Patricia Smith to be Solicitor General for the Department of Labor. This is the 15th filibuster against President Obama's nominees.

Commissioner Smith is a well-qualified nominee who has decades of experience working on labor issues, and a strong record as labor commissioner for the State of New York. The Senate Committee on Health, Education, Labor and Pensions held a hearing on her nomination in May and reported it favorably to the Senate last October. Commissioner Smith should have been confirmed long ago. However, as has become all too common in this Congress, the Republican minority continues to block the Senate from even considering her nomination and giving her the up or down vote they not long ago insisted was the constitutional right of every nominee. Instead, the Senate is faced with another Republican filibuster.

Nothing I have seen suggests there is a reason to block Commissioner Smith's nomination from receiving Senate consideration. If some Senators oppose the strong enforcement of laws to protect American workers, they can vote against the nomination.

Some seek to justify this delay by creating controversy over "Wage

Watch," a pilot program started by the New York Department of Labor under Commissioner Smith designed to encourage Department employees to report labor law violations. This seems to be a controversy generated by those who disagree with the program. What is so troubling about this filibuster is how difficult it has become to determine which nominations Senate Republicans are merely blocking as part of their political strategy of obstruction and delay of President Obama's nominees.

If cloture is invoked and we are finally able to consider the Smith nomination, we will then have the opportunity to end the filibuster of another nomination, that of Martha Johnson to head the General Services Administration, GSA. Her nomination has been stalled on the Senate Executive Calendar since June 8 due to the opposition of a single Republican Senator over a dispute with GSA about plans for a Federal building in his home State. The will of the Senate and the needs of the American people are held hostage by a single Senator.

This should not be the way the Senate acts. Last week in his State of the Union Message, President Obama told Congress and the American people: "The confirmation of well-qualified public servants shouldn't be held hostage to the pet projects or grudges of a few individual senators."

Unfortunately, we have seen the repeated use of filibusters, and delay and obstruction have become the new norm for the Republican minority. We have seen unprecedented obstruction by Senate Republicans on issue after issue—over 100 filibusters last year alone, which has affected 70 percent of all Senate action. Instead of time agreements and the will of the majority, the Senate is faced with a requirement to find 60 Senators to overcome a filibuster on issue after issue. Those who just a short time ago said that a majority vote is all that should be needed to confirm a nomination, and that filibusters of nominations are unconstitutional, have reversed themselves and now employ any delaying tactic they can.

The Republican practice of making supermajorities the new standard to proceed to consider many non-controversial and well-qualified nominations for important posts in the executive branch, and to fill vacancies on the Federal courts, has had a devastating effect. As a result of this Republican strategy, there are currently 75 nominations pending on the Senate's Executive Calendar for important positions throughout the executive branch and the judiciary, all but nine of them pending since last year.

There are 19 judicial and executive nominations pending on the Senate Executive Calendar that were reported favorably by the Senate Judiciary Committee, all of them reported with bipartisan support. In fact, 16 of the nominations reported by the committee were

reported without a single dissenting vote. These nominations are not controversial. They should be easy to consider and confirm.

Five more nominations reported by the committee were pending on the Senate Executive Calendar at the end of last year, but Republicans insisted that they be returned to the President rather than held in place. Two were judicial nominees and three were nominees to head divisions at the Justice Department as Assistant Attorneys General. One of those nominations had been reported by the Senate Judiciary Committee by voice vote, with no dissent.

Despite the fact that President Obama began sending judicial nominees to the Senate 2 months earlier than President Bush, last year's total was the fewest judicial nominees confirmed in the first year of a Presidency since 1953, a year in which President Eisenhower only made nine nominations all year, all of which were confirmed. The number of confirmations was even below the 17 the Senate Republican majority allowed to be confirmed in the 1996 session.

Only 12 of President Obama's judicial nominations to Federal circuit and district courts were confirmed all last year, less than half of what we achieved during President Bush's first tumultuous year. We have confirmed only two more this year, after Republicans objected to consideration of the nomination of Joseph Greenaway of New Jersey to the Third Circuit, a nomination reported by the committee last October 1 by unanimous consent.

Democrats did not practice this kind of obstruction and delay in considering President Bush's nominations. In the second half of 2001, the Democratic majority in the Senate proceeded to confirm 28 judges. By this date during President Bush's first term, the Senate had confirmed 30 circuit and district court nominations compared to only 14 for President Obama. In the 17 months that I chaired the Senate Judiciary Committee during President Bush's first term, the Senate confirmed 100 of his judicial nominees.

During President Bush's last year in office, with Democrats again in the majority, we had reduced judicial vacancies to as low as 34, even though it was a Presidential election year. When President Bush left office, we had reduced vacancies in nine of the 13 Federal circuits.

As matters stand today, judicial vacancies have spiked and are being left unfilled. We started 2010 with the highest number of vacancies on article III courts since 1994, when the vacancies created by the last comprehensive judgeship bill were still being filled. While it has been nearly 20 years since we enacted a Federal judgeship bill, judicial vacancies are nearing record levels, with 102 current vacancies and another 21 already announced. If we had proceeded on the judgeship bill recommended by the Judicial Conference

to address the growing burden on our Federal judiciary, as we did in 1984 and 1990, in order to provide the resources the courts need, current vacancies would stand over 160 today. That is the true measure of how far behind we have fallen. Justice should not be delayed or denied to any American because of overburdened courts and the lack of Federal judges. The rule of law demands more. The American people deserve better.

Among the nominees ready for Senate approval are nine Federal judicial nominees reported by the Senate Judiciary Committee. Two would fill vacancies on the Third Circuit, three would fill vacancies on the Fourth Circuit, and there are nominees to fill vacancies on the First, Second and Sixth Circuits, as well as a district court nominee to Wisconsin. The delay in considering them is also part of this effort to delay and obstruct. Judge Greenaway, about whom Senators LAUTENBERG and MENENDEZ spoke last week, was reported by unanimous consent back in October, four months ago.

Two weeks ago the Majority Leader tried to get agreement to take up the nomination of Judge Greenaway, the next judicial nominee on the Senate Executive Calendar, but Republican objections continue to stall consideration. That is a shame. He is a good judge. Senator SESSIONS praised him at his confirmation hearing. Why he is being stalled I do not know, and no one has explained. Even after the statements by the New Jersey Senators, no one has come forward to explain the hold up from the Republican leadership. Judge Greenaway is one of the many outstanding judicial nominations reported by the Senate Judiciary Committee that remain stalled on the Senate Executive Calendar. They should have been confirmed last year and would have but for Republican objection. When considered, they will be confirmed but not before being needlessly delayed for months.

They insisted on debate on the nomination of Judge Gerard Lynch, who was confirmed with more than 90 votes. Republicans insisted on hours of debate for the nomination of Judge Andre Davis, who was confirmed with more than 70 votes. Senate Republicans unsuccessfully filibustered the nomination of Judge David Hamilton last November, having delayed its consideration for months. For at least 2 additional months, Judge Beverly Martin's nomination was stalled because Republicans would not agree to consider it before January 20. Judge Martin, of course, had the strong support of both of her home state Republican Senators, Senator CHAMBLISS and Senator ISAKSON, and the highest possible rating from the American Bar Association's Standing Committee on the Federal Judiciary.

The Democratic leadership sought to build on our belated progress two weeks ago when we were allowed finally to consider and confirm Judge



Martin. We asked for agreement to consider the nomination of Judge Greenaway. As the Majority Leader indicated two weeks ago: "[The Democratic] majority was in a position to agree to a vote on the nomination of Joseph Greenaway to be a U.S. circuit judge for the Third Circuit. However, I was advised the Republicans would not agree to such request." This is CONGRESSIONAL RECORD S166, January 22, 2010, daily ed. Again, Senate Republicans have withheld consent and have objected to consideration of a nominee.

None of the nine Federal circuit and district court nominations currently pending on the Senate Executive Calendar should be controversial. Six were reported by the Senate Judiciary Committee without a single dissenting vote. One had one negative vote, one had three negatives votes and the nominee from Tennessee supported by Senator ALEXANDER had 4 negatives votes but 15 in favor, including 3 Republicans. We have wasted weeks and months having to seek time agreements in order to consider nominations that were reported by the Senate Judiciary Committee unanimously and who are then confirmed unanimously by the Senate once they were finally allowed to be considered. That obstruction and delay continues.

The American people deserve better. The cost will be felt by ordinary Americans seeking justice in our overburdened Federal courts. President Obama has reached across the aisle and worked with Republican Senators, including Senators LUGAR, MARTINEZ, SHELBY, SESSIONS, THUNE, ALEXANDER, BURR, CHAMBLISS and ISAKSON, who all have supported his judicial nominees. I wish Senator Republicans and the Senate Republican leadership would reconsider their tactics of obstruction and delay and work with us and with the President.

The Republican minority must believe that this partisan playbook of obstruction will reap political benefit for them and damage to the President. But the people who pay the price for this political calculation are the American people who depend on the government being able to do its job. I hope that Republican Senators will rethink their political strategy and return to the Senate's tradition of promptly considering noncontroversial nominations.

During his State of the Union Address last Tuesday night, President Obama talked with us about the "deficit of trust—deep and corrosive doubts about how Washington works that have been growing for years." He urged that we show the American people that we can work together. Regrettably the Senate is being required to dedicate today and tomorrow to freeing one of the long-delayed nominations the President has sent to the Senate for advice and consent. This is not working together. This is yet another instance in which Senate Republicans have decided to delay and obstruct.

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of M. Patricia Smith, of New York, to be Solicitor for the Department of Labor.

Harry Reid, Tom Harkin, Jeff Bingaman, Mark Begich, Byron L. Dorgan, Edward E. Kaufman, Barbara Boxer, Benjamin L. Cardin, Robert Menendez, Kay R. Hagan, Sheldon Whitehouse, Barbara A. Mikulski, Jon Tester, Roland W. Burris, Kirsten E. Gillibrand, Bill Nelson, Mary L. Landrieu.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of M. Patricia Smith, of New York, to be Solicitor for the Department of Labor shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from New Hampshire (Mr. GREGG), the Senator from Texas (Mrs. HUTCHISON), the Senator from Arizona (Mr. MCCAIN), the Senator from Kansas (Mr. ROBERTS), the Senator from Louisiana (Mr. VITTER), the Senator from Idaho (Mr. RISCH), and the Senator from North Carolina (Mr. BURR).

Further, if present and voting, the Senator from Idaho (Mr. RISCH), would have voted "nay."

The PRESIDING OFFICER (Mr. BENNET). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 60, nays 32, as follows:

[Rollcall Vote No. 17 Ex.]

#### YEAS—60

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Kirk	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

#### NAYS—32

Alexander	Collins	Grassley
Barrasso	Corker	Hatch
Bennett	Cornyn	Inhofe
Brownback	Crapo	Isakson
Bunning	DeMint	Johanns
Chambliss	Ensign	Kyl
Coburn	Enzi	LeMieux
Cochran	Graham	Lugar

McConnell  
Merkowski  
Sessions

Shelby  
Snowe  
Thune

Voinovich  
Wicker

#### NOT VOTING—8

Bond  
Burr  
Gregg

Hutchison  
McCain  
Risch

Roberts  
Vitter

The PRESIDING OFFICER. On this vote the yeas are 60, the nays are 32. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. REID. Mr. President, I ask unanimous consent, notwithstanding rule XXII, that the Senate consider the following nominations: Calendar No. 561, Clifford Stanley, to be Under Secretary of Defense for Personnel and Readiness; Calendar No. 603, Laura Kennedy, to be U.S. Representative to the Conference on Disarmament; Calendar No. 614, Philip Goldberg, to be Assistant Secretary of State for Intelligence and Research; Calendar No. 615, Caryn Wagner, to be Under Secretary for Intelligence and Analysis with the Department of Homeland Security; that the nominees be confirmed en bloc, the motions to reconsider be laid on the table en bloc, any statements relating to the nominations appear at the appropriate place in the RECORD as if read, and the President be immediately notified of the Senate's action.

Prior to there being a statement on whether this is accepted, let me say, these are all critically important to the safety and security of this Nation: Clifford Stanley, Under Secretary of Defense; Laura Kennedy, the Conference on Disarmament; Philip Goldberg, Assistant Secretary of State for Intelligence and Research; and Caryn Wagner to be Under Secretary for Intelligence and Analysis with the Department of Homeland Security. Every one of these are very important, I repeat, to the security and safety of our Nation.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Ohio is recognized.

Mr. BROWN. Mr. President, I rise to speak in support of the nomination of Patricia Smith, currently commissioner of labor for the State of New York, as the Solicitor of Labor.

We just had a vote where, again, 40 people tried to block the nomination of a key position at the Department of Labor. This is a position that matters to workers. It is a position that matters to the middle class. It is a position that has remained unfilled for 1 whole year. It has been 1 year since President Obama has been sworn in. This is one of the top officials of the Labor Department. It is a department which, frankly, the Bush administration didn't put much stock in. The Bush administration didn't much care about enforcing the rules about labor, didn't much care about putting government on the side of the workers in terms of worker safety, in terms of wages, in terms of all

the things a Labor Department is there for—to make sure people are rewarded for their labor; that people who work with their hands, people who work with their brains are compensated for the fruits of their labor. It is such an American success story, of people working hard, getting ahead and being compensated for what they do and sharing in the wealth they create for their employer through pay and benefits.

That doesn't seem to be the way 40 Members of this body look at the world. The Solicitor of Labor is the third-ranking leader at the Department of Labor. She will be charged, if confirmed, with enforcing the full scope of the Federal laws protecting labor rights and employment rights. These are not trivial matters. They are important protections that reflect core American values: fair hiring practices, safe working conditions, retirement security, and the payment of wages and benefits rightfully earned.

Let me give an example: There has been a practice in northeast Ohio—and across the country, we find out—where, when you go to a restaurant and you don't pay your bill and you walk out of the restaurant, in many cases it is the person who waited on your table who ends up paying the bill. If you skip out on your bill—as has happened more and more and more in this recession—it is not management who eats the cost, it is typically the worker, the waiter, the waitress, the server who eats that cost.

There are two cases—one in Columbus—where I believe it was a waitress, in this case, who chased a person out of the restaurant who didn't pay their bill and she was hit by a car and is paralyzed. There was a case in Texas where a server chased someone who didn't pay the bill out to the parking lot and was hit by a car and was killed.

The reason they do that is they are trying to make the patron behave and do the right thing, but they paid the ultimate price for that. You know why? Because the Department of Labor has not enforced laws that protect that worker. Those are just two examples—one in Columbus and one, I believe, in Dallas or somewhere in Texas.

There are only a few people who I am aware of who have expressed any concerns over Commissioner Smith's nomination. The Commissioner will enforce these rules that simply aren't being enforced—and were not enforced during the 8 years of the previous administration, which almost always sided with management over any real labor concerns—over wages, over safety, over worker concerns.

A handful of Republicans have voiced opposition due to supposed discrepancies in Commissioner Smith's testimony before the Health, Education, Labor, and Pensions Committee. They disingenuously cite her statements regarding a small pilot program that constituted \$6,000 of the Department's \$11 billion budget. In response to written questions, Commissioner Smith

clarified her statements to the full satisfaction of Chairman HARKIN.

Despite this, Republicans on the HELP Committee have held up the nomination process. Again, it has been 1 year and she is not sitting there yet—1 year of Republicans saying no, of blocking things, of obstruction. They have gone so far as to call for the withdrawal of the nomination altogether.

It is irresponsible to cause a lengthy delay for a position that is so important. This isn't an inconsequential position that doesn't matter. It is a position that affects workers' rights, that affects workers' pay, that affects workers' ability to be part of the middle class. This position is particularly critical to the needs of workers in this country.

We all know, in the last 10 years, until this recession, profits generally were up, the economy was growing—until this recession, until 2007—yet workers' wages didn't keep up. Part of the reason is because we had a Labor Department that simply didn't care about enforcing these rules. We have a responsibility to provide leadership at the highest level to ensure American workers of their right to an honest day's work.

I am pleased the President has nominated a candidate who is as well-qualified as Patricia Smith to be our Nation's next Solicitor of Labor. She previously served as the New York attorney general's labor bureau chief, where she argued and won two cases before the U.S. Supreme Court.

Her tenure as commissioner has come at a difficult period. Yet she has met the challenge with great professionalism and dedication. She has garnered support in New York State, where she worked in both the business and labor communities. The Business Council of New York State—not exactly the State AFL-CIO—said her record shows her to be “thorough, fair, and judicious in the use of the tools at her disposal to ensure compliance with New York's labor law.”

Local chambers of commerce have also expressed their support, saying they “have enjoyed not only attention and engagement from Patricia Smith, but a genuine working partnership.”

She has received commendations while serving under both Democratic and Republican administrations. One Republican New York Senator observed that she “has worked in a positive, bipartisan manner.” The New York congressional delegation—both parties—unanimously supports her.

Yet 40 Republicans have again said no and tried to block what we are trying to do, what the President simply wants to do—to fill this position.

Let me conclude with a short story. Today, I was at Hugo Boss, which is a clothing manufacturer in Cleveland, OH. It is actually Brooklyn, a suburb of Cleveland. This Hugo Boss plant is one of the last manufacturing companies of men's suits, pants, and sport coats in the United States. It is Hugo

Boss's last manufacturing plant. Hugo Boss has said this is a profitable operation. Hugo Boss is a German company. This is a profitable operation in greater Cleveland making suits, but they say they would make more if they moved their production to Turkey, and that is what they are going to do.

I met with some of the 400 workers today. They make no more than \$15 an hour, many less than that. They are paid pretty good benefits. It is one more case where our trade laws and tax laws undercut manufacturing. These are jobs that barely get their workers to the middle class. A lot of husbands and wives both work at Hugo Boss, so I am hopeful they change their mind. At the same time, Hugo Boss says they are expanding their operations in the United States, but those operations are in the sales force. They are going to open more stores in the United States. They are expanding their sales force, but they have decided to eliminate production in the United States.

Again, this is happening not because they are not making a profit in Cleveland but because they can make a bigger profit in Turkey. I think this illustrates, again, that it is time our government—whether it is enforcement of our labor laws with Patricia Smith or trade agreements and tax laws—comes down on the side of the workers, comes down on the side of communities. We know what this will mean for Cleveland, OH, in terms of taxes. We know what it will mean for those 400 workers. We know what it will mean for those families. It is not good for anybody. It is important that at least we speak today in support of Patricia Smith, to show that this body will stand for workers and do the right thing.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. ISAKSON. I ask to be recognized for up to 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### UNINTENDED CONSEQUENCES OF WELL-INTENDED REGULATION

Mr. ISAKSON. Mr. President, I rise tonight following on the heels of three more bank closings in my State last Friday; not new banks, one of them over 60 years old, one of them over 100 years old. I want to talk for a few minutes tonight about the unintended consequences of well-intended regulation.

We are now going into the 26th month of the current recession. This will arguably be the longest recession post-World War II America has experienced. I can tell you from having gone through four of the recessions post-1960, this is by far the worst of anything that we experienced. We are at a point where we have to make some good, solid decisions, but we have to help our economy, help our businesses, and help our financial institutions.