

**NOMINATIONS OF KARLA GILBRIDE
AND JESSICA LOOMAN**

HEARING

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

SECOND SESSION

ON

EXAMINING THE NOMINATIONS OF KARLA ANN GILBRIDE, OF MARYLAND, TO BE GENERAL COUNSEL OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, AND JESSICA LOOMAN, OF MINNESOTA, TO BE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

SEPTEMBER 13, 2022

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NOMINATIONS OF KARLA GILBRIDE AND JESSICA LOOMAN

Tuesday, September 13, 2022

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

The Committee met, pursuant to notice, at 10:03 a.m., in room 106, Dirksen Senate Office Building, Hon. Tina Smith, presiding. Present: Senators Smith [presiding], Casey, Murphy, Kaine, Rosen, Hickenlooper, Braun, Marshall, and Tuberville.

OPENING STATEMENT OF SENATOR SMITH

Senator SMITH. The Senate, Health, Education, Labor, and Pensions Committee will please come to order. Thank you, Chair Murray, for calling this hearing today, and I appreciate the opportunity to fill in for Chair Murray.

In addition, thank you to Senator Burr for working closely with Chair Murray to get this hearing planned and for working with these two nominees. Senator Burr is also unable to be here today, but I am very pleased to have Senator Braun as the Ranking Republican today.

We are holding a hearing on the nominations of Jessica Looman to serve as the Administrator of the Wage and Hour Division of the Department of Labor, and Karla Gilbride to serve as the General Counsel for the Equal Employment Opportunity Commission. Ranking Member Braun and I will each have an opening statement and then we will introduce the witnesses. After the witnesses have given their testimony, Senators will each have 5 minutes for a round of questions.

While we are unable to have the hearing fully open to the public or media for in-person attendance, live video is available on our Committee website at help.senate.gov. The video on the HELP Committee's website will have closed captioning. If you are in need of other accommodations, you can reach out to the Committee or the Office of Congressional Accessibility Services.

We received Ms. Looman's formal nomination on July 28th, her Office of Government Ethics paperwork on August 3d, and her Committee paperwork on August 18th. And we received Ms. Gilbride's formal nomination on June 7th, her Office of Government Ethics paperwork on June 23d, and her Committee paperwork on July 11th.

I would like to thank all our witnesses for joining us and also to welcome their family members who are here today, Ms. Looman's husband Jason, and sons Jack and Joshua, and Ms. Gilbride's husband Mark and mother, Janet. Welcome.

I am very happy to have before us two nominees with strong records of representing the interests of workers. Jessica Looman has very ably served as the Principal Deputy Administrator of the Wage and Hour Division since January 2021. In recognition of her excellent service, Ms. Looman has been nominated to permanently lead the Division at the Department of Labor, and I can't think of a better candidate for this role.

I have had the pleasure of knowing and working closely with Jessica since 2011, and I am confident that she will be a fair and pragmatic Administrator as she enforces some of our Nation's most important labor laws, including laws covering minimum wage, overtime, and child labor.

This is the role that has real impact for working people, like the waitress who should be protected from a boss who steals her tips, the building trades carpenter or laborer who has the right to earn the prevailing wage that can support their families when they work on Federal contracts, and the worker who has the right to earned overtime but isn't being paid for those hours worked.

Ms. Looman's values are rooted in upholding the dignity of work and supporting every day, hardworking Americans. In all the time that I have known her, she has approached issues with a keen desire to understand both sides of the argument and to find the fair solution that both sides can understand.

This is why she is respected by both employers and labor, first in Minnesota and now in her work at the U.S. Department of Labor. Ms. Looman is respected because she is reasonable, and she builds consensus even when it is difficult and there are real differences to bridge. Ms. Looman is an expert in her field and a strong listener.

These are qualities that will serve her well and make her a great Wage and Hour Administrator for workers and employers across the country. Our second nominee is Karla Gilbride, who has been nominated to serve as the General Counsel for the Equal Employment Opportunity Commission, the EEOC.

Karla Gilbride is currently a Co-Director of the Access to Justice Project at Public Justice, a nonprofit legal advocacy center. There she leads litigation on issues related to workers' rights and access to justice. Her work experience and background in litigation on these matters makes her highly qualified and well-suited to lead the Office of General Counsel at the EEOC.

This office at the EEOC conducts litigation and service to enforcing our Country's employment discrimination statutes. These discrimination laws, which affect virtually all Americans, include Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Pregnancy Discrimination Act, the Equal Pay Act, the Age Discrimination and Employment Act, the Rehabilitation Act, and the Genetic Information Nondiscrimination Act.

These laws offer crucial protections for people in connection to their employment to close the gender pay gap and other pay inequities, to shut down workplace harassment and discrimination, and to protect the rights of workers in their workplaces.

Congress created the EEOC to protect workers through these anti-discrimination laws, and the Office of General Counsel at the EEOC plays a central role in delivering these protections.

I am very confident that Ms. Gilbride's background and experiences will serve her very well in this role. Before I turn to Ranking Member Braun for his opening remarks, I seek unanimous consent to put into the record a statement for the record from Chair Murray, seven letters in support of Ms. Looman's nomination, and five letters in support of Ms. Gilbride's nomination.

Without objection, so ordered.

[The following information can be found on page 27 (*Ms. Looman*) and page 36 (*Ms. Gilbride*) in Additional Material:]

Senator SMITH. I will now turn it over to Senator Braun for your opening remarks.

OPENING STATEMENT OF SENATOR BRAUN

Senator BRAUN. Thank you, Madam Chair. Before coming to the Senate, I spent 37 years in my hometown building a business that started as a real little one. It evolved into a national company.

When you do that and you live on Main Street, your employees are your friends and your family. I think it is so easy that companies that do grow, especially when they don't—get to corporate, when they get detached from maybe what got him there in the first place, it is a different dynamic.

We had that conversation a little bit prior to this hearing today. I know firsthand that the burden that the Federal Government can put on a small business in just making payroll can be significant. And the other thing you got to realize is that small businesses, they are earning a living mostly in that small business as a paycheck and they are providing jobs to boot.

It is technically a much tougher kind of dynamic than it would be in just working somewhere. I want to make sure whatever we do is that we don't throw cold water on that or make it to where we discourage entrepreneurialism in what happens on Main Street. Big difference between Main Street and corporate America, in my opinion.

When it comes to how Government interacts, I think there is a place for having common sense regulations, where employees, when they are not treated in a way where it is like family, friends, where you are not giving good wages, benefits, and a good long term future there, are especially—and we were in a hearing earlier this year from the Budget Committee, and it related to the issue of unionizing Amazon.

Of course, you have in that case higher than normal accident rates, higher turnover rates. And when you are maybe bragging about the fact you are paying a \$15 an hour wage, I think we need to aim higher than all of that. I think there is a place for that interjection of Government.

But when it comes to what drives this country, what makes it what it is, it is Main Street America, it is that small grassroots economy, and most of the people there, remember, are making their living out of that entity.

We don't want to do anything that suppresses it. Today, we are considering the nominations of our Karla Gilbride for General Counsel of the Equal Employment Opportunity Commission, and Jessica Looman for the Administrator of the Wage and Hour Division of the Department of Labor.

We had a, I think, lengthy conversation in how recently where that attempt was to move that salaried position from a figure of like \$27,000, ended up at \$36,000, but then got proposed mean as high as in the \$70,000's or \$80,000's.

That would completely disrupt and ruin the dynamic that many small businesses have to live with. Acknowledging too that if you are on a salaried pay system that there are certain things that maybe are different from it versus being a waged employee.

I want to make sure that—during the Trump administration, we tried to take a little bit of the burden off of Main Street, that we don't add back to it, conflating the need that might come from that dynamic of huge companies with their employees versus small businesses in Main Street with theirs.

Commission could reverse the approved—reverse some of that stuff, and then you involve litigation, then you make it strenuous. A lot of that marginal difference in having to fight things that you are not necessarily needing to fight, because you are doing a good job anyway, can be the difference between staying in business and going out of business.

The Chair of the Commission also has made clear that she will seek to reinstate burdensome collection pay data from employers in an attempt to identify pay discrimination. However, the reality is that this data provides no context for the wages such as job experience, education, or skill level.

This collection will force employers to shoulder additional costs and require significant changes in their H.R. systems, and again, will have a disproportionately burdensome effect on smaller companies.

As Wage and Hour Administrator, Ms. Looman would be charged with the enforcing of the Fair Labor Standards Act, which is the Federal statute dictating minimum wage, overtime pay, record keeping, and child labor requirements for private employers.

As Acting Administrator, she oversaw the end of some of the things that Trump administration did. And we talked about that before this hearing as well, that we shouldn't just get rid of carte blanche if there is some common sense to it.

The Biden administration is working on their own version of these rules, which I am concerned will be somewhat job killing, burdensome, and bring uncertainty to employers, employees, and entrepreneurs. Based on the previous conduct, I am concerned that the White House will attempt to circumvent Congress to implement aspects of the Pro Act.

If you try to do this wholesale, I think, again, you are tampering with the grassroots dynamic of what makes this economy tick. There are solutions Congress can implement to help the Government work with employers to create a better and fairer workplace, bona fide goals to aspire to.

For example, the Ensuring Workers Get Paid Act, which codifies the payroll audit independent determination pilot program, is one of them. This program gave employers a way to proactively fix inadvertent overtime and minimum wage violations without the heavy hand of audits and litigation and so forth.

We need to keep that in mind because I think most small employers really like that, before you get into a full-fledged regulatory discussion. President Biden ended the program upon taking office, and this bill would reinstate it so we can work together with employers rather than continue the top down, one size fits all approach that it looks like we are now entering into. Thank you, Madam Chair.

Senator SMITH. Thank you, Senator Braun. I will now introduce today's witnesses. First, we have Jessica Looman. Jessica is from Saint Paul, Minnesota. Thank you to you and your family for being here.

Jessica is a longtime labor leader attorney and lifelong champion of workers. Prior to joining the Department of Labor last year, Jessica led the Minnesota State Building and Construction Trades Council, which represents more than 70,000 union members working in 15 construction trades.

In that role, she worked to secure funding for key infrastructure projects, fair wages, and safe working conditions for workers, and a strong Minnesota economy. Jessica is a strong advocate for working people, and she is also thoughtful, innovative, and fair in working with a variety of stakeholders.

I know this because Jessica and I were able to serve together in State Government for nearly 7 years. We began working together when I was Minnesota Governor Mark Dayton's Chief of Staff. She began as an Assistant Commissioner in the Minnesota Department of Labor and Industry and impressed us all.

She then was promoted to Deputy Commissioner before being named Commissioner of the Minnesota Department of Commerce, which oversees energy, insurance, and financial services in Minnesota.

There she led a number of successful initiatives to help support domestic energy, grow the state's economy, and support workers and business. Jessica received her bachelor's degree from the George Washington—from George Washington University.

Her law degree from the University of Minnesota. She is a 24 year member of LIUNA. As I said at the beginning of this hearing, Jessica is an excellent pick to lead the Wage and Hour Division, and I can't think of a better nominee.

Our next witness is Ms. Karla Gilbride. Ms. Gilbride is an attorney and leader focusing on defending the rights of workers. I know you are also joined by your family today, and it is wonderful to have you all with us.

Ms. Gilbride is currently the Co-Director of the Access to Justice Project at Public Justice, a nonprofit legal advocacy organization. There she has successfully argued in front of multiple U.S. courts of appeals on the topic of arbitration and recently won a unanimous Supreme Court decision in *Morgan v. Sundance*, which held that courts cannot favor arbitration agreements over other types of contracts.

She has a record of fighting for meatpacking workers, people with disabilities, warehouse workers. Prior to joining Public Justice, Ms. Gilbride served as an Associate at Mehri & Skalet PLLC, where she worked on wage and hour, employment discrimination, consumer class action, and Fair Housing Act cases. Before that, she spent several years at Disability Rights Advocates, representing disabled consumers and discrimination class actions.

Ms. Gilbride is from New York, and both her parents and grandparents were lifelong New Yorkers. She went to public school in Long Island, and her father was a state employee. Ms. Gilbride received her bachelor's degree from Swarthmore College and her law degree from Georgetown, where she served on the Georgetown Journal of Poverty, Law and Policy, and graduated with honors.

Following her graduation from law school, she clerked for Judge Ronald Gould of the U.S. Court of Appeals for the Ninth Circuit. I am confident that her skills and experiences make her well-prepared to serve as the General Counsel of the EEOC, and I look forward to supporting her nomination as well. Thank you very much.

We will begin with Ms. Looman, with your testimony.

**STATEMENT OF JESSICA LOOMAN, TO BE ADMINISTRATOR,
WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR**

Ms. LOOMAN. Thank you so much, Madam Chair. Thank you, Ranking Member Braun and the Members of the Committee that are here today. I appreciate very much the opportunity to appear, and I particularly want to thank Chair Smith for the very, very kind introduction.

I also want to thank my husband Jason and my sons, Jack and Joshua, who are here with me today for their ongoing encouragement and support. I am honored and grateful for President Biden, Vice President Harris, and Secretary Walsh's faith in me. I appreciate your consideration for my nomination to serve as the Administrator of the Wage and Hour Division of the U.S. Department of Labor.

As Senator Smith shared, my family and I are from Saint Paul, Minnesota, and since January 21, I have served as the Deputy Administrator for the Wage and Hour Division here in Washington. I am proud that every day I get to wake up and help 148 million workers across our Country and 10 million employers. I, like many of you, were inspired to public service by my parents.

My mother, who passed away in 1999, was active in our community. She worked for the Red Cross and the Cystic Fibrosis Foundation, and she was passionate about making sure that everyone, and especially women, were able to vote. My dad, who was a locomotive engineer and a union steward when I was little, also served in the Ohio State Government.

My dad especially taught me that hard work and workers are the foundation of our society, our economy, and our community, and he is pretty proud of me right now. Last year I came to the Wage and Hour Division after 2 years as the executive director of the Minnesota State Building and Construction Trades Council, which represents over 70,000 union construction workers in that state.

In that role, I partnered with employers and advocates for more construction investment, I worked to expand construction career pathways, and increase the number of women and people of color in the Minnesota construction industry.

In 2017, I was appointed by the Governor of Dayton as the Commissioner of the Minnesota Department of Commerce, where I worked at the energy, finance, and insurance industries to expand investments in domestic energy production, focus on consumer protections, and address insurance fraud.

As Deputy Commissioner of the Minnesota Department of Labor and Industry, I oversaw the operations of the agency as well as the labor standards, construction codes, and apprenticeship programs. I was proud to oversee some of the most impactful efforts to streamline licensing and increase opportunities to expand registered apprenticeship into health care, agriculture, and IT industries.

Throughout my work with the Minnesota building trades and my time with the Minnesota Department of Commerce and Labor, I have worked on issues of critical importance to businesses and workers.

In each of these roles, I made sure to listen and learn from business, worker, Government, and other leaders, and I have consistently found that listening to all points of view has made me a better leader too.

My parents, mentors, and colleagues have all inspired me to work hard, to collaborate, build consensus, and develop opportunities, and create economic security for working people across our Country, and I have worked with employers to do it.

Nowhere is this better illustrated than the construction industry where I have spent over half of my career. Because building trades workers only work when they are construction contractor employers have projects, it is critical that labor and management partner together to advocate for infrastructure investment, to ensure the safety of construction workers, and to expand diversity and inclusion in the industry.

I bring those lessons to my state and now my Federal Government work. As Commissioner of the Minnesota Department of Commerce, I prioritize providing certainty for the financial, energy, and insurance industries, and at Labor and Industry, I provided construction, manufacturing, and health care industries, helping them to work to meet their workforce needs and their labor standards responsibilities.

I recognize that helping employers understand the law is a key part of helping businesses, consumers, and employee, and working families thrive in our economy, and that most employers want to understand and to comply with the law.

To support responsible employers and all working people, we must focus on protecting the most vulnerable among us, because it hurts both workers and employers when workers become victims of wage theft, retaliation, and exploitation.

In America today, we are seeing workers who are not getting paid the minimum wage and the overtime they have earned, and children working in dangerous occupations. And we know that workers are still fired, threatened, and worse because they asked to be paid for their work.

If confirmed, I am committed to helping to prevent wage and hour violations from happening through outreach, education, and compliance, and to ensuring that violations that do occur are remedied and workers are made whole. It would be a privilege to serve. Thank you.

[The prepared statement of Ms. Looman follows:]

PREPARED STATEMENT OF JESSICA LOOMAN

Thank you, Chair Murray, Ranking Member Burr, and Members of the Committee for the opportunity to appear before you today and thank you to Senator Smith for that kind introduction. I also want to thank my husband Jason and my sons Jack and Joshua, who are with me here today, for their encouragement and support.

I'm honored and grateful for President Biden, Vice President Harris, and Secretary Walsh's faith in me, and I appreciate your consideration of my nomination to serve as Administrator of the Wage and Hour Division of the U.S. Department of Labor.

As Senator Smith shared, my family and I are from St. Paul, Minnesota and since January 2021, I have served as the Deputy Administrator for the Wage and Hour Division here in Washington.

I am proud that every day, I get to wake up and do my best to help 148 million workers and 10 million employers across this country.

I, like many of you, was inspired by my parents to go into public service. My mother, who passed away in 1999, was active in our community. She worked for the Red Cross and the Cystic Fibrosis Foundation, and she was passionate about making sure that everyone, and especially women, voted. My dad, who was a locomotive engineer and union steward when I was little, also served in Ohio state government. My dad especially taught me that hard work and workers are the foundation of our society, our economy, and our community. He's pretty proud of me right now.

Last year, I came to the Wage and Hour Division after 2 years as the Executive Director of the Minnesota State Building and Construction Trades Council, which represents over 70,000 union construction workers. In that role, I partnered with employers to advocate for more construction investment. I worked to expand construction career pathways and increase the numbers of women and people of color in the Minnesota construction industry.

In 2017, I was appointed as the Commissioner of the Minnesota Commerce Department where I worked with the energy, finance, and insurance industries to expand investments in domestic energy production, focus on consumer protections, and address insurance fraud.

As the Deputy Commissioner at the Minnesota Department of Labor and Industry, I oversaw the operations of the agency as well as labor standards, construction codes, and apprenticeship programs. I was proud to oversee some of the most impactful efforts to streamline licensing processing and increase opportunities to expand registered apprenticeships to healthcare, agriculture, and IT.

Throughout my work with Minnesota Building Trades and my time with the Minnesota Departments of Commerce and Labor, I worked on issues of critical importance to businesses and workers. In each of these roles, I made sure to listen to and learn from businesses, workers, and government. I have consistently found that listening to all points of view has made me a better leader too.

My parents, mentors, and colleagues have all inspired me to work hard to collaborate, build consensus, and develop opportunities and create economic security for

working people across our country. And I have worked with employers to do just that. Nowhere is this better illustrated than in the construction industry where I have worked in different capacities for over half of my career. Because building trades workers work when their construction contractor employers have projects, it is critical that labor and management partner together to advocate for infrastructure investment, to ensure the safety of construction workers, and to expand diversity and inclusion in the industry.

I bring those same lessons to my work in state, and now, Federal Government. As Commissioner of the Minnesota Department of Commerce, I prioritized providing regulatory certainty for the financial, energy, and insurance industries. At the Minnesota Department of Labor, I worked closely with the construction, manufacturing, and healthcare industries to help them meet their workforce needs and their labor standards responsibilities. I recognize that helping employers understand the law is a key part of helping businesses, consumers, and working families thrive in our economy.

I know that most employers want to understand and comply with the law. And to support responsible employers and all working people, we must focus on protecting the most vulnerable among us—because it hurts both workers and responsible employers when workers become victims of wage theft, retaliation, or exploitation. In America, today, we are seeing workers who are not getting paid the minimum wages and overtime they have earned and children working in dangerous occupations. And we know that workers are still fired, threatened, or worse because they ask to be paid for their work. I am committed to helping to prevent violations from happening through outreach, education, and compliance assistance, and to ensuring that violations that do occur are remedied and workers are made whole.

It is an honor to be nominated to be the Administrator of the Wage and Hour Division of the US Department of Labor. And it would be a privilege to serve in this role if I am confirmed. Thank you again for the opportunity to appear before you today, and I look forward to your questions.

Senator SMITH. Thank you, Ms. Looman.

We will now hear from Ms. Gilbride for 5 minutes. Thank you.

**STATEMENT OF KARLA GILBRIDE TO BE GENERAL COUNSEL,
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

Ms. GILBRIDE. Thank you, Chair Smith, Ranking Member Braun, and Members of the Committee. I am honored to be here today under consideration to serve as General Counsel of the U.S. Equal Employment Opportunity Commission.

I am deeply grateful to President Biden and Vice President Harris for nominating me for this role. I am even more grateful to the people in my life who helped me get to the place where that nomination was possible.

The first of those people can't be with us physically today, but I know he is here in spirit, and that is my father, James Gilbride. My dad taught me by example about the nobility of service, starting with his service to this country in the military, followed by a career in law enforcement.

He taught me, through his quiet, steadfast presence that showing up, working hard, and treating others with respect are virtues worth emulating. My mother, Janet, is here today. From her, I learned from an early age about leadership and about taking the initiative to address unmet needs.

I was born with an eye condition that caused me to be totally blind. My mom looked around for support groups for parents of blind children in Long Island, New York, where we lived, and upon finding that there weren't any such groups, she started one. She also took on leadership roles within our church and school district,

and many evenings during my childhood she presided over meetings at our kitchen table.

Like many parents, she was a fierce advocate for her child, making sure that I had the same educational opportunities that my sighted peers did, but she broadened those efforts beyond her own family to advocate for other students with disabilities as well.

Also with me today is my husband, Mark Faulkner, one of the smartest and most generous people I have ever known. Mark is not a lawyer, and while I am most comfortable in a world of words, he is happiest when working with his hands or with data and electronics.

Our differences and the joy he takes in doing things I am not good at and don't enjoy remind me every day how important different skills and perspectives are. Our differences make our partnership work, and my life is richer in countless ways because he is part of it. I am grateful beyond words for his support over the years, and I am grateful that he is here today. Other people also set me on the path that made this nomination possible.

Teachers who instilled a lifelong love of learning and propelled me to excel as a first generation college student and then go on to law school. Role models in the disability rights and women's rights movement who dared greatly and gave me the courage to dare more while standing on their shoulders. And my current and former employers who mentored and supported me as I gained skills and confidence as a lawyer.

Throughout my legal career, I have always sought to open pathways of opportunity to those with less money and fewer societal advantages. I have represented restaurant workers, truck drivers, people who endured dangerous conditions in meatpacking plants, and people who use wheelchairs and just want the same transportation options as everyone else.

Along the way, I have learned a great deal about litigation, but also about how to effectively communicate and find common ground. I have learned that by listening closely to everyone I interact with, I will learn, I will grow, and I will form relationships that matter. I can't think of another Government agency where using the legal experience and interpersonal skills I have acquired over the years would mean more to me than the EEOC.

That is because the laws that the EEOC enforces represent some of this country's greatest ideals, that everyone should have opportunities to reach their full potential in the workplace, free from barriers caused by bias, harassment, or a failure to accommodate their religion, their pregnancy, or their disability.

If I am so fortunate as to be confirmed to serve as General Counsel at this agency, I will work with the Commissioners, the regional attorneys and agency employees, employers and their representatives, and those who file charges of discrimination with the agency to bring those ideals closer to reality.

I recognize that the position I have been asked to fill entails challenge and complexity. I welcome the challenge because I believe in the EEOC's mission with every fiber of my being, and I welcome the complexity because I know there are many valuable

and diverse perspectives with a lot to teach, and I am eager to learn. Thank you again to the Committee for your time and consideration today, and I welcome your questions.

[The prepared statement of Ms. Gilbride follows:]

PREPARED STATEMENT OF KARLA GILBRIDE

Chair Murray, Ranking Member Burr, and Members of the Committee, I'm honored to be here today under consideration to serve as general counsel of the U.S. Equal Employment Opportunity Commission (EEOC). I'm deeply grateful to President Biden for nominating me for this role, and I'm even more grateful to the people in my life who helped me get to the place where that nomination was possible.

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Throughout my legal career, I have always sought to open pathways of opportunity to those with less money and fewer societal advantages. I have represented restaurant workers, truck drivers, people who endured dangerous conditions in meatpacking plants, and people who use wheelchairs and just want the same transportation options as everyone else.

Along the way I have learned a great deal about litigation, but also about how to effectively communicate and find common ground. I've learned that by listening closely to everyone I interact with, I will learn, I will grow, and I will form relationships that matter. And I can't think of another government agency where using the legal experience and interpersonal skills I've acquired over the years would mean more to me than the EEOC.

The laws the EEOC enforces represent some of this country's greatest ideals, that everyone should have opportunities in the workplace free from barriers caused by bias, harassment, or a failure to accommodate their religion or their disability. If I am so fortunate as to be confirmed to serve as general counsel at this agency, I will work with the commissioners, the regional attorneys and agency employees, employers and their representatives, and those who file charges of discrimination with the agency, to bring those ideals closer to reality. I recognize that the position I have been asked to fill entails challenge and complexity. I welcome the challenge because I believe in the EEOC's mission with every fiber of my being, and I welcome the complexity because I know there are many valuable and diverse perspectives with a lot to teach, and I am eager to learn.

Thank you again to Chair Murray, Ranking Member Burr, and Members of the Committee for the opportunity to appear before you today. I welcome your questions.

Senator SMITH. Thank you very much to both of our nominees. And we will now begin a round of questions from Members of approximately 5 minutes each.

I will begin with a question to Ms. Looman.

Ms. Looman, you have a strong background in labor. I am very proud of that background for a good reason. In your time working in Minnesota and now in Washington, I know you have also made it a priority to listen to both sides of an issue and to build relationships and open dialog with both workers and employers.

Could you talk a little bit more about that value that you have? Why do you think it is so important to listen to everyone when you are making policy? And could you expound a bit on how you have worked with a wide variety of stakeholders, including businesses and employers, in addition to representatives from Labor?

Ms. LOOMAN. Thank you, Madam Chair. I appreciate the question. I absolutely agree and recognize that in order to have an effective labor standards program for this country, that we need to recognize that we are both protecting working people and we are helping serve the employers who provide them jobs every single day.

The way we do that and the way I think about that work—I mean, I have always thought about that work, whether it is in Minnesota State Government or when it is working advocating for union construction workers or now at the Wage and Hour Division.

The way I always think about that work is first and foremost, our goal is to prevent wage and hour violations from ever occurring in the first place. When we work together, when employers understand their responsibilities, when workers understand their rights, then we would through outreach, education, compliance, we can make sure that those violations never occur.

That is just one of the most critical issues, is that success for the Wage and Hour Division and frankly success for our economy is that workers are paid correctly every time on payday.

Through prevention, we can really work together to make sure that employers and workers and unions are coming to the table, having a conversation, and understanding what the obligations are and how to achieve those as quickly, as efficiently, and as productively as possible.

Senator SMITH. Thank you very much. I want to hone in a little bit on the issue of wage theft, which is something that I am greatly concerned about. I think it is really surprising for people to understand that wage theft is so pervasive that according to one estimate, it accounts for nearly three times as much lost money as robberies.

Wage theft, of course, can take many forms, whether it is making employees work off the clock, denying overtime pay, stealing tips, knowingly misclassifying your workers. I think we would both agree that many employers treat their workers fairly and do the

right thing, want to do the right thing when it comes to compensating their employees.

Yet we also know that there are examples of employees being taken advantage of. So, Ms. Looman, if confirmed, what will you do to combat this issue of wage theft? And can you give us an example or two of why this is so important?

Ms. LOOMAN. Thank you, Senator. Absolutely. Wage theft is one of the most critical issues, and it is foundational under the Fair Labor Standards Act that workers get paid the minimum wage and the overtime, a minimum wage for every hour that they work, overtime when they work over 40.

Since I have been with the Wage and Hour Division, we have collected over \$343 million in back wages for 279,000 workers. Again, that is—those are folks who didn't get paid correctly on payday. I think the reason that this is so prevalent and such a critical issue is because it is not just about impacting industries and sectors, this is also the impact on individual workers lives.

I was in Columbus, Ohio, a few weeks ago and was talking with an investigator at the Wage and Hour Division, and he was telling me about the impact that he was able to make on one worker's life when he was able to return \$200 that she should have gotten on her paycheck, was able to return \$200. And he asked her what she was going to do with that money.

She said, I am going to call my grandchildren. I usually see my grandchildren on the weekends, but I haven't been able to buy them food for the last 3 weeks and I haven't been able to see them, and the first thing I am going to do is call them and invite them to my house, and then I am going to go to the grocery store. That makes the difference.

That \$200 makes the difference to that worker and that family, and that is what we have to prevent. We have to prevent wage theft to that worker.

Senator SMITH. Thank you very much. Thank you. Ms. Gilbride, I so enjoyed the opportunity to meet with you and our discussion last week and appreciated hearing your—about your experience and your personal interest in this role.

I want to just give you an opportunity to expand on that briefly. And could you just talk to us about what you connect to in the mission of the EEOC, and what you think will be so important as you approach this important role.

Ms. GILBRIDE. Absolutely, and thank you for the question. The mission of inclusion and of allowing workers to be judged on their merits and not on aspects of their identity, like their race, their sex, their religion, or their disability is something that I have practiced and focused on throughout my career as a civil rights lawyer representing workers, but it is also something that I feel very personally as a woman, as a person with a visible disability.

You know, I have been fortunate to have had wonderful employment opportunities throughout my career, but I have also applied for jobs that I didn't get. I have had interviews where I did feel that my disability was perhaps an elephant in the room. I have

talked to many friends, many people that I know well in the disability community who have similar experiences.

Or I have friends who are attorneys of color and who have had potential clients say to their face, I would be more comfortable working with a white lawyer than with you. And those experiences of being treated as less than, of not being trusted, of not being given opportunities because of immutable characteristics of race, of sex, of disability is something I feel very strongly about, something that is very personal to me.

I would do my best to bring my experiences and my legal skills to bear to make sure that the ideals and the mission of equality of opportunity that led Congress to pass the anti-discrimination statutes that the EEOC is now charged with enforcing, that mission is something that is very personal to me, and I would make sure that Congress has laws as interpreted by the Supreme Court are enforced by the Commission, if I am so fortunate as to be confirmed as General Counsel.

Senator SMITH. Thank you very much.

Senator Braun.

Senator BRAUN. Ms. Looman—I have got three questions for each witness and kind of pace the answers accordingly. I have got a little—five minutes or just a hair over. The Pro Act, which passed the House, does not look like it is going to make it through the Senate, had a couple really significant items within it.

It would be expanding the joint employer standard and further fleshing out the definition of independent contractor, including the ABC test, which I think you are familiar with. My question is very simple, do you think the Department of Labor has the authority to wade into either one of these discussions, or do you think that is the bailiwick of us here in Congress?

Ms. LOOMAN. Thank you, Senator Braun, and I will try to keep my comments short. The Pro Act is very much supported by President Biden in terms of how Congress can help move forward with thinking about worker protections and worker organizing in this country, which is empowering workers.

From the perspective of the Wage and Hour Division of the Department of Labor, we continue to look at implementing and enforcing the Fair Labor Standards Act as passed by Congress, and that means that we do look at issues related to the employer, employee relationship as it impacts whether workers are earning minimum wages and overtime under the law.

Senator BRAUN. Does that mean you would be for looking at particularly doing something to change the ABC test or expanding the joint employer standard guidelines? Is that something that is actually—something Congress should do, or can you do it administratively?

Ms. LOOMAN. Thank you, Senator Braun. Related to the ABC test specifically, the Wage and Hour Division in the Department of Labor do not have the authority to adopt by regulation ABC test unless there is—it is changed by Congress. We do have the responsibility of ensuring that workers are not misclassified as independent contractors and that is very much a focus of ours in the

Wage and Hour Division, and that is determined on a case by case basis, not utilizing the ABC test.

Senator BRAUN. Sounds like with the former you think it does not have the authority. And on the second one, when it comes to independent contractors, you would get involved in maybe the more routine part of what you would come across as opposed to charting new territory.

Second question, the gig economy, which is something relatively new. Tell me what you think about it. And of course, that is in that tricky category of independent contractor, one person business, and the fact that it has exploded in terms of options, again, for people to earn a living.

To me, the same thing is getting a paycheck from an employer. Plus, again, all the risk of running your own business. Tell me what you think about it and how would you navigate accordingly.

Ms. LOOMAN. Thank you, Senator Braun. The way that individuals are employed is, again, a case by case determination that we make in the Wage and Hour Division when we are looking at whether or not there been violations of the Fair Labor Standards Act. And we particularly recognize and understand that legitimate independent businesses have an incredibly important role in our economy.

At the same time, we want to make sure that workers that should be getting the basic protections of minimum wage and overtime are getting those protections. And so we apply the law based on the cases and the facts that we have and determine whether or not any individual worker should be getting those protections under the law.

Senator BRAUN. One final question, the Department of Labor is considering the threshold for overtime exemptions. Mentioned it earlier in my opening statement. Some have called for a level up to or slightly above \$80,000. What is your opinion on where that should be?

Ms. LOOMAN. Thank you, Senator. We—overtime is one of the foundational and most important issues that we look at in the Wage and Hour Division. And as you know, the exception from the Wage and Hour protections for workers who are characterized as executive, administrative, or professional employees, there is a salary—

Senator BRAUN. What about the level? I know all of that. What is your opinion on where that level should be? Because that is the thing that everybody is worried about, not the concept of it.

Ms. LOOMAN. Absolutely. And that level does matter because, again, it is when you make—

Senator BRAUN. Do you have an opinion on where that level should be?

Ms. LOOMAN. We have been listening to industry, we have done over 27 listening sessions with over 2,000 participants, really to get to that issue of what is the appropriate level for workers who are going to be excluded from—

Senator BRAUN. It sounds like you are still working through that. So to me, I think most—like I said earlier, if it would get into that

higher altitude area, it would be disruption both for employees and employers.

Ms. Gilbride, in a recent Wall Street Journal op-ed, Commissioners Dhillon and Sonderling expressed concern that the Commission was being undermined by a power grab from the staff, which is refusing to formally close proposed lawsuits that the majority of the Commission has voted down.

Do you agree that only the Commission by majority vote can authorize litigation, and the General Council and staff should defer to the Commission's decision?

Ms. GILBRIDE. Thank you for the question, Senator Braun. I understand that the delegation of litigation authority from the Commissioners to the General Counsel is something that has evolved over time at the agency.

If I am so fortunate as to be confirmed, I would want to speak with all of the stakeholders, including Commissioners Dhillon and Sonderling, as well as the career staff at the agency, who have a lot more understanding of how the delegation authority has played out over time.

Based on those perspectives, I would gain a more informed opinion than I do now as an outsider, which is only what I read in the news media.

Senator BRAUN. Final quick question related to that, do you think it is appropriate for the General Counsel to take a litigation position that does not reflect the majority view of the Commission?

Ms. GILBRIDE. Well, if I have the opportunity to serve as General Counsel, I would certainly work closely with the Commissioners and attempt to gain consensus. Again, I would follow what the current delegation of authority is with respect to seeking Commission approval for engaging in new litigation.

But aside from whatever the formal policy of delegation is, I think it is simply a good practice to work closely with all affected stakeholders, and I would want to understand what the Commissioners' views were, if we had a difference of opinion to try to work through that through productive dialog to hopefully reach consensus.

Senator BRAUN. Thank you so much.

Senator SMITH. Thank you.

Senator Murphy.

Senator MURPHY. Thank you very much, Madam Chair. Thank you to both of you for your willingness to serve. I had just one topic that I wanted to raise with you, Ms. Looman, and that is the issue of non-compete agreements.

There is a growing body of literature, frankly, both on the right and the left that shows, one, the massive explosion of non-compete agreements, both for high income workers, where we tend to think non-compete agreements exist, but also low income workers.

Today, it is estimated that somewhere between 20, maybe as high as 30 or 40 percent of American workers have these non-compete agreements, the vast majority of them are not negotiated. And in fact, maybe as high as 30 to 40 percent of these non-compete

agreements are signed after the employee starts the job when they have very little leverage to refuse it.

In Connecticut, we are hearing about these non-compete agreements being used for very low income home care workers. Of course, there is the famous instance of Jimmy John's Sandwich Shop requiring its workers to sign non-compete agreements and then denying them the ability to go work for another franchise of Jimmy John's because it was owned by a different ownership group.

These non-compete agreements, they depress wages, they hinder entrepreneurship. And we have a good bipartisan consensus growing in the Senate to restrict their usage. Senator Young, Senator Cramer, Senator Kaine, and myself have introduced legislation that would make them broadly impermissible with certain commonsense exceptions.

I know Senator Rubio and Senator Hassan have introduced more targeted legislation to restrict their uses for lower income workers. President has put out an Executive Order from starting to enter this—put the Administration more firmly on the side of workers.

What can the Wage and Hour Division do? What role can the Division play in reducing the proliferation of these harmful agreements? What is the sort of boundaries of what the law allows you to do today? What additional authority might you need from Congress?

Ms. LOOMAN. Thank you, Senator. We, too, are concerned about, and again, in my role as the Deputy Administrator but also in my previous roles, we are concerned about issues that would impact workers in terms of either the wages that they earn today or also from any chilling effect about them stepping forward and coming and suffering—fear of suffering from retaliation because they have exercised their rights under the Fair Labor Standards Act.

We see some arrangement that could really result in that chilling effect, and that could include these non-compete agreements. These could include other issues that are particularly concerning in terms of, again, empowering workers to make sure that they are getting the rights that they are entitled to under the law.

From the Wage and Hour perspective, we very much look in our—in the course of our investigations to make sure that workers are getting all of the law—all the protections that they should be getting under the Fair Labor Standards Act, but we also work very closely with employers to help identify and address areas that could be considered retaliation and prevent those from happening in the first place.

In some ways, a non-compete agreement really could have that chilling effect and we are concerned about that for working people.

Senator MURPHY. And often these non-compete agreements are unenforceable. Many of them are limited in scope, but they often allow the employer to make certain threats to employees that may not be based in law, because many states, frankly, limit the usage of these non-compete agreements, that end up binding the employee to their workplace, even though their agreement actually does not limit their ability to go seek other employment.

I guess my only other question is a simple one, and I do hope that we are going to be able to have some success in moving this bipartisan legislation through. If you look at the map of states that restrict them, it has nothing to do with which party controls the state legislature or the Governor's office.

Again, this is a pretty nonpartisan issue. Just ask for your commitment to work with those of us who are trying to develop legislation to empower the Administration to crack down on unjustifiable non-compete agreements.

Would you commit to working with those of us on both sides of the aisle that are trying to address this issue?

Ms. LOOMAN. Thank you, Senator. Absolutely. If confirmed, I am happy to continue to work on this issue with you.

Senator MURPHY. Great. Thank you, Madam Chair.

Senator SMITH. Thank you very much.

Senator Tuberville.

Senator TUBERVILLE. Thank you, Madam Chair. The congratulations to both of you and Godspeed to doing this job at this time with inflation, and it just announced that incomes aren't going up very much and the American people are suffering. But Ms. Looman, businesses across my State of Alabama and the Nation have been hammered by COVID, and we have got a lot of rippling effects.

It stands to reason the Department of Labor should recognize the lingering economic consequences that COVID has had on everybody across the country, the negative impact. Many industries are currently facing historic global supply chain disruptions, rising material prices, massive workforce shortages.

For example, the construction industry is—this year will be 650,000 people short, and that is devastating to our Country. You know, a sweeping change to overtime pay regulations will further complicate and worsen this current situation.

Do you think that now is the time for further regulations in this area, just as businesses are trying to get back off their feet? What are your thoughts on that?

Ms. LOOMAN. Thank you, Senator. And absolutely agree that we are continuing to come out of the challenges that we all faced under the pandemic. And we do take into account how we think about the work that we are doing, the outreach education, compliance work that we are doing every day in the Wage and Hour Division in light of all of those issues, particularly focused on essential workers and the workers who really kept our economy going through the pandemic.

The overtime issue, as I mentioned earlier, is incredibly important and it is one of the most foundational protections that we have in this country to ensure that both workers are making the wages that they are entitled to under the law, and also that employers, the responsible employers, are able to compete in the marketplace.

When we look at whether or not we want to change any of the overtime regulations, which is something that is our responsibility to continue to evaluate, we look at where we are right now in

terms of what the threshold is for an exclusion, to exclude people from the protection of the Fair Labor Standards Act and whether that is the right threshold.

As I said, we have been engaging with stakeholders, we have been looking at this issue. We continue to determine whether or not it is the right time to make a change as anticipated by the current regulations.

As you know, the current regulations do set that threshold at about \$35,500 a year. And then the anticipated in the most current regulations is this concept that we would need to continue to evaluate whether that is the appropriate threshold on an ongoing basis. So that is the work that we are doing now at the Department of Labor, is doing that evaluation.

Senator TUBERVILLE. Thank you. Ms. Gilbride you are being nominated for a 4-year term as an EEOC General Counsel, a very important job. As I am sure you are aware, your predecessor was fired by President Biden last March, years before her term expired. Now, this shouldn't be a political job.

This should be a job where people get experience and work through it. You know the problems, you know the answers. And the more and longer you are in this, the better you are at it, and that you are able to help the American people. What are your thoughts about if any president, any president cut short your term, would you resign?

Ms. GILBRIDE. Thank you for that question, Senator. I would hope that in the time that I would have spent as General Counsel before any change in Administration, that I would have gained the respect of my peers and that I would have a track record of success and good work done in the job that would cause the new president to want to keep me on in that position, to gain further experience and to continue my work.

If that were not the case, and if a new president came into office and asked me to leave, I would then evaluate whether I thought I could continue on effectively. If I didn't feel I could effectively serve the agency and its mission, then I would step down and resign.

Senator TUBERVILLE. Very good answer. I hope you would tell, I don't care whether Republican or Democrat President, to pound sand, that this is your job, that you were nominated and confirmed. You know, I am a believer in experience, coming from the field that I came from. So, very good answer. Thank you, again, both for doing what you are doing. It is a sacrifice, and I hope you are very successful. Thank you. Thank you, Madam Chair.

Senator SMITH. Thank you, Senator Tuberville.

Senator Casey.

Senator CASEY. Thank you, Senator Smith. And thanks for sharing this hearing, this important hearing. I want to thank both of our nominees for their enduring commitment to public service. And in particular, Ms. Looman, I want to commend your work lifting up the voices of workers and the work you did on behalf of members of the building trades. Ms. Gilbride, for your work at public justice

and advocating on behalf of workers' rights. I will start with Ms. Looman.

I wanted to thank you for the time we spent discussing the work that you do. I recently, as you know, sent a letter to Secretary Walsh urging the Department to take action on the spread of invasive and exploitative technologies in workplaces across the Nation. The implementation of novel technologies to track, monitor, manage, and discipline workers is growing due to an imbalance of power in the workplace and a lack of legal protections or regulatory restrictions on these practices.

The reports that employers are using worker productivity technologies to commit wage theft with little transparency or recourse for workers to understand how these decisions are being made. I believe the Department of Labor must stay at the forefront of these issues on behalf of workers, and to monitor and regulate workplace privacy and technology issues before they become the norm.

Here is my question, as the Administrator of the Wage and Hour Division, how will you consider or weigh the impact of emerging workplace technologies on workers' rights and worker protections?

Ms. LOOMAN. Thank you, Senator. And if I am privileged to be confirmed in this role as the Administrator, it will continue to be a priority for me to think about how, what tools, what instances, what ways workers may be deprived of their protections under the Fair Labor Standards Act.

That, again, is a way that we can work with employers to help identify what those instances might be, where those violations might be occurring, and prevent them from happening in the first place.

I would be happy to work with you as you continue to think about this issue, to work with the Wage and Hour Division, to think about how we can ensure worker protections in light of some of these concerns that you have raised.

Senator CASEY. Thank you. I will turn next to Ms. Gilbride to ask you about sub-minimum wage. As you know, this is a continuing practice that has an adverse impact on people with disabilities.

I have worked for years now in the Senate to lead the effort to phaseout sub-minimum wage for people with disabilities. I have got a bipartisan bill with Senator Daines of Montana that would help employers who pay sub-minimum wage to shift their employment model to a competitive and integrated employment model.

There are currently about 1,000 employers across the country that are permitted by law to pay their employees with disabilities below the minimum wage. Some of these employers—employees are paid as little as \$1.00 or \$0.50 an hour. The average the last time that it was surveyed is about \$3.34 an hour, which is a terribly low wage.

Many of these employees with disabilities work side by side with employees that don't have a disability and earn at least the minimum wage. The Biden administration has established the goal of eliminating the use of sub-minimum wage payments to people with

disabilities. Could you please share your policy views on sub-minimum wage employment from the perspective of the EEOC?

Ms. GILBRIDE. Thank you for that question. This is—well, I will preface the rest of my answer by saying that the policy position of the EEOC is something that would be set by the Commissioners, and I wouldn't want to intrude upon their province, but it is something that I personally feel strongly about and have experience working on.

I have litigated a case on behalf of workers with disabilities in New Mexico who were paid sub-minimum wage in accordance with the program that you are speaking about—under 14(c) of the Fair Labor Standards Act.

We brought that case under state law, arguing that they were not paid in accordance with the state minimum wage. Several states have changed their laws to prohibit subminimum wage employment. I am aware of your efforts at the Federal level.

As, you know, I would be—look forward to the opportunity as the role of General Counsel would allow, which is primarily a litigation role, but I would look forward to working collaboratively with the Department of Labor, with the Commissioners, with others in the Federal Government, including with your office, and looking at the implications that sub-minimum wage work and the conditions that people who are being paid less than the minimum wage impose on people with disabilities, and that interface with the equal employment opportunity laws, the anti-discrimination laws that EEOC is charged with enforcing. I would very much look forward to that opportunity.

Senator CASEY. Thanks very much.

Senator SMITH. Thank you, Senator Casey.

Senator KAINE.

Senator KAINE. Thank you, Senator Smith. And congratulations to the two nominees. Ms. Gilbride, I think I am going to spend my time talking with you about disability enforcement in the EEOC, particularly with respect to the increase in the number of folks who are experiencing disabling conditions as a result of COVID. Fiscal Year 2020, disability discrimination accounted for the second most cited claim of charges in the EEOC, about 36 percent of all charges filed.

The pandemic has been a very large, mass disabling event for millions of people. In January, EEOC updated its COVID-19 guidelines—I am sorry, technical assistance, adding a new section to clarify under what circumstances COVID-19 could be considered a disability under the ADA and the Rehab Act.

The update also gave examples illustrating how an individual diagnosed with COVID-19 or a post-COVID condition could be considered to have a disability under the laws of the EEOC, non-discrimination provisions, when they might be entitled to reasonable accommodations at work. I think this is going to be a huge issue for us going forward.

It is not all—the number of people with COVID related conditions is very troubling. It is not all bad news, though, because during the pandemic, we learned to do things like telework that we

weren't doing before that actually may offer some opportunities for workers with disabilities and not only those suffering from COVID.

But if you are confirmed, how in your role would you prioritize this issue working across agencies to develop consistent positions about COVID conditions and long COVID with respect to the Nation's disability laws?

Ms. GILBRIDE. Thank you for the question, Senator Kaine. I agree with you that the COVID-19 pandemic, and particularly the persistence of long COVID in a large percentage of the population is something that we are still sort of getting our minds around and how that is going to change the workplace, how it is going to change many facets of our society.

I also agree with the point that you made about remote work and how it has really opened up opportunities for people to work in a more flexible way. I applaud some of the increased flexibility that we are seeing.

I think we are still, again, sort of figuring out what long term implications that will have for the way that work is performed. I think those opportunities are exciting. And what I would do if I were confirmed as General Counsel would be to consult with stakeholders, both within the EEOC—and that also is filtering the facts that are coming in on the ground.

What sorts of charges are coming in related to disability and COVID? What are investigators and those in the field offices who are handling those charges, what are they seeing?

Also to discuss with the Commissioners and others on the policy side of the EEOC about sort of trends and the technical assistance that has already been issued and any additional changes that would need to be made to that as the situation continues to evolve.

I look forward to working—will look forward to working across agencies as well to figure out how the Government could, in a coordinated way, sort of adjust and adapt to some of those changing realities that we are still in the midst of experiencing with regard to COVID.

I look forward to learning more and to working with others to craft an appropriate course to respond to that situation.

Senator KAINE. One of the things that I think is going to be challenging—I was a civil rights lawyer before I got into elected politics and did Title VII and EEOC cases, and the sort of general gravamen of some of our employment laws as we want people to be treated equally at work. And yet not every kind of work is equal.

This Committee has grappled with issues, for example, that Federal agencies were adopting some uniform policies about telework, but that meant that they weren't doing in-person inspections of the facilities that were making infant formula.

One of the things that led to the infant formula challenge was the kind of decision to have a lot of those inspectors do telework because other people in their agencies were doing telework as well. And so for different jobs telework is great.

There are some jobs where in person is absolutely necessary. Is that treating employees differently? I mean, I think this is really going to be a thorny little area, but the millions of people who are

dealing with post-COVID conditions deserve to be treated fairly and deserve to have opportunities to work under reasonable conditions.

This is going to take a focus on fairness, but also a willingness to individualize and be flexible depending upon what the job is. And you have a solid background in this area, not an easy one, but I trust that you will be able to acquit that responsibility well. Thank you.

Senator SMITH. Thank you, Senator Kaine.

Senator Rosen.

Senator ROSEN. Well, thank you, Chairwoman Smith. I appreciate you. And thank you to the nominees for your willingness to serve and being here to answer our questions today. And so I want to talk a little bit about the EEOC report on women and STEM, because I am pleased that following this Committee's EEOC Commissioner nomination hearing in May, the Commission heeded my call to increase data transparency on incidents of gender bias against women working in STEM fields.

In July, it released a wide ranging report on women working in STEM jobs in the Federal Government, finding that women account for only 29 percent of Federal workers in STEM fields, and only 25 percent of STEM leadership roles in the Federal Government.

More concerning is that general—generalized harassment was a significant issue for women with nearly 2,000 harassment complaints filed in Fiscal Year 2019. That is why I am so glad that the recently passed Chips and Science Act included provisions I supported to address sexual, and sex based harassment in science.

So, Ms. Gilbride, if confirmed as EEOC's general counsel, how are you going to prioritize enforcement action to improve protections for women working in STEM careers not only in the Federal Government, but across the private sector as well?

Ms. GILBRIDE. Thank you for that question, and thank you for your leadership on this issue, which I agree is very important. I am glad that the report has helped to really shine a light on some of the specific problems that women in the STEM fields are facing in the Federal Government.

What I would do if confirmed as General Counsel would be to consult with the stakeholders at the Commission and with other people who had expertise in this area, such as yourself, to really understand what some of the pervasive challenges and barriers are. Certainly if identified harassment is one, which unfortunately is a very persistent and pervasive problem that affects women and men in many sectors of the economy, and I would make combating harassment in the workplace a priority if I were to be confirmed.

I think there are several tools that can be used to combat it, including outreach and education, and working with employers about how to change climates and be attentive to the climate in the workplace to prevent harassment from occurring or stamp it out quickly, if there are reports of harassment.

I would also look closely at whether particular charges of harassment can be consolidated and resolved through informal resolution

and would also use the tool of litigation when necessary to try to send a strong message that harassment is not tolerated in the workplace, and that is something that the agency takes seriously as part of its charge of ensuring equal opportunity.

I would certainly do that with respect to the STEM fields, including other sectors of the economy where harassment is unfortunately still very widespread.

Senator ROSEN. Well, that is great because we know there is sexual harassment, but there is also hate and violence in the workplace. I would like to talk about addressing the anti-hate Asian hate and violence in the workplace.

Ms. Gilbride, I discussed with Ms. Kotegal during her confirmation hearing in May that we have seen an unfortunate rise in crimes and reports of bias motivated harassment against Asian American and Pacific Islander communities over the last two or 3 years.

AAPI owned businesses have been targeted for discrimination, including in my State of Nevada, which is home to more than 21,000 Asian owned businesses. We are also one of the fastest growing AAPI populations in the country in Southern—in Nevada.

It is just all too common for individuals in our AAPI community to face harassment, discrimination, or even violence both inside and outside the workplace. So again, building on what you answered on the last question, if confirmed, how would you use your office to address the increase in anti-Asian violence and discrimination?

Ms. GILBRIDE. Well, hate and violence have no place in the workplace in the United States. I would take those incidents extremely seriously. I know that where business owners are targeted, as you mentioned employers are often the victims of this type of violence and hate, unfortunately, as well.

I would want to work closely with the employer community and with the Asian and Pacific Islander community and advocates in that community to think as a group about what can we do to be helpful, what could the agency do to be helpful in that space, to eradicate that scourge of violence.

Because it is not what we want for this country, and I would make that a high priority, if I were to be confirmed in this role.

Senator ROSEN. Thank you. I have more questions on pay equity and others. I will submit those for the record. Thank you, Madam Chair.

Senator SMITH. Thank you, Senator Rosen.

Senator Hickenlooper.

Senator HICKENLOOPER. Thank you, Madam Chair. And thank both of you. I have been kind of going out seeing little snippets of this. It sounds like I have—I am going to have a lot of catching up to do tonight.

Ms. Loman, when I was Governor in Colorado, we set up a task force to share information and improved investigations into worker misclassification and basically what ended up being tax fraud with-

in the construction industry. We did this because law abiding companies, their workers—I think the taxpayers are being undercut by these under the table payments and in other ways skirted the law.

How do you plan to collaborate and reinforce state efforts in regard to this, and other not just state efforts, but other stakeholder efforts to address worker misclassification?

Ms. LOOMAN. Thank you, Senator. And we currently have in the Wage and Hour Division and are very proud to work with Colorado under a memorandum of understanding. Also a memorandum of understanding, I was—had the opportunity in Minnesota to work with the Wage and Hour Division to address misclassification.

Very familiar with how we can really think about our partnerships with state as a force amplifier, a force multiplier, if you will, in terms of identifying and ensuring that we are providing the best worker protections possible.

I also share that we have really had great success in the Wage and Hour Division, and also my work in State Government, thinking about how we can address misclassification, wage theft, insurance fraud in the construction industry in partnership with different agencies who have different roles and I think different types of worker protections.

I think that the partnership, the relationships between states and local Government, and the Federal Wage and Hour Division can be really impactful. And if confirmed, I would continue to prioritize those relationships and making sure that we are leveraging all of the worker protection agencies and focus that we can have across the country to really address those issues, to your point.

Because responsible employers, particularly responsible employers in the construction industry, are very much at a competitive disadvantage when other businesses are misclassifying construction workers as independent contractors.

Senator HICKENLOOPER. I remember when I first ran for Governor of Colorado in 2010, and I heard several stories to the same effect. But the one that just stuck in my mind was a man who was 55 or 56, 57, somewhere in there, about same age I was at the time, and he had a commercial painting company, pretty much his whole life. He would put three kids through college, and yet he paid—he did everything above the board. He paid everybody with a payroll check, and he paid the taxes that were owed, and he could not compete.

The changes that happened in the early 2000's drove him out of business and he was sleeping on the couch in his daughter's basement. And it just, when the people that are out—the small businesses that have helped create the country we know and love, when they can't compete fairly, I think it is up to the rest of us to make sure we do something about it. I am glad to hear you are up for that.

Collaborating with the states is a great way to go about that. Ms. Gilbride, our team has heard from the Denver field office that their case loads are becoming overwhelming due to the understaffing, budget constraints, limited resources.

How important is it, Ms. Gilbride, for the field staff helping the EEOC stop unlawful employment discrimination and the General Counsel's Office to litigate cases? I mean, how critical is that?

I am giving you a chance to wax poetic on this. And what can we do to address the staffing issues and really reduce the amount of time it takes to resolve complaints?

Ms. GILBRIDE. Thank you for that question. The field staff are on the front lines of the agency's efforts to make sure that the workplace is fair and inclusive and a welcoming space for everyone.

If they don't have the resources that they need to do their job, then unfortunately, workers who are relying on the EEOC are the ones who suffer for that.

What I would hope to do, if I were confirmed as General Counsel, would be to talk to all of the regional attorneys in the field offices and really get a grasp for what are they dealing with, what are the challenges, and what are their needs, and what can I do as head of the Office of General Counsel to make sure that they have what they need in order to do their critical work on behalf of the America's workers.

Senator HICKENLOOPER. Great. Perfect. What was the name of your dog, again?

Ms. GILBRIDE. My dog, April is—

Senator HICKENLOOPER. Dog, April. I guess there is no way we can get the camera to show April who faithfully sitting at the feet of her master's. But obviously, you will be a dynamic team. I look forward to working with you.

Ms. GILBRIDE. Thank you so much, Senator.

Senator SMITH. Thank you, Senator Hickenlooper. Do any other Members have any questions, any additional questions they would like to ask? Well, in that case, thank you to our nominees for being here today and for providing your testimony.

For Senators who wish to submit questions for the record, those questions are due 1 week from today, which will be Tuesday, September 20th. Again, thank you to our nominees for being here today.

And with that, this hearing is adjourned.

ADDITIONAL MATERIAL

LETTERS OF SUPPORT AND OPPOSITION TO JESSICA LOOMAN

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

Earlier this week, the Health, Education, Labor, and Pensions Committee held a hearing of the nomination of Jessica Looman to serve as Administrator of the Wage and Hour Division (WHD) of the Department of Labor. While NRF takes no position on her qualifications for the position, the Committee should be aware of the potentially problematic regulatory changes being pursued by the WHD under the direction of Ms. Looman, namely her attempts to alter the independent contractor standard, joint employer standard, and overtime pay requirements under the Fair Labor Standards Act (FLSA).

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the Nation's largest private sector employer, supporting one in four U.S. jobs—52 million working Americans. Contributing \$3.9 trillion to annual GDP, retail is a daily barometer for the Nation's economy. The retail industry provides opportunities for lifelong careers, strengthens communities and plays a critical role in driving innovation.

On June 3, 2022, WHD announced that the agency would soon be promulgating a notice of proposed rulemaking creating a new independent contractor standard under the FLSA. The rulemaking is expected to make it more difficult for workers to work independently by limiting who can qualify as an independent contractor. This policy change is being pursued despite significant evidence that workers want the flexibility and autonomy that comes with independent contractor status. In this post-pandemic environment, independent work arrangements are more popular than ever. Unfortunately, WHD's new proposed rulemaking will make such arrangements more difficult, limiting workers' flexibility, autonomy, and right to choose their path to success.

WHD has also announced its intention to alter the overtime pay requirements under the FLSA. Reports indicate the agency will potentially increase the minimum salary threshold under which workers must be paid overtime, create automatic updates for the threshold, and/or alter the duties test used to determine if a worker's responsibilities qualify them for an exemption. Changes to this area will be particularly impactful upon entry-level managers who are actively gaining experience and expertise in the hopes of soon moving up the ladder to higher-level managerial positions.

The rule changes will needlessly force millions of these workers back on the clock, regardless of their preference. Such workers will lose the flexibility and dignity that managerial status provides. They will fail to benefit from countless educational and advancement opportunities. Moreover, the ability of the regulated community to comply with these new rules will be significantly impacted by COVID-19's changes to the American workforce and workplace. In the wake of the pandemic, more workers than ever before are working remotely and expecting maximum flexibility from their employers regardless of their exemption status. At the very least, WHD should fully understand and carefully consider these changes to the workplace before pursuing a new rulemaking.

Finally, WHD has indicated it plans to alter the joint employer standard used to determine if two or more employers are jointly responsible for the essential terms and conditions of employment over a shared group of employees. Joint employer status comes with substantial liabilities and obligations under the law. The agency is expected to significantly expand the standard so that even indirect or unexercised, reserved control over terms and conditions of employment could trigger joint employer status. This will have a devastating effect on the economy, as larger employers fear potential liabilities, disincentivizing them from contracting, franchising, or licensing with small and/or local businesses.

NRF maintains that the wage and hour regulatory efforts outlined above could cause significant economic upheaval. At the least, they will create confusion for retailers as they struggle to address workforce shortages, supply chain disruptions, and lingering inflationary pressures.

NRF appreciates the Committee's attention to this matter and respectfully requests that this letter be included in the official record of the hearing.

Sincerely,

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

ASSOCIATION OF UNION CONSTRUCTORS (TAUC).

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

The Association of Union Constructors (TAUC) would like to express our strong support for the confirmation of Jessica Looman to be Administrator of the United States Department of Labor's Wage & Hour Division (WHD).

TAUC represents over 1,800 union construction firms engaged in industrial maintenance and heavy construction and is the largest multi-craft union contractor association in America. Our mission is to serve as an advocate for contractors who utilize union craftworkers, and to enhance cooperation between the three entities involved in the successful completion of construction projects: the contractor, the building trades union, and the owner-client. This "tripartite dialog," facilitated by TAUC, delivers the cost-effective, high-quality construction demanded by our members' owner-clients.

The WHD is critically important to TAUC contractors, who are committed to investing in workforce development and providing middle class family sustaining wages and benefits to their workers. Our members believe that contractors should compete for construction work based on who can deliver the highest quality and productivity, not who can find the cheapest workforce. As such, it is vital that WHD have an experienced and knowledgeable leader like Ms. Looman to ensure contractor compliance with Federal labor law.

TAUC has had the opportunity to work closely with Ms. Looman during her tenure as Deputy Administrator and Acting Administrator of the WHD. She has made herself and senior WHD officials available to engage all stakeholders to answer questions and provide compliance guidance related to Federal wage and hour law. Throughout these interactions, which included representatives of labor and both union and non-union contractors, we have witnessed firsthand her openness to listen to and consider the perspectives of all stakeholders. We have also seen her commitment to ensuring a level playing field for law abiding contractors through compliance with the rule of law.

Having served as both Commissioner of the Minnesota Department of Commerce and as Executive Director of the Minnesota Building and Construction Trades Council, Ms. Looman brings a balanced approach to understanding both the labor and management perspective to improving compliance with Federal wage and hour laws. This experience gives her an understanding of the need to advance construction quality while ensuring compliance with Federal labor standards without unduly overburdening employers and ensuring that contractors who pay their workers middle class wages and benefits and investment in their workforce can continue to successfully compete for construction work.

TAUC looks forward to partnering with Ms. Looman on issues of importance to the union construction and maintenance industry and urges the committee to act quickly to confirm her nomination as Administrator of WHD.

Very sincerely yours,

DANIEL M. HOGAN,
Chief Executive Officer.

SHEET METAL AND AIR CONDITIONING CONTRACTORS',
NATIONAL ASSOCIATION (SMACNA).

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

The Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) is supported by more than 3,500 construction firms specializing in industrial, commercial, residential, architectural and specialty sheet metal and air conditioning construction in public and private markets throughout the United States. ***On behalf of SMACNA, I want to express our strongest and most enthusiastic endorsement for Jessica Looman to serve as Administrator of the US Department of Labor's Wage and Hour Division (WHD).*** Over many decades of reviewing candidates for Federal appointments, SMACNA has very rarely endorsed a nominee for Federal office. However, we make a special exception to support Jessica Looman to be WHD Administrator due to years of appreciation for her dedication and ability as well as our first-hand experience viewing her fairness, judgment, and professionalism at the state and Federal levels. Our member corporations have appreciated her work up close, from her service as Minnesota Commissioner of Commerce, Assistant and Deputy Commissioner of the Minnesota Department of Labor and later as Executive Director of the Minnesota State Building and Construction Trades Council. She is a gifted public servant and would bring a high level of credibility, accountability, and transparency to a most challenging role at the Department of Labor, as the Administrator of the Wage and Hour Division.

Ms. Looman has made significant progress on important goals most labor and management organizations support, from expanding construction career pathways to including greater diversity and inclusion in the construction industry to protecting the physical and financial health of the construction workforce. In addition, in Minnesota she worked to increase private and public investment in construction infrastructure, an effort benefiting contractors and workers alike as well as the Minnesota taxpayer. During tenure at the Minnesota and US DOL she actively supported increasing construction workforce training quality, public project safety and productivity. Three high priority policies for our member corporations and skilled workers include: reforming the Nation's prevailing wage laws, enforcing construction worker misclassification rules, and reforming and enforcing registered apprenticeship standards. On these long ignored regulatory matters she has earned the trust of our industry and introduced policy proposals important to our thousands of firms and their hundreds of thousands of highly skilled construction trades employees.

SMACNA members and allied quality driven contractors agree with the nominee that any major investment in public infrastructure should recognize the extreme importance and merit in building a larger skilled workforce, enforcing independent contractor rules, and paying locally prevailing wages as part of any quality based public procurement policy. We also endorse the Department of Labor Wage and Hour Division's view that Federal, state, and local prevailing wage laws should encourage employers to:

- Pay a locally prevailing wage
- Offer health care coverage to their employees and their families
- Provide for the future retirement of their employees and
- Make a significant investment in the registered apprenticeship training and safety programs producing an unmatched productive and safety conscious workforce.

From years of experience with Ms. Looman's leadership and service in Minnesota and at DOL, SMACNA member firms have learned to appreciate her commitment to expanding the skilled workforce, enforcing labor laws and regulations to provide a level playing field for all employers, including those providing quality wages, benefits, and training. Further, we know that her continuing Federal commitment to the payment of prevailing wages and benefits is not designed as a union versus non-union issue competition. According to many Department of Labor reports, most Davis-Bacon wage decisions for Federal projects have paid less than the union wage. Ms. Looman supports fair and balanced reforms to the prevailing wage laws to prevent the Federal Government from undermining local economies and prevailing local employment and training practices by reflecting local conditions. For that reason, we found general agreement and support for the Wage and Hour Division's draft rules the WHD issued in May boosting compliance assistance to employers as part of reforming the Davis-Bacon Act. Under Ms. Looman's guidance, the draft

rules, if adopted, would offer public construction projects far greater productivity by using a trained, skilled workforce completing highly complex construction projects faster and with better quality.

In summary, SMACNA views Ms. Looman as a highly competent, first-rate administrator supportive of a construction industry where quality driven firms are not disadvantaged when bidding Federal projects because they offer their employees locally prevailing wages, health care, pensions, and registered apprenticeship training opportunities. For that reason and many more, we endorse Jessica Looman to be the Administrator of the Wage and Hour Division at the US Department of Labor. Thank you for considering our views of this highly talented and qualified nominee. Do not hesitate to contact our association should you need our assistance to better support Ms. Looman or to promote construction quality, productivity, skilled workforce training and project safety.

Sincerely,

STANLEY E. KOLBE, JR.,
Executive Director,
Government and Political Affairs,
SMACNA—Capitol Hill Office.

NORTH AMERICA'S BUILDING TRADES UNION (NABTU),
ALPHARETTA, GA 30004,
September 9, 2022.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

On behalf of the over 3 million skilled craft professionals that comprise North America's Building Trades Unions (NABTU), I write in strong support of the nomination of Jessica Looman to serve as the Administrator of the Wage and Hour Division (WHD) at the U.S. Department of Labor.

In her current role as Principal Deputy Administrator, Ms. Looman's work has demonstrated a level of excellence in carrying out the mission of the WHD. She has recovered millions of back wages for workers and expanded employer assistance to increase compliance with labor standards. She has diligently worked to increase transparency and accountability with the Department's programs and initiatives. Furthermore, under her leadership, WHD has proposed a rule to strengthen and modernize the Federal prevailing wage regulations that will protect the wages of construction workers and strengthen enforcement.

As a proud building trades member and former Executive Director of the Minnesota State Building and Construction Trades Council, Ms. Looman has always prioritized the welfare of workers, a key tenant of WHD's mission. Furthermore, her accomplished experience as the Commissioner of the Minnesota Department of Commerce, as well as both Assistant and Deputy Commissioner of the Minnesota Department of Labor and Industry, has driven economic progress for both labor and business.

In closing, we are confident that she will continue to fiercely advocate for all workers and their employers while ensuring compliance with Federal policies under her jurisdiction. We urge strong bipartisan support for her nomination as well as a swift confirmation by the Committee and Senate.

Sincerely,

SEAN MCGARVEY,
President,
North America's Building Trades Union (NABTU).

ASSOCIATED BUILDERS AND CONTRACTORS.

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

DEAR CHAIR MURRAY, RANKING MEMBER BURR, AND MEMBERS OF THE SENATE HELP COMMITTEE:

On behalf of Associated Builders and Contractors, a national trade association with 68 chapters representing more than 21,000 members, I am writing to express our concerns with recent rulemaking and proposals from the U.S. Department of Labor's Wage and Hour Division as you consider the nomination of Ms. Jessica Looman. ABC urges the committee to ensure that as administrator of the Wage and Hour Division, Ms. Looman takes into consideration the serious concerns from the construction industry on forthcoming rulemakings, such as the independent contractor rule, the overtime rule and radical reforms to Davis-Bacon regulations that will increase the cost of taxpayer-funded construction projects and discourage small businesses from rebuilding America.

Earlier this year, the DOL WHD proposed more than 50 significant changes to existing regulations affecting how the agency determines, requires and enforces prevailing wages on covered taxpayer-funded construction contracts. In its proposed rule, the DOL estimates Davis-Bacon Act regulations apply to \$217 billion in Federal and federally assisted construction spending per year—which is roughly 63 percent of all public construction put in place and provide government-determined wage rates for an estimated 1.2 million U.S. construction workers.

Because the proposed rule will have far-reaching effects on local, state and Federal Government procurement stakeholders, taxpayers, ABC members and other construction businesses pursuing contracts and building Federal and federally assisted construction projects urged the DOL to extend the current 60-day comment period deadline of May 17 to provide adequate time to analyze the proposal, solicit member feedback and provide meaningful input on the proposal. On April 22, the extension request was arbitrarily and capriciously denied without adequate explanation by the WHD, in violation of the Administrative Procedure Act.

ABC urges the committee to obtain a commitment from Ms. Looman to provide an adequate explanation. ABC further requests that Ms. Looman ensures that WHD will consider the comments submitted by ABC and other construction organizations that have highlighted the new rule's failures. These criticisms include the rule's failure to fix the systematic errors within the DOL's wage determination process, elimination of prior reforms that had increased the accuracy of wage determinations, further expansion of DBA regulatory burdens that will increase costs for more taxpayer-funded construction projects and failure to provide regulatory clarity to impacted contractors and stakeholders.

ABC also remains concerned with the proposed rule on independent contractors under the Fair Labor Standards Act that is currently under review at the Office of Information and Regulatory Affairs at the Office of Management and Budget. ABC has met with OMB and DOL staff to discuss its concerns with the new proposed rule and the importance of independent contractors to the construction industry. They provide specialized skills, entrepreneurial opportunities and stability during fluctuations of work common to construction.

ABC and other co-plaintiffs successfully sued the DOL to vacate last year's independent contractor delay and withdrawal rules. As a result of the decision, the Jan. 7, 2021, final rule has now gone into effect, clarifying and simplifying the long-standing economic reality test based on an exhaustive analysis of cases applying that test around the country, along with other traditional factors. ABC believes the Jan. 7 rule provides clearer guidance to the regulated community regarding the interplay of these factors and that the committee should urge the next WHD administrator to let it stay in effect long enough to work. The current rule will reduce the degree of litigation chaos that has bedeviled the regulated community, promoting badly needed economic growth and protecting legitimate independent contractors and employees alike.

Should WHD pursue a new rule, a full comment period and adequate deliberation and consideration of the comments must be required along with an explanation of how a new rule will better promote economic growth, provide better guidance than the current rule and recognize the continuing importance of independent contractor classifications in construction and other industries. ABC urges the committee to receive these assurances from Ms. Looman during her nomination hearing.

Finally, ABC remains concerned about WHD moving forward with an overtime proposal and urges the committee to support postponing any proposed changes to the current rule, which increased the minimum salary threshold only 3 years ago.

WHD should also recognize the lingering economic consequences of the COVID-19 pandemic and the negative impact more regulation will have on the construction industry that currently face historic global supply chain disruptions, rising materials prices and a current workforce shortage of 650,000.

A sweeping change to overtime pay regulations will further complicate this current situation and could have unintended effects of restricting employee workplace flexibility in setting schedules/hours, hurting career advancement opportunities for employees, negatively affecting employee morale, significantly increasing both legal and operational compliance costs and making it harder to fill the critical construction jobs needed.

ABC appreciates the HELP Committee's important attention to these critical matters for the construction and numerous other industries affected by these Federal rules and regulations and hopes that the committee is able to receive these critical assurances from Ms. Looman as she seeks to lead the WHD in the coming years.

Sincerely,

KRISTEN SWEARINGEN,
Vice President,
Legislative and Political Affairs.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL,
EMPLOYEES (AFSCME).

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

On behalf of the 1.4 million members of the American Federation of State, County and Municipal Employees (AFSCME), I urge you to support the nomination of Jessica Looman as the Administrator of the Wage and Hour Division for the Department of Labor.

Ms. Looman has an extensive background in employment, labor and workplace law and policy and is very well qualified for this important role. Her work since the beginning of the Biden administration as the Principal Deputy Administrator has shown her expert judgment and keen understanding of the issues facing the Wage and Hour Division.

Her background in both labor unions and Minnesota state government provided an important foundation for tackling the challenges faced by workers across different sectors. As the Executive Director of the Minnesota State Building and Construction Trades Council, she worked to diversify construction career pathways, advocated for worker safety, and helped improve investment in construction infrastructure.

Prior to this role, she served in multiple state government capacities in Minnesota, both as the Commerce Commissioner and the Deputy Commissioner and the Assistant Commissioner for the Minnesota Department of Labor and Industry (DLI). Ms. Looman understands how the Wage and Hour Division can make an enormous difference for workers across the country. Ms. Looman will surely protect and advance the rights of working people that they deserve and are guaranteed under the law.

AFSCME strongly endorses the nomination of Jessica Looman as Administrator of the Wage and Hour Division for the Department of Labor. We urge you to vote to quickly confirm her for this important position.

Sincerely,

EDWIN S. JAYNE,
Director of Federal Government Affairs.

INTERNATIONAL UNION OF
BRICKLAYERS AND
ALLIED CRAFTWORKERS,
September 12, 2022.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

I am writing in strong support of the nomination of Jessica Looman to be Administrator of the Wage and Hour Division (Wage and Hour) of the U.S. Department of Labor (DOL).

Jessica currently serves as the Principal Deputy Administrator at Wage and Hour, where she has served for nearly 2 years. She has demonstrated exceptional leadership in this position, as well as a thorough understanding of the many complex issues in the jurisdiction of the agency.

She came to DOL with extensive experience in government relations, Federal and state labor and employment law and executive agency leadership. She has served in several high-level positions in the government of the State of Minnesota, including time as Commissioner of the Minnesota Department of Commerce and Deputy Commissioner of the Minnesota Department of Labor and Industry.

Jessica has also gained valuable experience as General Counsel to the Laborers District Council of Minnesota and North Dakota, and Executive Director of the Minnesota State Building and Construction Trades Council.

She received a B.A. in Political Science and Government at the George Washington University, and a J.D. at the University of Minnesota. Jessica's education and work experience make her ideally suited for the position of Administrator of Wage and Hour at DOL. Throughout her career, she has demonstrated excellence and the ability to listen to all stakeholders involved in public policy development and implementation. On behalf of the International Union of Bricklayers and Allied Craftworkers, I am honored to give Jessica Looman my highest recommendation, and I urge the Senate to promptly vote in favor of her nomination.

Sincerely,

TIMOTHY J. DRISCOLL.

INTERNATIONAL ASSOCIATION OF
SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS,
11750 NEW YORK AVENUE, NW,
SUITE 600,
WASHINGTON, DC 20006,
September 9, 2022.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

On behalf of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART), and our over 203,000 union members, we urge you to swiftly confirm the nomination of Jessica Looman to be Administrator of the U.S. Department of Labor's Wage and Hour Division.

SMART is one of North America's most dynamic and diverse unions with 203,000 members. SMART's members produce and provide the vital services that move products to market, passengers to their destinations and ensure the quality of the air we breathe. Our members include sheet metal workers, service technicians, bus operators, engineers, conductors, sign workers, welders, production employees and more. With members in scores of different occupations, we advocate for fairness in the workplace, excellence at work and opportunity for all working families.

We strongly support Jessica Looman's nomination. In her role as Principal Deputy Administrator and Acting Administrator of the Wage and Hour Division, she has overseen an extensive regulatory agenda, recovered millions of back wages for workers, proposed ways to strengthen and modernize Federal prevailing wage regula-

tions and expanded employer assistance to increase compliance, transparency, and accountability with Department of Labor programs.

Ms. Looman has an extensive history working on these issues. Prior to joining Department of Labor, she served as Executive Director of the Minnesota State Building and Construction Trades Council and as Commissioner of the Minnesota Department of Commerce and Assistant and Deputy Commissioner of the Minnesota Department of Labor. Throughout all her roles, she has prioritized fairly enforcing our laws and raising labor standards and conditions to make economic progress for both labor and industry.

Ms. Looman's commitment, leadership and expertise on labor and worker rights, make her the right choice for this position. We urge you to quickly confirm her nomination.

Sincerely,

INTERNATIONAL ASSOCIATION OF
SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS.

LABORERS' INTERNATIONAL,
UNION OF NORTH AMERICA (LIUNA),
July 28, 2022.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

On behalf of the 500,000 men and women of the Laborers' International Union of North America (LIUNA), I write to enthusiastically support the nomination of Jessica Looman, a proud member of our great union, to be the Administrator of the Wage and Hour Division (WHD) of the U.S. Department of Labor. LIUNA asks you to vote in favor of her nomination as soon as possible.

As a dedicated public servant, she has served the Department of Labor as the Acting Administrator and Principal Deputy Administrator of the Wage and Hour Division. Under her leadership, the Wage and Hour Division has instituted a range of programs and reforms to ensure full compliance with Federal wage and hour laws. Her diligent oversight has resulted in millions of dollars in back wages being recovered for workers, and the new Workers Owed Wages online system modernized the process to make sure workers can be connected to the wages they are owed. WHD has also expanded assistance to the employer community, including the creation of sector-specific toolkits, to help employers understand and comply with Federal wage and hour laws. It has also published an online enforcement data system to promote transparency and accountability.

Her office has drafted a critically important proposed rule to modernize Davis-Bacon prevailing wage regulations. The proposal will improve enforcement tools, address construction wage theft and misclassification, protect workers from retaliation, and improve the process for determining local wages. She also oversaw the final rule implementing President Biden's executive order on Federal contractor minimum wage ensuring public service workers are paid no less than \$15 an hour. And currently, she is overseeing an important proposed rule that will improve the retention of service contract workers. The rule will prevent disruptions in Federal services and makes it easier for employers to find trained workers.

Jessica Looman has a long history as a talented and experienced administrator, bringing unions and their employer partners together. In addition to her time leading WHD, she served as the Commissioner of the Minnesota Department of Commerce and Assistant and Deputy Commissioner of the Minnesota Department of Labor. Prior to her service in Minnesota government, she served as the General Counsel for the Laborers' District Council of Minnesota and North Dakota, as well as the Executive Director for the Minnesota Laborers-Employers Cooperation and Education Trust (LECET). In all of these roles, she brought labor and employers together to grow the economy and create good family supporting jobs.

For all of these reasons, LIUNA believes that she is the best person for the job of Administrator of the Wage and Hour Division of the U.S. Department of Labor, and we ask that you vote in favor of her nomination.

With kind regards, I am,
Sincerely yours,

TERRY O'SULLIVAN,
General President.

MINNESOTA DRYWALL,
AND PLASTER ASSOCIATION (MDPA),
September 8, 2022.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

I am writing on behalf of the membership of the Minnesota Drywall and Plaster Association (MDPA) to express our strongest support for the nomination of Jessica Looman to the position of Administrator of the United States Department of Labor's Wage & Hour Division (WHD).

MDPA is the leading wall and ceiling construction employer association in Minnesota. Our members employ thousands of workers—carpenters, drywall finishers, laborers and plasterers—who perform tasks such as wall framing, drywall installation, plastering and fireproofing.

MDPA's primary functions include representing its member-employers in labor relations matters such as collective bargaining as well as in state government relations matters.

Our organization is very familiar with Ms. Looman from her time in the private sector leading Minnesota building trades unions and from her time in public service as a leader of Minnesota State Agencies.

Throughout her career, MDPA has consistently found Ms. Looman to be extremely competent, professional, and honest. She has always worked to improve conditions for not only labor but also for honest employers. Her appreciation for and understanding of these different perspectives should not go unnoticed. From MDPA's perspective, it has been a cornerstone of her success as a leader in the private and public sectors.

While she was in the private sector, MDPA sat "across the table" from Ms. Looman in labor negotiations and dispute resolution efforts during her time in the private sector. In that setting Ms. Looman was a strong advocate for her organization while maintaining a commonsense perspective that always supported positive labor-management relations.

While in public service, Ms. Looman was an effective leader who genuinely considered the views of all parties involved. She did not favor particular parties—instead, she performed her duties with the utmost professionalism and with the greater good in mind. Her smart, balanced perspective was always evident in her efforts.

UNITED ASSOCIATION OF
UNION PLUMBERS AND
PIPEFITTERS (UA),
September 9, 2022.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

On behalf of the more than 359,000 hardworking men and women of the United Association of Union Plumbers and Pipefitters (UA), I write in strong support of the nomination of Jessica Looman, current Acting Administrator of the Department of Labor Wage and Hour Division, to serve as Administrator. Acting Administrator Looman has proven to be a tireless advocate and evenhanded arbiter protecting fair wages for working families, and she will continue this important work once confirmed.

Acting Administrator Looman has a strong track record of fighting wage theft and standing up for working families. In this position, she has brought a measured ap-

proach to ensuring more Americans have a fair shot at success—and that begins with their ability to earn fair wages for an honest day's work. Acting Administrator Looman led the most significant expansion of Davis-Bacon prevailing wage laws in generations with new rulemaking earlier this year, and she remains committed to creating a level playing field that benefits all workers, regardless of circumstance. Acting Administrator Looman has proven to be a reliable partner as she has worked tirelessly to include stakeholders in the policy process at all levels, ensuring the voices of working families, like those of the United Association, are heard. I have every confidence that once confirmed Administrator Looman will continue this balanced and important work standing up to unscrupulous contractors and protecting the ability of all Americans to earn fair wages.

The entire United Association stands ready to continue our work with Acting Administrator Looman and the entire Department of Labor to create a level playing field and ensure more Americans earn fair wages and benefits. We are proud to support Acting Administrator Looman's nomination to lead the Wage and Hour Division, and we look forward to her swift confirmation.

Sincerely yours,

MARK MCMANUS,
General President,
United Association.

LETTERS OF SUPPORT AND OPPOSITION FOR KARLA GILBRIDE

NATIONAL EMPLOYMENT LAWYERS ASSOCIATION (NELA).

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

The National Employment Lawyers Association (NELA) writes to express our strong support for the nomination of Karla Gilbride to serve as General Counsel of the U.S. Equal Employment Opportunity Commission (EEOC). Ms. Gilbride has dedicated her career to ensuring equal access to justice under the law, and she has an exceptional record as a litigator and advocate for workers, which she would bring to bear as General Counsel at EEOC.

Since 1985, NELA has been the premier professional membership organization for lawyers that represent workers in labor, employment, and civil rights disputes. NELA members litigate in every Federal district and circuit, advocating for equality and justice for workers across the country. NELA members routinely work with the EEOC to enforce anti-discrimination law and protect the rights of workers.

Ms. Gilbride is eminently qualified to serve as General Counsel of the EEOC. In her hearing before the Senate HELP Committee on September 13, Ms. Gilbride's responses demonstrated her deep knowledge of the issues for which the EEOC has responsibility and her strong commitment to the mission of the agency. In addition, her measured and thoughtful temperament and approach to problem solving were evident.

Ms. Gilbride has extensive experience as a litigator for the protection of workers' rights at every level of the Federal judiciary. For over 15 years, she has represented workers across industries—from migrant farmworkers to women in the finance industry to prison employees. She has represented many different clients, from many walks of life, but her mission is always the same—to enforce workers' rights to safe and equitable working conditions under the law.

Ms. Gilbride started her law career at Disability Rights Advocates, bringing cases on behalf of students and residents to ensure equal access to course materials, professional licensing exams, and emergency services. She continued that work at the law firm of Mehri & Skalet, PLLC, where she also brought cases under Title VII of the Civil Rights Act of 1964 to protect her clients from workplace discrimination based on religion, race, and sex.

Ms. Gilbride's commitment to fair and equitable treatment under the law is evidenced in her consumer and wage and hour litigation efforts as well. In her current role as the Access to Justice Co-Director at Public Justice, Ms. Gilbride recently argued and won a unanimous decision at the U.S. Supreme Court. The case involved

a collective action filed by an hourly employee of a Taco Bell franchise against her employer alleging violations under the Fair Labor Standards Act for failure to pay overtime wages. The employer engaged in the litigation for nearly 8 months before attempting to force the employee out of court and into a binding, confidential arbitration process. The Eighth Circuit sided with the employer. In an important ruling for workers and consumers, the Supreme Court reversed the Eighth Circuit, holding that the Federal Arbitration Act “does not authorize Federal courts to invent special, arbitration preferring procedural rules,”¹ like the one used against the fast-food worker in this case.

Ms. Gilbride is a strategic advocate who takes a holistic approach to pursuing policy goals. In keeping with her holistic approach, Ms. Gilbride is focused on solutions and will appropriately consider solutions to systemic problems that focus on education, training, and systemic reform in addition to, or alongside litigation efforts. Ms. Gilbride is also extremely well-equipped to coordinate regional and field office litigation at EEOC to maximize enforcement of Federal employment anti-discrimination laws in harmony with the broader strategy of the agency.

Ms. Gilbride’s exceptional experience, qualifications and temperament, as well as her commitment to fairness and justice for working people will make her an exceptional General Counsel at the EEOC.

The importance of this agency to working people across the country cannot be overstated. NELA strongly urges the Senate to promptly confirm Ms. Gilbride. If you have any questions, or would like to discuss these comments further, please contact Laura Flegel at lflegel@nelahq.org.

Sincerely,

LAURA M. FLEGEL,
Legislative & Public Policy Director,
National Employment Lawyers Association National Employment Lawyers
Association.

JEFFREY A. MITTMAN,
Executive Director,
National Employment Lawyers Association National Employment Lawyers
Association.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

The undersigned 44 civil rights, workers’ rights, and gender equality organizations write to express our strong support for the nomination of Karla Gilbride to serve as General Counsel of the U.S. Equal Employment Opportunity Commission (EEOC) and to urge the Committee to advance this nomination to the Senate floor for a vote.

During her hearing before this Committee, Ms. Gilbride showed a deep commitment to the mission of the EEOC as well as a profound understanding of the responsibilities of the General Counsel. We have no doubt that Ms. Gilbride will be an effective leader and collaborator, working together with the commissioners to help ensure equal opportunity for working people.

The EEOC is the only Federal agency specifically charged with enforcing the Nation’s Federal employment anti-discrimination laws, including Title VII of the Civil Rights Act of 1964 (which includes the Pregnancy Discrimination Act), the Equal Pay Act, the Americans with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act. The EEOC General Counsel manages the Commission’s litigation program, recommends cases to the Commission for litigation, and oversees the EEOC regional and field offices, which are responsible for investigating charges of discrimination and obtaining relief for people that have been discriminated against. The General Counsel also plays a role in advising the Commission on agency policies and enforcement matters.

As an accomplished litigator with nearly 15 years of experience advocating for the right of everyday people to enjoy equal opportunity under the law, Ms. Gilbride is an exceptional choice to serve as EEOC General Counsel. Ms. Gilbride has success-

¹ *Morgan v. Sundance*, 142 S. Ct. 1708 (2022)

fully litigated cases at every level of the Federal judiciary, including the U.S. Supreme Court, and has represented a diverse array of workers throughout her career, including restaurant,¹ slaughterhouse,² and warehouse³ workers. Her background and experience would strengthen the EEOC's enforcement efforts, ensuring that litigation is strategic, complements other enforcement tools, and addresses systemic or egregious violations of the law.

Throughout her career, Ms. Gilbride has focused on ensuring that all individuals are able to enforce their legal rights, including under our antidiscrimination and employment laws. For example:

- As senior attorney and co-director of the Access to Justice Project at Public Justice, Ms. Gilbride has successfully challenged unfair mandatory, pre-dispute arbitration agreements that prevent workers and others alleging unlawful behavior from seeking their day in court.
- In May 2022, argued and secured a unanimous decision at the U.S. Supreme Court clarifying that Federal courts must treat arbitration agreements like any other contract and may not create rules to favor arbitration over litigation.⁴ In that case, an hourly employee of a Taco Bell franchise filed a collective action in Federal court against her employer alleging violations under the Fair Labor Standards Act for failure to pay overtime wages. The employer engaged in the litigation for nearly 8 months before attempting to force the employee out of court and into a binding, confidential arbitration process. The Eighth Circuit sided with the employer. In an important ruling for workers and consumers, the Supreme Court reversed the Eighth Circuit, holding that the Federal Arbitration Act “does not authorize Federal courts to invent special, arbitration-prefering procedural rules,”⁵ like the one used against the fast-food worker in this case, and sent the case back to the lower court.
- While an associate at Mehri & Skalet, Ms. Gilbride was part of the team representing over 500 women who worked for the Federal Bureau of Prisons facility in Coleman, Florida. The women alleged that their employer failed to protect them from repeated, ongoing sexual harassment and misconduct by prison inmates. The case ultimately settled and resulted in changes to the prison's policies and practices to improve working conditions at the facility.⁶
- Ms. Gilbride has worked to ensure that people with disabilities have access to reasonable accommodations necessary for equal opportunity. For example, while an attorney at Disability Rights Advocates, Ms. Gilbride helped secure a victory at the U.S. Court of Appeals for the Ninth Circuit granting a blind law school graduate the right to use assistive screen reading software—the same software Ms. Gilbride, who is blind, uses to perform her job—to take professional licensing exams.⁷

Ms. Gilbride's extensive litigation experience, coupled with her commitment to ensuring that all people have access to opportunity and the ability to enforce their rights, make her well-qualified to serve as EEOC General Counsel and we urge you to vote to advance her nomination to the Senate floor. Please contact Gaylynn Bur-

¹ Howard v. Clyde's Restaurant Group, Inc., 1:11-CV-00687 (E.D. Va. 2012).

² Rural Community Workers Alliance v. Smithfield Foods, Inc., PUBLIC JUSTICE, <https://food.publicjustice.net/case/rcwa-jane-doe-v-smithfield/>. (last visited Sept 6, 2022)

³ Palmer v. Amazon, PUBLIC JUSTICE, <https://www.publicjustice.net/case—brief/palmer-v-amazon/>. (last visited Sept 6, 2022).

⁴ Morgan v. Sundance, 142 S. Ct. 1708 (2022).

⁵ Id. at 1712.

⁶ Federal Bureau of Prisons Coleman Facility Sexual Harassment, MEHRI & SKLAET PLLC, <https://findjustice.com/cases/coleman-sexual-harassment> (last visited Sept. 2, 2022).

⁷ Enyart v. National Conference of Bar Examiners, Inc., 630 F.3d 1153 (9th Cir. 2011).

roughs, Director of Workplace Equality at the National Women's Law Center
(gburroughs@nwl.org) with any questions.

Sincerely,

A BETTER BALANCE
AFL-CIO
AFSCME
AMERICAN FEDERATION OF TEACHERS
AMERICANS FOR FINANCIAL REFORM
ASIAN PACIFIC AMERICAN LABOR ALLIANCE, AFL
ASSOCIATION OF LATE DEAFENED ADULTS (ALDA)
BAZELON CENTER FOR MENTAL HEALTH LAW
CALIFORNIA EMPLOYMENT LAWYERS ASSOCIATION
CENTER FOR DISABILITY RIGHTS
CENTRO DE LOS DERECHOS DEL MIGRANTE, INC.
CLEARINGHOUSE ON WOMEN'S ISSUES
COALITION OF LABOR UNION WOMEN
DISABILITY LAW CENTER OF UTAH
DISABILITY RIGHTS ADVOCATES
DISABILITY RIGHTS NORTH CAROLINA
ECONOMIC POLICY INSTITUTE
EQUAL RIGHTS ADVOCATES
FEMINIST MAJORITY FOUNDATION
GENDER EQUALITY LAW CENTER, INC.
JUSTICE IN MOTION
KWH LAW CENTER FOR SOCIAL JUSTICE AND CHANGE
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
LEGAL AID AT WORK
LIBERTY RESOURCES, INC.

NATIONAL CENTER FOR LAW AND ECONOMIC JUSTICE
 NATIONAL COUNCIL OF JEWISH WOMEN
 NATIONAL DISABILITY RIGHTS NETWORK (NDRN)
 NATIONAL DISABLED LEGAL PROFESSIONALS ASSOCIATION
 NATIONAL EMPLOYMENT LAW PROJECT
 NATIONAL EMPLOYMENT LAWYERS ASSOCIATION
 NATIONAL IMMIGRATION LAW CENTER
 NATIONAL ORGANIZATION FOR RIGHTS PROTECTION AND ADVOCACY
 NATIONAL ORGANIZATION FOR WOMEN
 NATIONAL WOMEN'S LAW CENTER
 NORTH CAROLINA JUSTICE CENTER
 NORTHWEST WORKERS' JUSTICE PROJECT
 PEOPLE'S PARITY PROJECT
 PUBLIC CITIZEN
 SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU)
 THE CENTER FOR POPULAR DEMOCRACY
 THE SIKH COALITION
 THE TANYA PROJECT: A MEDICAL-LEGAL PARTNERSHIP FOR WOMEN WITH
 CANCER
 TOWARDS JUSTICE

AMERICAN COUNCIL OF THE BLIND (ACB),
September 7, 2022.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

The American Council of the Blind (ACB) writes to express its support for Karla Gilbride's nomination to the office of General Counsel at the United States Equal Employment Opportunity Commission (EEOC). We strongly believe that Karla has the skills, knowledge, and abilities to effectively serve in this role, and that her legal career and extensive experience in fighting for equity in employment for minority populations make her an ideal candidate for this position.

ACB is the Nation's leading member-driven organization of and for blind and low vision individuals. Founded in 1961 and comprised of more than 10,000 members and over 65 state and special-interest affiliate organizations, ACB strives to increase the independence, security, equality of opportunity, and to improve the quality of life for all people who are blind and experiencing vision loss. Equal access to employment, including hiring, training, and advancement opportunities, is key to our work. As a totally blind individual, Karla understands on a personal level how physical, technological, and attitudinal barriers can affect access to employment for individuals with disabilities and can keep them from full participation in the workplace, including hiring and promotions, and she will work tirelessly to eliminate discriminatory eligibility criteria in all aspects of employment for disabled workers.

For approximately 15 years Karla has handled all aspects of litigation in Federal district and appellate courts throughout the country and at the U.S. Supreme Court. She is uniquely well-qualified to lead the EEOC's regional and field office attorneys because she has litigated before many of the same courts where they practice and understands what they need to succeed. Karla is passionate about the statutes that the EEOC enforces and the rights that Congress created the EEOC to defend. She began her legal career at Disability Rights Advocates, bringing cases under the Americans with Disabilities Act, seeking to make sure that students with disabilities had access to accessible course materials and that residents with disabilities had equal access to emergency services in the event of a disaster.

While working at the law firm of Mehri & Skalet, she continued representing employees with disabilities under the ADA but also used Title VII to advocate on behalf of women in the finance industry who did not receive equal pay for equal work and Black managers who were discriminated against with respect to performance reviews and promotions. At Public Justice she continued using Title VII to secure improved working conditions for her clients, including a Sikh bus driver who experienced harassment by coworkers and students who called him a terrorist and mocked his beard and religious dress until mandatory education and training put an end to the religious harassment.

Karla will work to ensure that survivors of sexual harassment and assault, as well as intimate-partner violence, are protected and supported by the statutes the EEOC enforces. Karla has a long history of working on these issues, as one of her first legal jobs involved securing immigration relief for the partner of an abuser under the Violence Against Women Act. While at Mehri & Skalet she also worked on a class action lawsuit filed with the EEOC, *Taronica White v. Federal Bureau of Prisons*, on behalf of female prison employees in Coleman, Florida who were repeatedly sexually harassed by male inmates and whose employer did not protect them from the ongoing harassment. That case ultimately settled for \$20 million and extensive programmatic relief to improve the working conditions at the prison.

Karla is a fierce advocate for workers who are treated as expendable or “less than” in any way. She’s pursued cases on behalf of migrant farmworkers who were given rotten food to eat and not allowed to seek medical care when they became ill, restaurant workers who were told to clock out but continue working, and warehouse and slaughterhouse workers who were required to work in dangerous conditions without protective equipment during the first months of the COVID-19 pandemic when most white-collar workers remained in relative safety at home. One of her priorities if confirmed as general counsel at the EEOC will be to make sure that the Nation’s employment discrimination laws are enforced on behalf of all workers, no matter what industry they work in, how much money they make, and whether they’re employed directly or through a staffing agency or other intermediary.

While Karla has argued over 20 cases on appeal and is proud of those arguments, she’s settled more cases than she’s argued and has given more educational presentations in her areas of expertise than arguments and settlements combined. She recognizes the importance of education, training, and conciliation, and will work with the Commissioners, EEOC career staff, employers, and other government agencies to ensure that the tool of litigation is used strategically to address repeated, systemic, or egregious violations, and that it complements and supports the other tools at the EEOC’s disposal, such as conciliation and policy guidance.

Karla believes that every employee or applicant for employment in the United States deserves to be treated with dignity, deserves a safe workplace free from harassment, and deserves a working environment where they can succeed to their full potential without arbitrary barriers or policies that disadvantage certain groups (like older workers, workers of color, or workers with disabilities). If confirmed as general counsel, Karla will strive toward this ideal of workplaces that are dignity-affirming, safe, barrier-free, and inclusive.

ACB strongly supports Karla Gilbride’s nomination to the office of General Counsel at the EEOC and urges the Senate Committee on Health, Education, Labor, and Pensions to confirm her nomination. We thank you for your time and consideration in this matter. If you have any questions or would like to discuss our comments further, please contact ACB’s Executive Director, Eric Bridges, either at ebridges@acb.org.

Sincerely,

ERIC BRIDGES,
Executive Director,
American Council of the Blind (ACB).

September 9, 2022.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

I write in support of Karla Gilbride’s nomination for General Counsel of the Equal Employment Opportunity Commission. Karla has a well-deserved reputation as an outstanding public-interest lawyer, and her impressive track record reflects both her legal acumen and her high personal character. Since graduating with honors from Georgetown Law, Karla has advocated and litigated on behalf of a wide range of individuals experiencing discrimination or other improper treatment, including exploited workers, disabled consumers, incarcerated persons, and individuals seeking to avoid forced arbitration. As those experiences reflect, Karla has a strong moral compass and a deep commitment to protecting individuals from corporate and other forms of misconduct—traits that make her well-suited to lead the EEOC’s litigation efforts.

On a personal level, I recently litigated against Karla as opposing counsel in a case before the U.S. Supreme Court. Throughout the course of that case, Karla demonstrated the impressive characteristics for which she is widely known and respected. Her briefing was clear, rigorous, and thoughtful, as was her oral argument before the Court, all of which is reflected by the 9-0 decision the Court issued in her favor. Perhaps even more important, my interactions with her throughout the case were warm and collegial, and I have spoken with other attorneys who have likewise found Karla to be kind, courteous, and supremely talented. I have no doubt that she possesses the character, temperament, and intellect to be an asset to the EEOC.

I hope this information will be of assistance to the Committee in its consideration of Karla's nomination, and I urge you to support her confirmation.

Sincerely,

MICHAEL D. LIEBERMAN,
Partner, Kirkland & Ellis LLP.

NATIONAL FEDERATION OF THE BLIND,
September 6, 2022.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

The National Federation of the Blind, the transformative membership and advocacy organization of blind Americans, strongly and without reservation supports the confirmation of Karla Gilbride to serve as general counsel to the Equal Employment Opportunity Commission (EEOC).

Ms. Gilbride is a seasoned attorney with more than 15 years of experience fighting for the rights of the American worker and persons with disabilities at all levels of our judicial system, including the Supreme Court of the United States, in which she just this year argued *Morgan v. Sundance* where she secured a unanimous decision that lower courts cannot adopt rules that favor contracts to arbitrate claims over other types of contracts.

In *National Federation of the Blind v. the Container Store*, Ms. Gilbride argued and won a case before the United States Court of Appeals for the First Circuit wherein the First Circuit ruled that blind customers of the Container Store could not be forced to arbitrate claims regarding inaccessible point of sales devices especially when the terms of arbitration were not accessible to the blind customers precisely because of the inaccessible nature of the machines themselves.

She has also regularly testified before state legislatures like those of New York and California on the topic of compelled arbitrations. Additionally, Ms. Gilbride has a proven record of settling disputes and successful negotiations, creatively using alternative dispute methods, that would enable her to advise Commission staff in ways that are likely to increase fair, meaningful, and lasting settlements.

Ms. Gilbride's decorated legal career demonstrates that she is a problem-solver who will successfully use all the tools at her disposal and her growing wisdom to help the EEOC carry out its mission more effectively and efficiently. As general counsel at the Equal Employment Opportunity Commission, we believe that she will use her considerable experience with written, oral, and alternative dispute resolution wisely to build a more just, inclusive, and equal workplace for all Americans.

There is another point that perhaps cannot be underemphasized. Appointing Ms. Gilbride to such a substantial position sends the critical message that any young blind girl or one with another disability can dream big and reach the absolute heights of her profession when given a great education and true opportunity. Ms. Gilbride is a perfect role model for this principle. As far as we know, she is the first totally blind person ever chosen to argue a case before the Supreme Court. It is only fitting that the official sketch portraying the oral argument before the Supreme Court depicts Ms. Gilbride arguing the case competently and confidently while reading her Braille notes.

It is for all of these reasons that the National Federation of the Blind strongly, and with great enthusiasm, supports the confirmation of Karla Gilbride to serve as general counsel to the Equal Employment Opportunity Commission. If confirmed,

we are positive she will not let the Senate down and will serve the role with distinction and high competence.

Respectfully,

MARK A. RICCOBONO,
President,
National Federation of the Blind.

THE NATIONAL WOMEN'S LAW CENTER,
September 12, 2022.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

The National Women's Law Center, together with the National Partnership for Women & Families, writes to express our strong support for the nomination of Karla Gilbride to serve as General Counsel of the U.S. Equal Employment Opportunity Commission (EEOC).

Ms. Gilbride is an outstanding choice to serve as EEOC General Counsel. The EEOC enforces the Nation's Federal employment anti-discrimination laws, including Title VII of the Civil Rights Act of 1964 (which includes the Pregnancy Discrimination Act), the Equal Pay Act, the Americans with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act. The primary role of the EEOC General Counsel is to "provide direction, coordination, and supervision to the EEOC's litigation program."¹ The General Counsel oversees the EEOC regional and field offices—responsible for investigating charges of discrimination and obtaining relief for victims—and approves and recommends cases to the Commission for litigation. The General Counsel also plays a role in advising the Commission on agency policies and enforcement matters.

Ms. Gilbride is an accomplished litigator with nearly 15 years of experience advocating for the right of everyday people to enjoy equal opportunity under the law. She has represented workers from all walks of life, including restaurant,² slaughterhouse,³ and warehouse⁴ workers and has successfully litigated cases at every level of the Federal judiciary from Federal district and appellate courts throughout the country, to the U.S. Supreme Court. Ms. Gilbride's litigation background, including her experience representing clients before a diverse set of judges based throughout the country, would strengthen the EEOC's enforcement efforts, ensuring that litigation is strategic, complements other enforcement tools, and addresses systemic or egregious violations of the law.

Throughout her career, Ms. Gilbride has focused on ensuring that all individuals are able to enforce their legal rights, including under our antidiscrimination and employment laws. For example, as senior attorney and co-director of the Access to Justice Project at Public Justice, Ms. Gilbride has successfully challenged mandatory, pre-dispute arbitration agreements that prevent workers and others alleging unlawful behavior from seeking their day in court. Companies commonly force workers and consumers to agree to resolve disputes in arbitration as a condition of obtaining a job or purchasing a good or service.

These agreements are usually buried in fine print; many individuals have no idea they have waived their ability to enforce their rights in court and must instead engage in a secret process controlled by a private arbitrator often chosen and paid for by the company. In 2022, Congress banned enforcement of mandatory pre-dispute arbitration agreements in cases involving sexual assault or harassment;⁵ however, these agreements may still be used to force individuals to waive their ability to fully

¹ The Commission and the General Counsel, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <https://www.eeoc.gov/commission> (last visited Sept 6, 2022).

² *Howard v. Clyde's Restaurant Group, Inc.*, 1:11-CV-00687 (E.D. Va. 2012).

³ *Rural Community Workers Alliance v. Smithfield Foods, Inc.*, PUBLIC JUSTICE, <https://food.publicjustice.net/case/rcwa-jane-doe-v-smithfield/> (last visited Sept 6, 2022).

⁴ *Palmer v. Amazon*, PUBLIC JUSTICE, <https://www.publicjustice.net/case—brief/palmer-v-amazon/> (last visited Sept 6, 2022).

⁵ Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, Pub. L. No. 117-90, 136 Stat. 26.

enforce their rights to be free from other forms of unlawful harassment, discrimination, and abuse.

In May 2022, Ms. Gilbride argued and secured a unanimous decision at the U.S. Supreme Court clarifying that Federal courts must treat arbitration agreements like any other contract and may not create rules to favor arbitration over litigation.⁶ In that case, an hourly employee of a Taco Bell franchise filed a collective action in Federal court against her employer alleging violations under the Fair Labor Standards Act for failure to pay overtime wages.

The employer engaged in the litigation for nearly 8 months before attempting to force the employee into binding, confidential arbitration. The employee opposed, arguing that the employer had waived its right to arbitration by litigating the case for more than half a year. The Eighth Circuit, following a court-created, arbitration-specific rule, sided with the employer, finding that the fast-food franchise owner had not waived its right to arbitrate because the employee had not been prejudiced, or unfairly harmed, by the litigation. In an important ruling for workers and consumers, the Supreme Court reversed the Eighth Circuit, holding that the Federal Arbitration Act “does not authorize Federal courts to invent special, arbitration-prefering procedural rules,”⁷ like the one used against the fast-food worker in this case, and sent the case back to the lower court to determine anew whether the employer had knowingly waived or forfeited its right to arbitration.

Ms. Gilbride has also demonstrated a commitment to ensuring that workers are treated fairly at workplaces free from unlawful discrimination. For example, before joining Public Justice, while an associate at Mehri & Skalet, Ms. Gilbride was part of the team representing over 500 women who worked for the Federal Bureau of Prisons facility in Coleman, Florida. The women alleged that their employer failed to protect them from repeated, ongoing sexual harassment and misconduct by prison inmates. The case ultimately settled and resulted in changes to the prison’s policies and practices to improve working conditions at the facility.⁸

In addition, Ms. Gilbride has sought to ensure that people with disabilities have access to reasonable accommodations necessary for equal opportunity. For example, while an attorney at Disability Rights Advocates, Ms. Gilbride helped secure a victory at the U.S. Court of Appeals for the Ninth Circuit granting a blind law school graduate the right to use assistive screen reading software—the same software Ms. Gilbride, who is blind, uses to perform her job—to take professional licensing exams.⁹

Ms. Gilbride’s extensive litigation experience, coupled with her commitment to ensuring that all people have access to opportunity and the ability to enforce their rights, make her well-qualified to serve EEOC General Counsel. She is also a graduate of Swarthmore College and Georgetown University Law Center and began her legal career as a clerk to Judge Ronald M. Gould of the U.S. Court of Appeals for the Ninth Circuit.¹⁰

We offer our strong support of Karla Gilbride to serve as EEOC General Counsel and urge you to approve her nomination. Please contact Gaylynn Burroughs, Director of Workplace Equality at the National Women’s Law Center (gburroughs@nwlc.org) or Michelle McGrain, Director of congressional Relations for Economic Justice at the National Partnership for Women & Families (mmcgrain@nationalpartnership.org) with any questions.

Sincerely,

NATIONAL WOMEN’S LAW CENTER,
National Partnership for Women & Families.

⁶ Morgan v. Sundance, 142 S. Ct. 1708 (2022).

⁷ Id. at 1712.

⁸ Federal Bureau of Prisons Coleman Facility Sexual Harassment, MEHRI & SKLAET PLLC, <https://findjustice.com/cases/coleman-sexual-harassment/> (last visited Sept. 2, 2022).

⁹ Enyart v. National Conference of Bar Examiners, Inc., 630 F.3d 1153 (9th Cir. 2011).

¹⁰ Staff, Karla Gilbride, PUBLIC JUSTICE, <https://www.publicjustice.net/team/karla-gilbride/> (last visited Sept 6, 2022).

METRO WASHINGTON ASSOCIATION OF
BLIND ATHLETES (MWABA),
September 9, 2022.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

The Board of the Metro Washington Association of Blind Athletes (MWABA) is honored to add its recommendation of Karla Gilbride for General Counsel of the EEOC. Ms. Gilbride co-founded MWABA in 2015 as a 501(c)(3) nonprofit organization dedicated to creating sports and recreational opportunities for blind and low vision children and adults across the DC metropolitan area.

She has served on the organization's Board since its inception beginning as President. She currently serves as Treasurer. In this capacity, Ms. Gilbride has demonstrated exceptional leadership, a commitment to serving her community, and has mentored dozens of blind and low-vision people who participate in MWABA's activities. She is willing to listen, build consensus, and manage multiple priorities with grace and skill. This is why we believe she will be a thoughtful and effective EEOC General Counsel.

The Americans with Disabilities Act ensures that disabled people have equal access to recreational opportunities, which are critical both for individual well-being and for ensuring the inclusion of disabled people in our social and cultural fabric. However, people with disabilities continue to experience barriers such as lack of access to adaptive equipment and other accommodations that are essential to meaningful enjoyment of sports, recreation, and the outdoors.

Ms. Gilbride observed these gaps, which led her to co-found MWABA. Upon its formation, the group established the first-ever DC goalball team. Goalball is a blind sport developed for blind veterans following World War II. Ms. Gilbride then collaborated with Board members to establish a tandem cycling program, partnering with the Washington Metropolitan Area Transit Authority to install tandem bicycle lockers at metro stations to store donated tandems, and recruiting and training volunteers to serve as tandem captains for blind cyclists. Under Ms. Gilbride's leadership, MWABA went on to establish adaptive yoga, hiking, and beep kickball programs, and has partnered with DC's Bell Program and Virginia's Project Rise program to organize recreational opportunities for blind youth across the region.

There are three hallmarks of Ms. Gilbride's leadership that we believe will serve as tremendous assets in her future role at the EEOC—her ability to listen and build consensus, her exceptional management skills, and her commitment to equity. As MWABA's founding board member, Ms. Gilbride built a strong leadership structure for the organization, bringing in diverse voices and adeptly channeling the talents and perspectives of each Board member.

She always listens to others and encourages debate that fosters democratic decision-making. She is a collaborative leader with good judgment. She has also managed hundreds of blind athletes and volunteers, coordinating events large and small, from a weeknight tandem ride to a regional goalball tournament involving nearly 200 participants. All the while, Ms. Gilbride has created a welcoming environment for athletes of all skill levels and ensured that the needs of all participants are met, while also balancing the well-being of the group as a whole. Finally, Ms. Gilbride is passionately committed to equity, ensuring that all MWABA members have an equal opportunity to participate in recreational activities, regardless of their background.

In short, Ms. Gilbride possesses the sound judgment, commitment to equal opportunity, and outstanding management skills necessary to become an exemplary General Counsel. We sincerely hope that you and the Senate will confirm her.

Respectfully,

THE MWABA BOARD,
Mwaba.inc@gmail.com.
 LORI PIERCE,
President.
 KURT SLOOP,
Vice-President.
 QUDSIYA NAQUL,
Secretary.
 TAJUAN FARMER,
Board Member.
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Board Member.

AFL-CIO.

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

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

I am writing on behalf of the AFL-CIO to urge swift confirmation of Jessica Looman to serve as Administrator of the Department of Labor's Wage and Hour Division (WHD), Moshe Marvit to serve as a Member of the Federal Mine Safety and Health Review Commission, and Karla Gilbride to serve as General Counsel of the Equal Employment Opportunity Commission (EEOC). Each nominee will fill a pivotal role in protecting workers across the country while ensuring our worker protection laws are effective and enforced.

Jessica Looman possesses the requisite skills and experience to lead the Wage and Hour Division. She has built a stellar professional career and is exceptionally well-prepared for service. In both private practice and as a public servant for significant portions of her career, Ms. Looman has demonstrated a deep knowledge of the law and efficient government enforcement mechanisms. Most recently, since January 2021, Ms. Looman has been both the Wage and Hour Division's principal deputy administrator and acting administrator. Looman has also served as a Building Trades attorney in Minnesota and as Commissioner of the Minnesota Department of Commerce.

Moshe Marvit is a distinguished labor law expert with a commitment to worker rights and safety. Mr. Marvit's expertise and professionalism while serving as a Supervisory Attorney Advisor with the Federal Mine Safety and Health Review Commission (FMSHRC) for the past decade illustrates his ability to hit the ground running if confirmed, fully prepared to fulfill his duties on day one. Mr. Marvit's legal background, along with his understanding of worker issues under the Federal Mine Safety and Health Act, will aid him in his review of decisions as a Commissioner.

Karla Gilbride is a distinguished litigator who has devoted her entire career to advocating for workers in employment and consumer rights. She has almost 15 years of experience advocating for equal opportunity under the law for workers in a variety of industries, appearing at all levels of the Federal judiciary. Her current position as senior attorney and co-director of the Access to Justice Project at Public Justice has included successful challenges of unfair mandatory, pre-dispute arbitration agreements that preclude workers and others from seeking their day in court. She has been involved in a variety of matters involving the multiple statutes enforced by the EEOC including disability discrimination and sexual harassment

claims. Given her extensive experience and commitment to civil rights for all, she is eminently qualified to serve as General Counsel at the EEOC.

The AFL-CIO urges the Senate to confirm the nominations of Jessica Looman, Moshe Marvit, and Karla Gilbride so that these critical agencies can continue to fulfill their important roles in enforcing a broad array of rights and protections for American workers.

Sincerely,

WILLIAM SAMUEL,
Director, Government Affairs.

[Whereupon, at 11:15 a.m., the hearing was adjourned.]

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