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September 22, 2009

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Honorable Tom Harkin, Chairman
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428 Dirksen Senate Office Building
Washington, DC 20510

Chairman Harkin:

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

Commissioner Smith's thirty year record of accomplishment proves that she is uniquely qualified to serve and has the experience and expertise to serve as Solicitor of Labor. Beyond her exemplary work as Commissioner, she has served both in the New York State Office of the Attorney General as the Assistant Attorney General in charge of the Labor Bureau and as the Deputy Bureau Chief and Section Chief of the Labor Bureau. In these positions, she conducted and oversaw labor law litigation in both state and federal courts. Under both Democratic and Republican Attorney Generals, she effectively brought together management, unions, employers and employees, to solve disputes and ensure the effective and fair application of labor and employment laws.

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

Moreover, she successfully argued two Employment Retirement Income

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

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

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

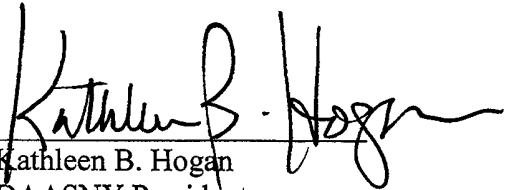
Commissioner Smith overhauled wage and hour enforcement at the Department by strategically targeting enforcement to either low-wage industries such as apparel, grocery stores, car washes and race courses, or to poor neighborhoods, each time bringing national attention to the plight of workers. In 2008,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

Commissioner Smith spearheaded the first-of-its kind Joint Enforcement Task Force on Worker Misclassification that brought together various state and federal agencies to focus on misclassification of workers as independent contractors and off-the-book work, which result in tax violations, workers' compensation fraud, and unreported wages and unemployment taxes. To date, the Task Force has identified over 25,100 instances of employee misclassification and over \$292 million in unreported wages. Many of these investigations uncovered criminal violations, and the Office of Special Investigations worked with District Attorneys throughout the state to ensure that corrupt business practices were prosecuted. Three of these cases resulted in criminal convictions. Several more are currently under investigation by prosecutors. Many states are now following New York's lead and creating task forces to tackle this national problem.

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


Kathleen B. Hogan
DAASNY President

cc://

Hon. Mike Enzi, Ranking Member, U.S. Senate HELP Committee,
Senator Dodd,
Senator Barbara Mikulski,
Senator Jeff Bingham,
Senator Patty Murray,
Senator Jack Reed,
Senator Bernie Sanders,
Senator Sherrod Brown,
Senator Robert P. Casey, Jr.,
Senator Kay R. Hagen,
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Senator Al Franken,
Senator Judd Gregg,
Senator Lamar Alexander,
Senator Richard Burr,
Senator Johnny Isakson,
Senator John McCain,
Senator Orrin Hatch,
Senator Lisa Murkowski,
Senator Tom Coburn,
Senator Pat Roberts,
Mr. Phil Schiliro, Director of White House Legislative Affairs,
Mr. Patrick Gaspard, Director of Political Affairs.

KBH/mjdIII