

**STATEMENT OF P. DAVID LOPEZ
NOMINEE FOR GENERAL COUNSEL, EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

**BEFORE THE
COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS
U.S. SENATE**

NOVEMBER 19, 2009

Thank you, Chairman Harkin, Senator Enzi, and members of the Committee. It is an honor to appear before you today as you consider my nomination to be the General Counsel of the U.S. Equal Employment Opportunity Commission.

I am here alone in body, but my heart is more than 3,000 miles away in Phoenix, in the American Southwest. That's home to my life partner and wife for nineteen years and my cornerstone, Maria Leyva. We have been blessed with three rambunctious, opinionated boys: Javier 14, Julian Diego 11, and Luis Andres, who is nine. All three attend St. Gregory's School in Central Phoenix.

I am the second of four children. My parents, Ernesto and Faith Lopez, are both from families that go back several hundred years and many generations in Northern New Mexico. My father is a retired 8th grade teacher; my mother, who is also retired, owned a small shoe store. When I was growing up, I witnessed both my parents, guided by their faith, demonstrate the importance of service to the poor and disenfranchised. My parents worked with Cesar Chavez and the migrant farm worker community and instilled in us the awareness that we had obligations to society greater than ourselves.

When I was 14, my parents divorced and my mother, two brothers and I moved from Tucson to Woodburn, Oregon, a small farming community. My mother worked full-time and I had significant obligations for my younger brothers. When I was sixteen I left high school, one of several schools I had attended in Oregon's Willamette Valley, and got a job as a dishwasher. I was a bit bored, but had every intention of continuing my education. I washed dishes, I listened to music, but most of all, I read. I read everything I could put my hands on.

Soon after dropping out of school, I started taking classes at a local community college and, when I was 17, I returned to Arizona and enrolled at Arizona State University to pursue a degree in political science. I worked though college. When I graduated, I was admitted to Harvard Law School and, at the age of 21, I went back East, for the first time, without a jacket or galoshes, a child of the Southwest in the New England snow. My plan was to return to Phoenix and practice civil rights law.

Then I met Maria, Boston born and raised, and I deferred my plans of returning home. I began my career with Spiegel and McDiarmid, a mid-sized Washington, D.C.

law firm. I practiced energy law and anti-trust law. I loved the firm but when they permitted me to take an employment discrimination case pro bono, I was reminded of my calling. In response, I moved to the Department of Justice Civil Rights Division, Employment Litigation Section, where I had the opportunity to practice law on behalf of the United States in federal courts all over the country.

In 1994, I received a call from Gilbert Casellas, who had just been sworn in as the Chairman of the EEOC. He was looking for an attorney advisor. I interviewed and eagerly accepted his job offer. This was a very exciting time at the Commission; a true renaissance in ideas and activity. During this period, Chairman Casellas and the other commissioners brought dramatic change and efficiency to the agency. Under Chairman Casellas's leadership, the EEOC streamlined the charge processing system, developed a strategic approach to litigation and enforcement, and developed a fabulous and innovative mediation program. The Commission started again to think in earnest about the model of a national law firm.

When Chairman Casellas resigned, I returned to Phoenix to work as an EEOC trial attorney, and, after thirteen years on the East coast, realized my dream of practicing civil rights law in my hometown. As my wife and children will tell you: It has been challenging and rewarding.

During these past 11 years in the EEOC Phoenix legal unit, much of it under the wonderful leadership of Regional Attorney Mary Jo O'Neill, I have been reminded every day that discrimination is something that can disrupt lives and can happen to anyone. It has been a profound privilege to advocate for several individuals who have had the courage stand up for themselves in the face discrimination. It is for these heroes that I go to work every day. Let me tell you about a few of my heroes:

One hero is Chad Farr, a remarkable young man who lives in Cottonwood, Arizona. At the age of nine, Chad was diagnosed with retinitis pigmentosa. This permanent and degenerative condition caused severe tunnel vision, akin to looking at the world through a straw. Chad was ambitious and worked twice as hard as everyone else. When he asked for an accommodation to bring his service animal, Harley, with him to work as a customer service representative at a local AutoZone store, he was given the runaround for more than a year and effectively terminated. As a result of our suit, AutoZone altered its accommodation policies and agreed to pay Chad damages. Chad used this award to start his own small trucking business, which is thriving.

Another one of my heroes is Paul Franks, a 40-year-old African-American, who worked in an electronics warehouse. Soon after he was hired, a co-worker referred to him as "boy" and asked whether he could call him "n" word. Mr. Franks said, "No. Please call me 'Paul.'" When he complained to his boss about the comments, he was fired for being a "troublemaker." After losing his job, he suffered enormous hardship and ended up living in his car. We resolved the case with a consent decree and damages. This case reminds us of the need to remain forever vigilant in preventing and prosecuting race

discrimination, which is the foundation of the federal anti-discrimination laws that protect us all.

Eight of my other heroes are people whose names I do not know, the members of a jury in Arizona, who, in June 2008, acting as the conscience of the community, stood up against religious intolerance and bigotry, and rendered a verdict, including punitive damages, to Bilan Nur. Bilan came to this country as a refugee from war-torn Somalia. Bilan had an American dream. She learned English and attended college. Bilan found a job with Alamo Rental Car as a sales agent. She asked her boss for the simple accommodation of being permitted to keep her head covered in observation of Ramadan. She was permitted to do so in 2000, but, when she attempted to do so in November 2001, right after September 11, she was fired and told “her religion would understand the need to remove her scarf to keep her job.” The heroes on the jury reminded us of the best principles for which our nation stands.

The final hero I will mention is Stacey Wing, a young woman with dreams of earning a paralegal license, who found herself down on her luck. She found work at an auto retailer because it was on her bus route. Immediately, her boss subjected her to the most repulsive and violative sexual harassment imaginable. When she complained to her company, her pleas for help were ignored for several months until a security camera caught her boss subjecting her to one of these acts. Last June, an Arizona jury listened to her, found the company liable for sexual harassment, and imposed damages, including punitive damages. The Court recently required additional injunctive relief, as well.

Senators, I am honored and humbled by President Obama’s nomination of me to be General Counsel of the EEOC. It is an honor for me and my family but it is also an affirmation of support for the EEOC staff, in the field fighting every day, often with meager resources, to vindicate civil rights and preserve the promise of this great country. Out in the trenches, in federal courts throughout this country, hundreds of committed lawyers and support staff fight every day for workers to be assessed on their individual merit and not on the basis of outdated and ugly stereotypes.

Among these public servants, special acknowledgement should be made to Jim Lee, Acting General Counsel, as well as Ron Cooper and Eric Dreiband, the two previous EEOC General Counsels. All three of these gentlemen have worked hard to implement the model of a national law firm and to effectively enforce civil rights, often on a tight budget. They have also demanded the highest standards of professionalism from the EEOC staff.

If confirmed as General Counsel, I will build on the efforts by these gentlemen to create a national law firm that is able to effectively and efficiently muster its resources to combat discrimination and ensure equal opportunity throughout this nation.

First, we must continue to build our infrastructure and eliminate the often mundane but practical impediments to effective law enforcement. This includes ensuring

adequate support staff for the field. It also includes implementing advances in technology to increase the EEOC's ability to maximize its effectiveness on a limited budget.

Second, given the budget realities, the EEOC's litigation program should make every effort to operate efficiently and as an integrated team. We must nurture a culture of collaboration within the agency. We need to cross-pollinate ideas and strategies among districts and between headquarters and the field so we can operate not as individual offices, but as an integrated team. We have considerable expertise within the agency, and we need to ensure that a person with particular expertise is able to share it with colleagues.

Third, again given the budget realities, the EEOC litigation program should operate strategically. We need to identify emerging areas of the law, such as the coverage of people with diabetes or epilepsy under the recently enacted ADA amendments, and develop small work groups to prosecute these cases strategically. A component of a strategic litigation program involves the continued development of our systemic litigation program. In 2005, Chair Dominguez established a Systemic Task Force under the leadership of Commissioner Leslie Silverman. This task force made several recommendations to further the creation of an effective program to attack systemic discrimination. Many of these recommendations have been implemented. Still, the EEOC must continue its efforts to create a culture of collaboration to support these systemic cases. Again, we need to make sure that EEOC resources and expertise are shared, so we can replicate the effective systemic enforcement of certain districts throughout the agency.

Senators, we all benefit from a strong and effective EEOC. Let me close by reading a letter I received from an eighth-grade girl, Stephanie, who I met during a career day at Isaac Middle School in West Phoenix. I have posted Stephanie's letter in my office to remind me every day why I practice law:

Dear Mr. David Lopez,

Thank you for giving up your time to come and talk to us. I liked it when you told us about the girl and the manager touching them because when I start to work in the summer I want to be aware of what might happen to me. When I asked you if lawyers were devils, it was only cause when I was little and wanted to be a lawyer, my mom said lawyers were devils and God was going to get them but I don't believe in that anymore.

Thank you for your time. I look forward to any questions that you may have.