

**STATEMENT OF M. PATRICIA SMITH
NOMINEE FOR SOLICITOR OF DEPARTMENT OF LABOR**

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

U.S. SENATE

MAY 7, 2009

Thank You Madam Chair, Senator Enzi and distinguished members of the Committee. It is an honor to appear before you today as you consider my nomination to be Solicitor of Labor. I want to thank President Barack H. Obama for nominating me and Secretary Hilda L. Solis for the confidence she has shown in me by recommending me for the position. I also want to thank my family members, especially my parents, and friends who are here supporting me today. If confirmed, I look forward to serving the American people and assisting the Department of Labor in improving opportunities for America's working families.

I have spent my entire career in public service. Upon graduation from law school I spent ten years at federally funded legal services programs, in Connecticut and Indiana, representing low wage individuals primarily in employment and job training related areas. I then spent twenty years in the Labor Bureau of the New York Attorney General's Office, serving at the pleasure of both Democratic and Republican Attorneys General and representing Commissioners of Labor appointed by both Democratic and Republican Governors. I served first as a supervisor, then as the Deputy Bureau Chief and finally as Bureau Chief managing a staff of approximately thirty attorneys.

At the Attorney General's Office I represented the New York State Department of Labor in litigation primarily involving New York's little Davis Bacon Act, Fair Labor Standards Act, Public Health and Safety Act, its Unemployment Insurance Law, and Apprenticeship Training Program. I defended the Worker's Compensation Board in appeals from its decisions. I represented Governor Pataki and the Health Department in matters involving ERISA preemption before the United States Supreme Court.

During the eight years that I served as Chief of the Labor Bureau I represented the People of the State of New York, opening investigations and bringing cases involving low wage workers. These cases involved delivery workers, wait staff, kitchen staff, retail clerks, street vendors and bathroom attendants. Some of these employees worked long hours with no overtime, others worked at wages far below the minimum wage, others worked only for tips, and still others were not even allowed to keep all their tips. The New York Labor Bureau also prosecuted contractors who were stealing taxpayer dollars on public construction projects by falsely claiming to have paid workers the prevailing wage. We also worked with returning veterans, making sure they received all the benefits they were entitled to under New York Law.

I took these cases, involving some of New York's most vulnerable workers, because I believe that government must assist those who are least able to assist themselves. I also took these cases to assist law abiding employers who are at an economic disadvantage when their competitors do not comply with minimum labor standards. Over the years, I have had employers ask me to investigate their industry for exactly that reason. Recognizing that not all employers are aware of their obligations under the law, all major enforcement initiatives were paired with offers of compliance training. And, believing that enforcement of the labor laws should result in better jobs, not fewer jobs, I worked with employers who did owe money to their employees to enter into fair and reasonable payment plans so that both they and their employees could thrive going forward.

I believe that getting employers into compliance is the main goal of labor law enforcement. I worked with employer groups and worker groups to create an innovative "Code of Conduct" in New York's Greengrocer industry where we had seen a zero compliance rate with the minimum wage law. Employers who signed onto the Code agreed to come into immediate compliance with the law and have their compliance monitored by third parties. In turn, the Attorney General's office agreed that so long as the employer was in compliance, it would not investigate claims of prior wage underpayments. Over 200 greengrocers signed onto the code, and after two years the compliance rate was over 98 percent.

For the last two and a half years I have had the privilege of serving as New York's Commissioner of Labor. In that capacity, I have managed a staff of nearly 4,000 employees and a budget of \$11 billion. I brought my philosophy of proactive enforcement balanced with compliance assistance to this position. For example, we took proactive enforcement actions in the car wash industry where we found a non compliance rate of 45 percent statewide and 78 percent in New York City. In the race track industry, we found a noncompliance rate of 52 percent. In each case we followed up with an invitation to each car wash and each horse trainer in the state to come to training sessions around the state, tailored to their industry. I am pleased to say that over 50 percent of those employers took us up on that offer. I directed staff to change their practice and focus their routine compliance assistance efforts on small businesses, because I understand that they often don't have the use of a Human Resources manager to assist them in navigating their legal obligations. As the head of the Misclassified Workers task force, the first one of its kind in the country, I worked with other state agencies to address the problems of employee workers misclassification as independent contractors or working off the books and identified over \$157 million in unreported payroll to over 12,000 workers.

Along with my philosophy of proactive enforcement, as Labor Commissioner I also worked creatively to help find ways to train, retain and attract a skilled workforce that meets the needs of New York's employers. I initiated this effort by establishing a new Division in the Department, the Division of Employment and Workforce Solutions, that brought together the formerly separate Wagner-Peyser funded and Workforce

Investment Act-funded staff. This merged and streamlined Division enabled us to better align our workforce development efforts with our business outreach activities. As a result, our menu of business services was enhanced, including providing technical assistance in new areas such as layoff aversion, and expanding existing areas such as targeted recruitment for individual businesses.

This first involved reshaping how traditional job fairs work and replacing them with career exploration job fairs that offer training and real job opportunities. I also directed my business services staff throughout the state to aggressively promote vital services and resources such as labor market and talent pool information to emerging businesses. This critical information, along with information on grants and tax credits and no-cost department services such as human resources and on-site Occupational Safety and Health Administration (OSHA) consultation programs, became vital to new and small business.

Our ongoing communication with the business community helped us to better respond to the workforce needs of existing and emerging firms across the state. We accomplished this by refocusing our WIA-funded programs on strategic industry clusters in each region of the state and by requiring the local Workforce Investment Boards (WIBs) to enter into regional partnerships in order to access certain grant funds. We also applied this strategic concept to our WIA-funded incumbent worker training program, by giving priority to training that meets each region's growth strategy. Lastly, since the onset of the economic crisis and the need to help New York's employers, I aggressively promoted the Shared Work program which averts layoffs by reducing the hours of workers while also allowing them to collect unemployment benefits. The promotion of this program resulted in over 890 companies signing up since January of this year and thus saving over 15,000 jobs. It also prompted Scott Hollander, Vice President of Latham International, to say "the Shared Work Program has helped us to save millions of dollars by avoiding the costs that often arise with turnover, hiring and lost productivity and it keeps people on the payroll and working." All of these programs became especially important as businesses struggle to remain competitive and weather the economic storm.

With this wide range of improvement to the services the Department provides employers, I also worked on increasing our efforts to detect and prosecute Unemployment Insurance claimant fraud, in an effort to make sure employers are not paying unnecessarily higher tax taxes. Since early 2008, this enforcement effort resulted in over \$17 million returned to the unemployment insurance trust fund.

I am proud of my record thus far as Commissioner of Labor for New York and if confirmed, I will bring this experience working with both the employer and worker communities to the Solicitor's Office at the Department of Labor. The work of the Solicitor's Office is critical to the Department's mission. The various divisions and agencies within the Department cannot, by themselves, secure full compliance with the many important laws the Department is charged with enforcing. They must have the full backing and cooperation of the attorneys in the Solicitor's office to prosecute violators. The work of the Solicitor's office touches every area of the Department of Labor. While

I am not knowledgeable in all the areas of law that the Department enforces, I believe that my combined experience as Commissioner of Labor and as an Assistant Attorney General has prepared me well to serve as Solicitor of Labor. I look forward to returning to being a full time attorney.

If confirmed, I will do my best to support the President's and Secretary Solis's agenda. As always, resources allocated to the mission of the Department are an issue. Therefore we must work harder and smarter with the resources we do have. If confirmed as Solicitor, I intend to work much more closely with the client agencies, Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA), the Wage and Hour Division, Office of Federal Contract Compliance Programs (OFCCP), and the Employment and Training Administration (ETA), just to name a few, to assure that the resources given to the Department are leveraged to their most efficient and strategic use.

My experience in the last two and a half years as head of the Misclassified Workers Task Force and as Co-Chair of the Governors Economic Security Sub Cabinet has taught me that when executive agencies work together on common goals, results are accomplished with fewer resources. I hope to work with other executive agencies, including the Treasury Department on misclassified worker issues and all the agencies that have a role in enforcing the Davis Bacon Act and the Services Contract Act.

Finally, during my tenure as Commissioner of Labor I maintained very good working relations with members of the New York legislature on both sides of the aisle. The Workers' Compensation Reform Bill of 2007, which I helped negotiate, was praised by both business and labor and passed with broad bipartisan support. Last year the legislature passed a State WARN Act, again with broad bipartisan support. If confirmed, I will endeavor to have a similar cooperative and productive relationship all stakeholders impacted by the Solicitor's Office and with the members of this Committee.