

## **STATEMENT OF CHAIRMAN TOM HARKIN (D-IA) AT HELP COMMITTEE EXECUTIVE SESSION ON PENDING NOMINEES**

*\*As Prepared for Delivery\**

WASHINGTON, D.C. – Chairman Tom Harkin (D-IA) today delivered the following opening remarks at the Senate Health, Education, Labor and Pension (HELP) Committee’s Executive Session on pending nominations. The Committee met to consider the nominations of M. Patricia Smith, of New York, to be Solicitor at the U.S. Department of Labor; Joseph Albert Main, of Virginia, to be Assistant Secretary of Labor for Mine Safety and Health; William Edward Spriggs, of Virginia, to be Assistant Secretary for Policy, Department of Labor; and Dr. Regina Benjamin, of Alabama, to be Surgeon General. Following are the text of his remarks, as prepared for delivery.

“Good morning and thank you all for being here for today’s session; we are taking up a number of important nominations and so I thank everyone for making the effort to be here during a very busy day.

“Today we are discussing the nominees for several important posts at the Department of Labor, including one – Patricia Smith, for Solicitor of Labor – who has been pending before this Committee since April. The Solicitor of Labor is vital to the enforcement of our labor laws. She plays a key role in ensuring that our workers are treated fairly, and that our working families have security for the future. The Department of Labor cannot perform its mission effectively without a strong Solicitor in place.

“Patricia Smith is an impressive attorney with a detailed knowledge of our labor laws and a deep commitment to improving the lives of working families. She spent two decades working on labor issues in the New York Attorney General’s office, where she developed a new, innovative approach to protecting workers. Her strategy – which involved targeting problem industries and increasing focus on low-wage and immigrant workers – has become a model for other states, and her fair and effective approach to enforcing the law has won her the strong endorsement of the New York State District Attorney’s Association. I would like to include that endorsement letter in the record.

“Since becoming Commissioner of the New York Department of Labor, Commissioner Smith has played an instrumental role in helping New York’s working families weather the current economic storm. She has implemented creative new work-sharing programs to help employers avoid layoffs. She has revamped the state’s unemployment insurance system to help workers

more easily access benefits. And she has created a new program to help low-income workers train for careers in high-demand fields such as green technology, construction, and health care.

“Through these initiatives, Commissioner Smith has demonstrated strong leadership and built a positive working relationship with legislators, worker advocates, and the business community. As the Business Council of New York State wrote in its letter endorsing her confirmation, “Ms. Smith has shown a clear ability to balance her duty as a public official to enforce the law and her obligation as a public official to ensure that the law provides for reasonable application and reasonable solutions. It is those critical skills – listening, interpreting, and balancing – that make Ms. Smith an ideal candidate to service as the United States Department of Labor’s Solicitor.” I’d like to include this letter, along with six other letters of support from business organizations, in the record.

“I know some of my colleagues have raised concerns about Commissioner Smith’s nomination. They’re focused on a program at the New York Department of Labor called Wage and Hour Watch. This small pilot project allowed the Department to partner with workers’ advocates and community groups to educate workers about their rights.

“Now that sounds like a pretty good idea to me. I think there are far too many violations of our labor laws, and that the more education we can have about workers’ rights, the better. Some of my Republican colleagues do not agree with New York’s approach, and that’s certainly an issue we can debate. But beyond these policy concerns, my colleagues have also suggested that Commissioner Smith’s statements about this program raise questions about her integrity and her managerial skills. Some have gone so far as to suggest that she is not qualified for the position, or that she has not been truthful with this Committee.

“These are very serious accusations to raise against a dedicated public servant. I have investigated these matters thoroughly, and spoken extensively with Commissioner Smith, and I can say with great confidence that these concerns are misplaced.

“It is true that Commissioner Smith misspoke on two occasions at her hearing. First, she said she hadn’t had any conversations about expanding the Wage and Hour Watch Program. Commissioner Smith has since clearly and repeatedly explained that she intended to say that she hadn’t authorized the expansion. She clarified her response on this issue to the Committee in writing, saying: “At the time of my confirmation hearing I had no discussions about a potential expansion of Wage and Hour Watch with anyone, other than generally indicating that if it were proved successful, my goal would be to expand it to other areas of New York State. At that time, I had not authorized my staff to proceed with a statewide expansion of the program . . . .”

“Commissioner Smith’s misstatement was certainly a regrettable error, but it wasn’t an attempt to hide anything from the Committee. Commissioner Smith had said publicly on many occasions that she hoped to expand the program if it was successful. She has made no secret of that fact. Indeed, there would be absolutely no reason for her to conceal it, because there is nothing wrong with wanting to expand a successful program. That’s the whole theory behind a pilot project – if it works, you expand it. There is simply no wrongdoing here, and certainly nothing that would disqualify her from public office.

“Second, Commissioner Smith testified at her hearing that the idea for the Wage and Hour Watch program came from within the New York Department of Labor. That testimony was correct, to the best of her knowledge, at the time. She later learned that one of her Deputies consulted with an outside group in the early stages of the program. Commissioner Smith was not aware of this fact at the time of her testimony, and subsequently corrected her testimony, after she learned of the prior communications by her staff.

“Moreover, as Commissioner Smith later explained in response to written questions from Chairman Kennedy, any such communications with outside groups played no role in her decision to approve the program. She said: “[E]ven if I had knowledge that someone outside the Department had been involved, that would not have influenced, in a positive or negative way, my consideration of the program. I was judging the advisability of such a program on its merits alone.”

“Commissioner Smith’s explanations are completely consistent with the documents produced to this Committee. In my view that should be the end of it. After all, there is nothing wrong with involving outside partners in the development of a government program. It’s often a good way to ensure success.

“But my Republican colleagues have argued that Commissioner Smith’s misstatement is nevertheless a problem because it was based on misinformation from her staff, and it thus reflects on Commissioner Smith’s ability to manage a large organization.

“Again, I just don’t agree. As busy public officials, we all have to delegate details to our staffs. Commissioner Smith runs an \$11 billion agency with close to 4,000 staff members. It was perfectly appropriate for her to delegate the management of this small, \$6,000 pilot project to her staff, and focus her attention on navigating New York’s workforce through an unprecedented economic crisis. Her lack of firsthand knowledge of every conversation related to a small pilot program in no way reflects on her abilities as a leader.

“It seems to me that critics’ real concern is that this is an innovative approach to enforcing the law. Historically, it has been very difficult to protect the rights of workers in low-wage industries because they are vulnerable to abuse and often afraid to approach the government for help. Calling on community groups to play a role reaching out and bridging this gap is an important idea that merits further consideration.

“It’s important to understand how this pilot project worked in practice. Participants did not have any special authority or any enforcement power. They could not come onto private property without permission, or interfere with business operations. These were ordinary citizens who volunteered to distribute flyers, sit at information booths, and educate workers about their rights under the law. This program was not radical in any way – it was simply a way to ensure that hardworking people are not unknowingly victimized, and Commissioner Smith should be given real credit for giving it a try.

“I have met Commissioner Smith, and I have found her to be a person of character and integrity. I am confident that she will be a tremendous asset to the Department of Labor and I urge my colleagues to support her nomination.

“We are also considering two other vital nominations at the Department of Labor – Mr. Joseph Main, to lead the Mine Safety and Health Administration, and Professor William Spriggs for Assistant Secretary for Policy. Both are well qualified for their positions, and both have bipartisan support.

“We’re particularly eager to see someone confirmed at MSHA. In recent years, mine safety has been a very important part of this Committee’s work—Senator Kennedy and Senator Enzi, as well as Senators Murray, Isakson, and Hatch, have all worked closely together on this issue. I hope that we can continue to have an open dialogue, both in our Committee and with the Department of Labor, to ensure that America’s miners receive better protection on the job.

“Finally, we are also going to vote on the nomination of Dr. Regina Benjamin for Surgeon General. Dr. Benjamin has been a trailblazer in the medical field for over two decades. She has devoted her career to ensuring that Americans receive the best possible health care, regardless of their financial situation. Dr. Benjamin also understands the importance of prevention and the importance of preventing chronic diseases and conditions that more than half of Americans suffer from and the public health challenges that this nation faces. With the health reform legislation putting a sharp new emphasis on prevention and public health, we could not ask for a more dedicated or committed Surgeon General.

“I hope that all my colleagues will join me in supporting these nominees today.”