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LEGISLATIVE ALERT!

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October 23, 2009

Dear Senator:

More than six months have passed since President Obama nominated New York State Labor Commissioner Patricia M. Smith to be Solicitor of Labor. At a time when workers are bearing the brunt of the economic recession and violations of workplace rights are rampant, the Labor Department needs a Solicitor with Ms. Smith's commitment to strong, fair, and effective enforcement of our workplace laws. The AFL-CIO urges the Senate to move quickly to take up Ms. Smith's nomination and confirm her to this critically important position.

The Solicitor of Labor is the third-ranking official and the top legal officer in the Department of Labor, overseeing a team of more than 400 lawyers nationwide who handle litigation relating to the administration and enforcement of more than 180 workplace laws. The Solicitor plays an important role in helping agencies craft and implement enforcement strategies. The Solicitor is also involved in providing advice and legal guidance on virtually every policy, regulatory and legislative initiative of the Department and its various agencies.

The importance of a Solicitor committed to vigorous enforcement of the law is underscored by the fact that many of the statutes under the Department's jurisdiction, including the Occupational Safety and Health Act, the Mine Safety and Health Act, the child labor provisions of the Fair Labor Standard Act, and the Davis-Bacon Act, do not provide a "private right of action" allowing workers to bring actions on their own behalf. Workers are dependent on the Department of Labor to enforce and vindicate their rights.

By reason of her background and experience, Commissioner Smith is uniquely and ideally suited to take on the responsibilities of Solicitor. Indeed, she may well be the most qualified person ever to be nominated to the position.

A career public servant, Ms. Smith spent 20 years – eight of them as Chief – in the Labor Bureau of the New York State Attorney General's Office. There, she worked under both Democratic and Republican Attorneys General and represented Commissioners of Labor appointed by both Democratic and Republican Governors. An experienced trial and appellate litigator, she represented the state in matters involving its labor standards, workplace safety and health, unemployment insurance, apprentice training and prevailing wage statutes. In 1995 and again in 1997, representing Governor Pataki and the state's Health Department, she argued and won two important cases before the U.S. Supreme Court regarding ERISA preemption of state regulation of health care plans.

In the three years she has served as New York's Commissioner of Labor, Ms. Smith has won a well-deserved national reputation for her innovative and successful efforts to crack down on labor standards violations, unemployment insurance fraud and tax avoidance through misclassification of employees as independent contractors. Managing a staff of nearly 4,000 employees and a budget of \$11 billion, she has targeted industries with high rates of noncompliance with wage and hour laws with a combination of enforcement efforts and compliance assistance, helping workers win more than \$20 million in back pay due from employers. As head of a multiagency task force on Misclassified Workers, she worked with other state agencies to identify over \$157 million in unreported payroll, and her focus on detecting and prosecuting fraud by claimants for unemployment insurance has resulted in over \$17 million being returned to the state's unemployment insurance trust fund.

Ms. Smith has worked creatively to develop new approaches to job training, working with the business community to better respond to the workforce needs of new and existing firms across the state. And she aggressively promoted the Shared Work Program, which averts layoffs by allowing workers to work reduced hours while collecting unemployment benefits—a program that has been credited with saving more than 15,000 jobs in the state.

Ms. Smith's accomplishments have won her the unanimous support of the state's congressional delegation—both Democrats and Republicans—and glowing letters of endorsement from business groups in New York State. The Business Council of New York State says she has “always demonstrated to the business community a willingness to listen, to reflect and to respond” and described her as “thorough, fair and judicious in the use of the tools at her disposal to ensure compliance” with the law. The Plattsburg North County Chamber of Commerce, representing more than 3,250 companies in upstate New York, says it has “enjoyed not only attention and engagement from Patricia Smith but a genuine working partnership.”

Nevertheless, there has been an effort to derail Ms. Smith's nomination on the basis of alleged discrepancies between statements she made at her confirmation hearing and statements made in e-mails written by some employees in the state Labor Department, all relating to a tiny \$6,000 pilot program started earlier this year in parts of New York City and Long Island called Wage Watch. Senator Enzi, who is leading the opposition against her nomination, acknowledged in a letter to President Obama that he has “no reason to believe” that Commissioner Smith intentionally misled the HELP Committee. Rather the alleged discrepancies center on such issues as whether the program – which uses educational efforts to educate workers and community members about wage and hour laws as a way to improve enforcement of the law – should properly have been described as an “educational” or an “enforcement” program, and whether the staff member who proposed the program to Commissioner Smith came up with the idea on her own or got it from talking to union officials.

The suggestion that any of this is at all relevant to Ms. Smith's fitness or qualifications to serve as Solicitor of Labor seems to us to reflect, at best, a lack of understanding and appreciation both of what her current job entails and of the skills and qualities that are needed to take on a job of the magnitude of Solicitor of Labor. In the interests of protecting the workplace rights of the nation's working families, we ask the Senate to reject these unfounded and unwarranted attacks on Patricia Smith, and to promptly confirm this highly-qualified nominee to be Solicitor of Labor.

Sincerely,

A handwritten signature in black ink, appearing to read "William Samuel". The signature is fluid and cursive, with a large initial "W" and a long, sweeping tail.

William Samuel, Director
GOVERNMENT AFFAIRS DEPARTMENT