

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

RANDEL K. JOHNSON  
SENIOR VICE PRESIDENT  
LABOR, IMMIGRATION, &  
EMPLOYEE BENEFITS

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March 10, 2017

Mr. John J. DeStefano  
Assistant to the President and  
Director of Presidential Personnel  
Executive Office of the President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

By electronic transmission: [John.j.destefano@who.eop.gov](mailto:John.j.destefano@who.eop.gov)

Dear John,

On behalf of the U.S. Chamber of Commerce (Chamber), the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region, we write to urge you to fill several important vacancies at two agencies which have a significant impact on the business community, the National Labor Relations Board (NLRB or Board) and the Equal Employment Opportunity Commission (EEOC or Commission). Filling the multiple vacancies which currently exist at these agencies is an important first step in the process of reversing the last eight years of labor and employment policy mistakes.

Recently, the Chamber submitted to the House Education & Workforce Subcommittee a comprehensive study entitled, [\*The Record of the National Labor Relations Board in the Obama Administration: Reversals Ahead?\*](#). The study captures the last eight years of the NLRB's policy overreach in one comprehensive document and serves as a reference point for policymakers seeking to return balance to national labor law. Of course, the quickest and most efficient way to begin undoing the Obama NLRB's radical policy shifts which are documented in *Reversals Ahead* is to nominate two new Board members who will interpret the National Labor Relations Act in a manner that is fair to workers, unions and employers alike. The Board currently has a two-to-one Democrat majority with a Democrat General Counsel, meaning that it can continue to issue decisions that benefit big labor at the expense of employers and workers.

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Accordingly, the quicker the two vacant Board seats are filled, the quicker a newly-constituted Board can embark upon releveling the labor law playing field and creating a climate conducive for economic growth.

There are also two vacancies at the EEOC: one Commissioner position and the General Counsel. Unlike at the Board, nominating an employment law expert to fill the vacant Commissioner slot will not flip the majority at the Commission, as there are currently three Democrat Commissioners and one Republican Commissioner. However, another reasonable Commissioner to work with Acting Chair Lipnic is vital to ensuring that all perspectives of equal employment opportunity issues are heard during the policy debates that occur at the Commission.

The EEOC's General Counsel is in charge of the Commission's litigation enforcement program and oversees the Commission's 15 Regional Attorneys and hundreds of lawyers and legal professionals.<sup>1</sup> The Commission has delegated a significant amount of its litigation authority to the General Counsel, which then further delegated this authority to the Regional Attorneys. This means that the General Counsel and the Regional Attorneys have tremendous freedom in choosing which investigations and legal challenges to pursue, and there are few institutional safeguards at the Commission to make certain it is not wasting resources by pursuing non-meritorious litigation. The Chamber detailed many of these abuses in its 2014 study entitled, [\*A Review of EEOC Enforcement and Litigation Strategy during the Obama Administration—A Misuse of Authority\*](#).

Because the General Counsel wields such significant legal power, it is crucial that President Trump quickly nominate an individual to the position who can wrest back some of the delegated litigation authority, will interpret federal anti-discrimination statutes fairly, will give meaning to the Commission's statutory duty to conciliate prior to filing suit, will not turn investigations into overly broad "fishing expeditions" to try to gin up lawsuits, and will otherwise not initiate meritless litigation. Appointing such an individual to the General Counsel position will return institutional integrity to the Commission's litigation program and ensure evenhanded enforcement of federal anti-discrimination laws.

Lastly, while these personnel decisions are being made, in order to clarify lines of authority, we respectfully request that the status of "Acting" Chairs Vicki Lipnic at the EEOC and Phil Miscimarra of the NLRB be strengthened through elimination of the "acting" designation.

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<sup>1</sup> The duties of the General Counsel are currently being assumed by a career EEOC employee.

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For these reasons, the Chamber urges that you make these appointments to the current vacancies as soon as possible. Thank you for your attention to these matters. We look forward to working with you on these nominations and related issues going forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Randel K. Johnson". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Randel K. Johnson