

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

**BEFORE THE  
COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS  
UNITED STATES SENATE**

**NOVEMBER 13, 2014**

Good afternoon, Chairman Harkin, Ranking Member Alexander, Members of the Committee.

My name is David Lopez and I am honored and humbled to have been nominated to serve another term as the General Counsel of the U.S. Equal Employment Opportunity Commission (EEOC).

I have served in the federal service since 1991, first at the United States Department of Justice Civil Rights Division, and then at the Equal Employment Opportunity Commission. Over my more than two decades of public service, I have proudly been part of this country's longstanding bi-partisan commitment to ensuring equal employment opportunity without regard to race, color, gender, religion, national origin, disability, age or genetic information.

When President Obama nominated me in 2009 to be the EEOC's General Counsel, I had served in the career civil service under Republican and Democratic administrations. And throughout my tenure I have observed firsthand that civil rights are not a partisan issue, but an American promise. This year we have celebrated the [50th anniversary of the Civil Rights Act of 1964](#), including Title VII – one of the most transformative pieces of legislation in the country's history. Along with subsequent legislation targeting discrimination on other traits like age and disability, it has enabled countless individuals to unleash their potential and productivity, in turn helping to drive our nation's economic engine.

The EEOC is a small agency with a big mission – to stop and remedy unlawful employment discrimination. To that end, the Agency has carried out its mission consistently and dutifully, decade after decade.

We start with prevention, issuing policy guidance designed to explain employer responsibilities and employee rights under the laws we enforce. We receive and investigate nearly 100,000 private-sector charges per year and resolve the vast majority of them informally, in mediation or conciliation. We devote enormous attention and resources to public outreach and education across the country. When these tools do not work, we also are statutorily-directed to file suit to enforce the laws in federal court.

As General Counsel, I run the Commission's litigation program, overseeing the Agency's 15 Regional Attorneys and a staff of more than 325 lawyers and legal professionals who conduct or support Commission litigation in district and appellate courts throughout the nation.

The public-interest litigation the EEOC chooses to pursue provides a unique deterrent to unlawful discrimination, both for the specific defendant and also for the larger community. And they help inform our tremendous efforts at conciliation and early resolution.

Take, for instance, the landmark [\\$240 million trial verdict](#) in Davenport, Iowa on behalf of 32 intellectually-disabled workers. These workers had been brought to Iowa to work at a turkey evisceration plant. During their employment, they were housed in an old schoolhouse in Muscatine, Iowa where they were deprived of access to medical care, and subjected to verbal and sometimes physical abuse. This one lawsuit may have done more than we can ever know to convey the warning of "never again." This particular piece of litigation filed by the Commission solely to serve the public interest served as a clarion call: That discrimination because of disability cannot and will not stand in Muscatine, anywhere in Iowa, or anywhere in this great country.

We are, of course, proud of the success we've been able to achieve through litigation on behalf of our charging parties. Some of our proudest victories for American workers include a case out of [Georgia](#), where we were able to win a victory for a woman unlawfully denied a supervisory position because of her sex and cases out of [Tennessee](#), [North Carolina](#), and [Texas](#), involving employees subjected to egregious harassment based on sex or race. During my tenure, I am proud that we have been able to prevail on behalf of charging parties in more than 60 percent of our jury trials, including 11 of our last 15.

We also have obtained landmark victories in the appellate courts. For example, in [Houston Funding](#), a panel of the Fifth Circuit issued a landmark – but common-sense – ruling recognizing that discrimination against a woman because she is lactating is discrimination "because of sex" in violation of Title VII and the Pregnancy Discrimination Act. Additionally, we prevailed before the U.S. Court of Appeals for the Fourth Circuit in our action against [Baltimore County](#), where the appeals court agreed with our position that making older workers contribute more to their pensions violates the Age Discrimination in Employment Act.

As General Counsel, I have made robust enforcement of the Americans with Disabilities Act a top priority. Indeed, when I appeared before this Committee more than four years ago I vowed that one of my main goals upon confirmation would be to breathe full life into the recently enacted Americans with Disabilities Act Amendments Act (ADAAA). This would be one of my main goals upon confirmation.

As Chairman Harkin and members of this Committee know well, under the “old” ADA, vindicating the rights of people with conditions such as diabetes or epilepsy (and sometimes even cancer) used to be virtually impossible. This had been one of my greatest frustrations over the many years I was in the trenches as an EEOC trial attorney. It was difficult to rectify glaring disability-based discrimination, even in cases where the employer admitted to discriminating based on the worker’s medical condition.

But Senators, I am pleased to say that today, in light of your efforts in passing the ADAAA, that we have been successful where before success had eluded us. We now have brought and successfully resolved [numerous cases](#) on behalf of individuals with cancer, diabetes, epilepsy, intellectual disabilities, and other conditions difficult to cover prior to the passage of this Act. We have also successfully [brought](#) and/or [resolved](#) the first cases under the Genetic Information Nondiscrimination Act (“GINA”).

In addition, in virtually every area under our purview – for instance, in combating sex discrimination in hiring in male dominated professions, or egregious overt racial harassment – we have a powerful story to tell. We have successfully prosecuted a multitude of sex-discrimination cases, including many involving blatant and unabashed pregnancy discrimination. I’ve observed that, more than 25 years after passage of the Pregnancy Discrimination Act, pregnancy-related discrimination continues to be among the most overt forms of discrimination we encounter. Fortunately, our [litigation efforts](#) in this area have had enormous impact for these women and their families.

We have also vigorously prosecuted cases based on religious discrimination. The Supreme Court recently granted our petition for certiorari in our ongoing lawsuit against [Abercrombie and Fitch](#). With this case, to be heard this term, the Court will examine Title VII’s requirement that companies reasonably accommodate workers’ religious beliefs and practices. A group of seven broad-ranging religious groups filed an amicus brief in support of our cert petition. This case illustrates the commitment the EEOC has to protecting the religious exercise of all Americans and underscores the singular role that the EEOC’s public-interest litigation can play in helping to clarify the law, and thus, in ultimately bringing greater certainty about legal obligations and rights for employers and employees alike.

While it’s my job as General Counsel to be the Agency’s chief litigator, let me be clear: I believe litigation should be the enforcement tool of last resort. I do *not* believe in suing first, and asking questions later. During my tenure as GC, I have focused on developing and filing critical cases, particularly those that further the public interest. Indeed, during the past four years the number of merits lawsuits we’ve filed has actually dropped. In FY 2013, for instance, we litigated on the merits only [.0014 percent](#) of all [charges filed](#). That is about one lawsuit for every 1000 charges. We carefully and deliberately vet our litigation vehicles to ensure effective enforcement nationwide and across the statutes. And we seek approval from the

Agency's Commissioners – by law, a bipartisan group – consistent with the guidelines the Commission itself has adopted to govern the delegation of litigation authority.

It bears emphasizing that we end up successfully resolving more than 90 percent of the cases we do file. In practice, this means we are able to secure victim specific relief *and*, as importantly, non-monetary relief such as policy changes and training to ensure the conduct does not recur in the vast majority of our cases. And we achieve all this without protracted and unnecessary litigation.

More generally, I have inculcated a culture of inclusiveness and transparency. More than four years ago I talked about fostering a “culture of collaboration.” True to my pledge, I have cultivated “One National Law Enforcement Agency,” encouraging our litigators nationwide to operate more collaboratively and cohesively with each other and other internal partners. This good-government approach has contributed to many of the successes mentioned above. Further, this One National Law Enforcement Agency model has spread beyond the litigation program; it is embodied in the Agency's current [Strategic Enforcement Plan](#) which enshrines an integrated, cross-functional approach, breaks down silos, and helps ensure we do not reinvent the wheel or repeat mistakes.

As General Counsel, I, along with those under my direction, actively and enthusiastically support the Agency's non-litigation enforcement efforts. During my tenure as General Counsel, I believe I personally have engaged in unprecedented levels of outreach to various stakeholder groups across the country, including to bar and management groups. For instance, I have appeared at 7 events over the past two months alone where I addressed members of the bar and business community. As I say often at these events, I operate from the premise that the vast majority of employers seek to comply voluntarily with the law and often will take steps beyond the minimal legal requirements to ensure inclusive and fair workplaces.

Let me close with some words about our incredible career staff. This past spring, the New York Times ran an above-fold [story](#) about the men who worked at Henry's Turkey, and how they had been all but forgotten for years. The article referred to Robert Canino – our wonderful Regional Attorney from Dallas and the career Commission lawyer who developed and tried the case. The story stated that Robert was the “last best hope for justice” for those discrimination victims in Muscatine. That's all in a day's work for EEOC litigators like Robert.

I was honored to be named by the National Law Journal earlier this year as one of America's 50 Outstanding General Counsel, but that award really belongs to my dedicated colleagues at the EEOC who inspire me every day. I have seen up close and personal the unparalleled dedication and skill of these amazing civil servants. Over the past four years they have faced a hiring freeze, significant attrition among their ranks, and furloughs. Yet these professionals, who doubtless could pursue other, more lucrative career options, have remained steadfast throughout, more

committed than ever to bringing equal employment opportunities for all. They embody the finest and highest ideals of public service. And I'm proud to serve with each and every one of them.

Thank you and I would be happy to answer any questions.