



September 26, 2017

The Honorable Lamar Alexander  
Chairman  
Committee on Health, Education, Labor & Pensions  
United States Senate  
428 Senate Dirksen Office Building  
Washington, DC 20510

The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education, Labor & Pensions  
United States Senate  
428 Senate Dirksen Office Building  
Washington, DC 20510

**Re: Nominations of Janet Dhillon and Daniel Gade to the EEOC**

Dear Chairman Alexander and Ranking Member Murray,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of approximately 200 national advocacy organizations, I am writing to express our concerns regarding the nominations of Janet Dhillon and Daniel Gade to be Chair and Member, respectively, of the Equal Employment Opportunity Commission (EEOC). Their responses to questions during their confirmation hearings leave us with unanswered questions regarding their willingness to protect individuals' rights to be free from discrimination in the workplace.

The EEOC serves a critically important role in ensuring equal opportunity for workers in the United States, enforcing laws prohibiting discrimination on the basis of sex (including pregnancy, gender identity and sexual orientation), race, national origin, age, disability and religion. The EEOC is particularly important for women, as it is often the first place women who have experienced workplace sex discrimination, including sexual harassment, pay discrimination and pregnancy discrimination, go to seek redress. Despite decades of progress, women continue to face discrimination in the workplace, making the role of the EEOC as vital as ever. Between 2010 and 2016, there were over 662,000 charges filed with the EEOC, of which 29 percent included sex discrimination claims.<sup>1</sup> The gender wage gap remains a persistent issue, with women overall paid 80 cents for every dollar paid to men; women of color fare the worst. The EEOC plays a critical part in preventing, investigating, and remedying such discrimination, which requires strong and dedicated leadership.

Janet Dhillon's career has been dedicated to representing private corporations. Her lack of experience in civil rights or equal employment opportunity raises concerns about her commitment and ability to lead the EEOC and put the rights and welfare of employees first.

After working at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP from 1991 to 2004, Ms. Dhillon worked for US Airways from 2004 to 2009, ending as a senior vice

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president, general counsel and chief compliance officer. From 2009 to 2015 she worked for JC Penney Company, Inc. as executive vice president and general counsel, overseeing all legal functions, including labor and employment. She currently serves as executive vice president, general counsel and corporate secretary at Burlington Stores, Inc. We are concerned that the nominee to lead the federal agency that promotes equal opportunity for employees has no experience doing so, and instead has spent her career advancing the interests of, and defending, large corporate employers in sectors where women face low pay and persistent discrimination.

We also have concerns about her extensive involvement with the Retail Industry Leaders Association's Retail Litigation Center (RLC). The RLC is led by the chief legal officers of large retail companies and describes itself as "dedicated to advocating the retail industry's perspective in those judicial proceedings that are most important to the retail community." The RLC has filed amicus briefs on its own and with other business associations in many state and federal cases; significantly, with regard to labor and employment issues, the RLC generally takes positions in favor of tightening class action standards, narrowing employer liability standards, supporting mandatory arbitration and class action waivers, and increasing judicial review of EEOC actions. The retail industry employs large numbers of women and faces persistent issues with pregnancy discrimination and sexual harassment.<sup>ii</sup>

Ms. Dhillon was involved in establishing the RLC, served as the first chair of the board of directors from 2010 to 2012, and remained on the board thereafter. During her tenure as chair and her subsequent board membership, the RLC authored or co-authored amicus briefs that successfully advanced positions adverse to workers in several Supreme Court cases: *Wal-Mart v. Dukes*,<sup>iii</sup> *Vance v. Ball State University*,<sup>iv</sup> *University of Texas Southwestern Medical Center vs. Nassar*,<sup>v</sup> and *Mach Mining vs. EEOC*.<sup>vi</sup> The decisions in all four of these cases impair workers' ability to challenge and hold employers accountable for workplace discrimination, and Ms. Dhillon's work in support of the outcomes in these cases is at odds with the mission of the agency she is nominated to lead.

We are also concerned by several aspects of Daniel Gade's record. While Mr. Gade has some government policy experience (he served on the Domestic Policy Council in the George W. Bush White House, and on the National Council on Disability), he is not a lawyer and does not have any experience enforcing antidiscrimination laws. In addition, he has expressed troubling views in the past about women serving in combat roles in the military, as well as controversial opinions on veterans' disability benefits policies, both of which continue to raise questions about how he will evaluate cases that come before him.

Mr. Gade would join the EEOC at a time when progress on equal pay is under siege, but we still have unanswered questions, even after the hearing, about how both he and Ms. Dhillon would implement the details of the EEOC's equal pay data collection. The EEO-1 pay data collection is a critical tool to help identify pay discrimination, improve enforcement of pay discrimination laws, and increase voluntary employer compliance with those laws.

We are also troubled by both Ms. Dhillon's and Mr. Gade's lack of clarity on how committed they are to upholding current EEOC policy stating that discrimination on the basis of sexual orientation or gender identity is prohibited sex discrimination under Title VII. This position is currently under attack by the White House and the Department of Justice. Both nominees were asked repeatedly at the confirmation hearing if they would commit to maintaining the EEOC's current position, but they declined to do so – claiming instead that the law was "in flux" due to pending cases and a division between federal civil rights agencies, and that they would essentially take a "wait and see" approach. While we take them at



their word that they personally oppose discrimination, we continue to have doubts about how much they will utilize the force of law to prevent and remedy it.

Finally, we are troubled that the committee will vote on both of these nominees only 24 hours after they have answered their written follow-up hearing questions for the record (QFRs), leaving little time to analyze their responses. We urge the Committee to revise its policies for the timing of votes on these important nominations.

Thank you for your consideration of our views. If you have any questions, please contact Rob Randhava, Senior Counsel, at (202) 466-3311.

Sincerely,

Vanita Gupta  
President & CEO

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<sup>i</sup> U.S. Equal Employment Opportunity Commission. (2017). *Charge Statistics (Charges filed with EEOC) FY 1997 Through FY 2016*. Retrieved 12 July 2017, from <https://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>

<sup>ii</sup> U.S. Equal Employment Opportunity Commission. (n.d.). *Fact Sheet on Recent EEOC Pregnancy-Discrimination Litigation*. Retrieved 25 July 2017, from [https://www.eeoc.gov/laws/guidance/pregnancy\\_fact\\_sheet\\_litigation.cfm](https://www.eeoc.gov/laws/guidance/pregnancy_fact_sheet_litigation.cfm); see, e.g., U.S. Equal Employment Opportunity Commission. (2014, March 25). *Wal-Mart to Pay \$363,419 to Settle EEOC Sexual Harassment and Retaliation Suit*. Retrieved 25 July 2017, from <https://www.eeoc.gov/eeoc/newsroom/release/3-25-14.cfm>

<sup>iii</sup> 564 U.S. 338 (2011).

<sup>iv</sup> 133 S. Ct. 2434 (2013).

<sup>v</sup> 133 S. Ct. 2517 (2013).

<sup>vi</sup> 135 S. Ct. 1645 (2015).