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Opening Statement

Rep. Elijah E. Cummings, Ranking Member

**Committee on Oversight and Government Reform Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs and the Committee on the Judiciary Subcommittee on
the Constitution and Civil Justice**

Joint Hearing on "DOJ's Quid Pro Quo with St. Paul: A Whistleblower's Perspective"

May 7, 2013

Thank you, Mr. Chairman, and thanks to the witnesses appearing here today.

It is certainly no coincidence that today's hearing is being held one day before a committee vote in the Senate to confirm Tom Perez as the President's nominee for Secretary of Labor. Today's hearing is an unfortunate and highly partisan exercise intended to raise unfounded questions about the reputation of Mr. Perez, despite the fact that there is no evidence that his actions were anything but professional and in the best interest of combating discrimination in our nation's housing.

The core allegation leveled by Republicans is that Mr. Perez, as the head of the Civil Rights Division at the Department of Justice, inappropriately coordinated a quid pro quo agreement with the City of St. Paul in which the Department declined to intervene in two False Claims Act cases in exchange for St. Paul withdrawing a separate case before the Supreme Court.

The problem with the Republican theory is that Mr. Perez did nothing wrong. He obtained clearance from ethics officials at the Department, he coordinated properly with the head of the Civil Division, and he and others at the Department relied on career experts with decades of experience who concluded, after a careful review of the evidence, that the False Claims Act cases were too weak to recommend that the government expend the resources to litigate them.

Since then, a host of other legal experts have backed up the Department's conclusions. For example, in a statement issued yesterday, Professor Stephen Gillers, who has taught legal ethics for more than 30 years at New York University School of Law, wrote that a Republican report issued last month suggesting that Mr. Perez acted improperly "cites no professional conduct rule, no court decision, no bar ethics opinion, and no secondary authority that supports this argument." The reason, he explained, is that "no authority supports it."

In addition, one of today's witnesses, Shelley Slade, is an attorney with 20 years of experience in False Claims Act cases. She explained in her written statement:

I am confident that the actions taken by the Civil Division officials with regard to the Newell qui tam case, including the factors that were considered in the declination decision, were fully consistent with the law, as well as ethical and professional obligations.

Ms. Slade explained further:

If my law firm had been contacted about taking on this case, we would have rejected it. Notwithstanding the apparent strong evidence that the City of St. Paul engaged in repeated and egregious violations of Section 3 of the Housing & Urban Development Act of 1986, the qui tam case presents serious litigation risk on a number of fronts.

Another expert, Ben Vernia, a practicing False Claims Act attorney and writer of the legal blog, falseclaimscounsel.com, wrote a letter to our Subcommittees. He cited the "prominent weakness" of the case and explained that even an early document prepared by Department attorneys initially favoring intervention "acknowledges several significant potential problems with the case – problems that clearly rebut the conclusion that the case was a 'strong' one."

In light of these significant legal weaknesses, we can understand why our investigation found that a high-ranking career official at the Department of Justice—considered to be the federal government's preeminent False Claims Act expert—expressed grave doubts about the case.

Mr. Newell probably does not want to hear about weaknesses in the case his lawyer brought, and this is certainly no criticism of him. I appreciate his efforts to combat discrimination, especially affecting his small business. But these weaknesses were both significant and obvious to attorneys experienced in this area of law. Unfortunately, the majority invited Mr. Newell here not because they want to further his anti-discrimination cause, but because they want to use him to further their partisan and unsubstantiated claims against Mr. Perez.

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