January 30, 2017

Senator Mitch McConnell, Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC  20510

Senator Charles Schumer, Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC  20510

RE: Senate Confirmation on the Nomination of Elisabeth Prince DeVos to serve as Secretary of Education

Dear Majority Leader McConnell and Minority Leader Schumer:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we write to express our continued opposition to the nomination of Elisabeth Prince DeVos as Secretary of the U.S. Education Department, as originally expressed in our January 13 letter to the Senate Health, Education, Labor, and Pensions (HELP) Committee.¹

Founded in 1940 by Thurgood Marshall, LDF is the nation’s oldest civil rights law organization. It has relied on the Constitution, and federal and state civil rights laws to pursue equality and justice for African Americans and other people of color. LDF litigated and won the landmark U.S. Supreme Court case Brown v Board of Education², which established the principle of equal access to education for all students and outlawed racial segregation in our nation’s schools. Since Brown, LDF has remained at the forefront of the battle to ensure quality education and equity in education for all students. LDF serves as counsel for African American children and parents in education cases throughout the South.³ Through our policy work, LDF advocates for African American and low-income

³ See, e.g., Thomas, et al. v. St. Martin Parish School Dist., et al., Civil Action No. 6:65-cv-11314, Doc. 178 (W.D. La., Jan. 25, 2016) (approving a school desegregation plan designed to racially integrate St. Martin Parish School District and ensure African-American students have equal access to quality educational opportunities), http://www.naacpldf.org/update/ldf-announces-consent-decree-thomas-v-school-board-st-martin-; see also; Br. for the Black Student Alliance at the University of Texas at Austin, the Black Ex-Students of Texas, Inc., and the NAACP Legal Defense & Educational Fund, Inc. as Amici Curiae, Fisher v. University of Texas at
students throughout the country, challenging harsh and disparate school discipline policies, inequity in services and funding, and supporting implementation of key measures of the Every Student Succeeds Act of 2015 (ESSA).

Ms. DeVos’ testimony before the Senate HELP Committee on January 17 revealed her inability to answer questions about the fundamentals of education law and policy and demonstrated a lack of commitment to promoting educational equity, a critical responsibility of the Education Department. In addition to her lack of experience in the field of education as a teacher, administrator or scholar, Ms. DeVos’ performance at the hearing more than demonstrated that she is ill-suited and woefully unqualified to serve as Secretary for the Department of Education.

Any Education Secretary will be responsible for enforcing federal laws—including Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin, and the Individuals with Disabilities Education Act (IDEA), which protects students with disabilities from discrimination. However, it is clear from Ms. DeVos’ responses to senators’ questions at the hearing that she is unaware of, or is not committed to upholding, such legal obligations. When asked by Senator Kaine if all schools that receive federal funding should be required to comply with the IDEA, Ms. DeVos replied, “I think that’s an issue that’s best left to the states.” Later, when asked if she was not aware the IDEA was a federal law, Ms. DeVos said she “may have confused it.”

Although Ms. DeVos recently stated in a letter sent to Senator Isakson on January 24 that she is “committed to enforcing all federal laws and protecting the hard won rights of

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7 Id. at 3:22:42.
students with disabilities,"8 her hearing testimony calls this statement into question. For decades, the Education Department’s Office for Civil Rights (OCR) has enforced federal civil rights laws through the issuance of policy guidance and the resolution of complaints. During the Obama Administration, OCR received nearly ten thousand or more complaints each year from 2014-2016 alleging discrimination based on race, sex, or disability.9 The Secretary of Education must lead in setting the resolution of these complaints as a priority for departmental staff. However, during Ms. DeVos’ confirmation hearing, when Senator Murray asked her about a conversation she reportedly had with Senator Lankford during which they discussed “reining in” this office,10 Ms. DeVos stated she did not believe she had used those words.11 She offered no assurance that she would not place restrictions on the operation of this very important office.

If confirmed, one of Ms. DeVos’ primary responsibilities will be to oversee OCR’s collection of civil rights data. When Senator Kaine asked Ms. DeVos if all K-12 schools that receive federal funding should be required to report the same information regarding instances of bullying, discipline, or harassment—data reported to OCR as required under the federal Department of Education Organization Act—she refused to answer the question and instead replied, “I look forward to reviewing that provision.”12

Such a statement reveals a lack of awareness about, or concern for, the disproportionate impact of bullying, harassment and punitive school discipline practices on students of color, students with disabilities and students who identify as lesbian, gay, bisexual, transgender, and queer (LGBTQ). Recent data released by OCR revealed that during the 2013-14 school year, 2.8 million public school students received at least one out-of-school suspension, and black students bore the brunt of these and other disciplinary practices, including expulsions and school-based arrests.13 National data also shows that


11 Education Secretary Confirmation Hearing, supra note 6, at 3:21:35.

12 Id. at 3:31:33.

bullying and harassment and exclusionary discipline practices disproportionately impact students with disabilities and students who identify as LGBTQ.\textsuperscript{14}

Ms. DeVos’ charitable contributions to organizations that oppose the rights of LGBTQ communities also suggest that she may hold views that could impact her willingness to uphold the Education Department’s civil rights enforcement obligations to students from those communities. During the hearing, Ms. DeVos denied making donations to anti-LGBTQ organizations, claiming no responsibility for large contributions the Prince Foundation made to Focus on the Family—which promotes “conversion therapy” for those who identify as LGBTQ—even though she is listed as the vice president of the board on the foundation’s federal tax documents from 2001 to 2013.\textsuperscript{15} When Senator Hassan asked Ms. DeVos to explain this discrepancy, she replied, “[t]hat was a clerical error.”\textsuperscript{16} In addition, Ms. DeVos’ own foundation, The Dick and Betsy DeVos Family Foundation reportedly made large grants to Focus on the Family and its local affiliates.\textsuperscript{17}

Ms. DeVos’ hearing testimony also failed to provide assurances that she will hold all schools accountable for providing a quality education to all students and for ensuring adequate and equitable funding for public schools, where students of color compose the majority of the population.\textsuperscript{18} Ms. DeVos, who has expressed strong support for the expansion of charter schools and for school vouchers that divert limited public funds from traditional public schools,\textsuperscript{19} refused to commit to avoiding privatizing education or cutting funds for public education at Senator Murray’s request during the hearing. While Ms. DeVos argues that school vouchers allow parents to select schools of their choice regardless


\textsuperscript{16} Education Secretary Hearing, supra note 6, at 3:23:08.


of zip code, historically, school vouchers have been used as a strategy to preserve, and had the impact of perpetuating, racial segregation in public schools.

Ms. DeVos also did not adequately respond to questions about lessons learned from the failures of charter schools in Michigan, which have failed to boost overall academic progress in the state and have reported lower test scores than traditional public schools. When Senator Bennet asked Ms. DeVos to explain what she had learned, she responded, “The notion that there has not been accountability is wrong... the reality is, charter schools in Michigan have been accountable, fully accountable to their overseeing bodies and the state.” However, Ms. DeVos’ record, nor her hearing testimony, reflect a commitment to promoting accountability. As recently as November 2016, Ms. DeVos was a board member of the Great Lakes Education Project, which successfully blocked a provision that would have stopped failing schools from replicating in 2011, as well as the development of a panel that would have overseen school openings and closings in Detroit last year.

Even more troubling, during the hearing Ms. DeVos also refused to commit to ensuring equal accountability for all schools that receive federal tax dollars and stated she did not agree with Senator Kaine that all schools that receive federal funding—including traditional public, public charter, and private schools—should be required to meet the same accountability standards. In addition, she would not commit to upholding the Education Department’s final regulations for accountability and state plans under ESSA. Instead, she stated that she “look[ed] forward to reviewing” the regulations. These regulations are intended to ensure that states and districts meet the requirements of ESSA and “uphold

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21 Diane Ravitch, Reign of Error: The Hoax of the Privatization Movement and the Danger to America’s Public Schools, ch. 19 (2013). https://books.google.com/books?id=GwF5oj29OBAC&pg=PT253&dq=%22school+choice+was+widely+understood+by+the+courts%22&hl=en&sa=X&ei=x22uVfD0b7CJogS704G0&ved=0CCYQ6AEwAA#v=onepage&q=%22school%20choice%20was%20widely%20understood%20by%20the%20courts%22&f=false.


23 Education Secretary Hearing, supra note 6, at 1:40:48.


25 Education Secretary Hearing, supra note 6, at 2:22:52.
the strong civil rights legacy of the law by including all students and historically underserved subgroups in accountability decisions, ensur[e] meaningful action where whole schools or groups of students are falling behind, and provid[e] clear and transparent information on critical measures of school progress and equity.”

Senators did not ask Ms. DeVos about her commitment to protecting the civil rights of students of color. Yet, through her philanthropy, Ms. DeVos has opposed practices that would increase access to higher educational opportunities for African American, Latino and other marginalized students. For example, the Dick and Betsy DeVos Foundation reportedly contributed funding to the Center for Individual Rights to support its lawsuit against the University of Michigan Law School in which it challenged the school’s affirmative action admissions policies. This contribution calls into question Ms. DeVos’ willingness to ensure that students of color have access to high-quality educational opportunities, as well as her understanding of the educational benefits of a diverse student body in preparing students for employment in the global workforce; benefits that have been well-documented.

Our nation’s students deserve an Education Secretary who is knowledgeable of and committed to enforcing federal laws designed to protect them from discrimination and to ensure they have access to a quality education. Ms. DeVos’ positions on issues related to educational equity and her lack of willingness to commit to carrying out the duties assigned to the Education Secretary, make it clear that she should not be entrusted with leading the Education Department. Therefore, we continue to strongly oppose her nomination, and we urge the Senate to vote in opposition of Ms. DeVos’ confirmation.


28 See, e.g., Br. for the Black Student Alliance at the University of Texas at Austin, the Black Ex-Students of Texas, Inc., and the NAACP Legal Defense & Educational Fund, Inc. as Amici Curiae, 30, Fisher v. University of Texas at Austin, 2015 WL 6690039 (Nov. 2, 2015), http://www.naacpldf.org/files/case_issue/14-981%20bsac%20The%20Black%20Student%20Alliance%20at%20the%20University%20of%20Texas%20at%20Austin%20et%20al._1_1.pdf; see also Br. of The American Educational Research Association, et al. as Amici Curiae, 6, http://www.americanbar.org/content/dam/aba/publications/supreme-court_preview/briefs_2015_2016/14-981_amicus_r_AmericanEducationalResearchAssociationEtAl_.authcheckdam.pdf (noting the “expansive body of scientific research on diversity, concluding that “numerous studies show that student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.”")
Thank you for considering this request. If you have any questions, please contact Monique Dixon, Deputy Director of Policy at 202-682-1300 or Elizabeth Olsson, Senior Policy Associate at 212-965-2200.

Sincerely,

Sherrilyn A. Ifill  
President & Director Counsel

Todd A. Cox  
Director of Policy