



January 13, 2017

Senator Lamar Alexander, Chairman
U.S. Senate Committee on Health, Education, Labor & Pensions
455 Dirksen Senate Office Building
Washington, DC 20510

Senator Patty Murray, Ranking Member
U.S. Senate Committee on Health, Education, Labor & Pensions
154 Russell Senate Office Building
Washington, DC 20510

**RE: Full Committee Hearing on the Nomination of Elisabeth Prince DeVos
to serve as Secretary of Education**

Dear Chairman Alexander and Ranking Member Murray:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we write to express our opposition to the nomination of Elisabeth Prince DeVos as Secretary of the U.S. Department of Education.

Founded in 1940 by Thurgood Marshall, LDF is the nation's oldest civil rights law organization. For 76 years, LDF 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's commitment to ensuring equity in education is demonstrated by its leadership in the seminal U.S. Supreme Court case of *Brown v. Board of Education*,¹ and its current work to advance quality educational opportunities for public school students of color in pre-K through post-secondary educational settings.² Ms. DeVos' record of unreserved support for school vouchers and her opposition to practices that would increase access to higher

¹ 347 U.S. 483 (1954).

² 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 *LDF Urges Robust Implementation of Every Student Succeeds Act (ESSA) to Close Achievement Gaps and Promote Student Success*, <http://www.naacpldf.org/case-issue/ldf-urges-robust-implementation-every-student-succeeds-act-essa-close-achievement-gaps-an>; 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 Austin*, 2015 WL 6690039 (Nov. 2, 2015), http://www.naacpldf.org/files/case_issue/14-981%20obsac%20The%20Black%20Student%20Alliance%20at%20the%20University%20of%20Texas%20at%20Austin%20et%20al.1.1.pdf.



educational opportunities for African American, Latino and other marginalized students compels LDF to conclude that Ms. DeVos is ill-suited and unprepared to serve as Secretary for the Department of Education.

Although education remains principally a state function, the federal Department of Education has played a critical role – especially since *Brown v. Board of Education*, when so many southern states abdicated their responsibility to provide quality education to African American students on an integrated basis – in ensuring that states meet the obligations alluded to by the Court in *Brown* to adequately prepare students for citizenship and success. The *Brown* Court wisely noted that “[i]n these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”³ Indeed, *Brown* itself demonstrates the powerful role the federal government often must play to ensure that states meet their constitutional obligation to provide education on an equal basis to all children.

The Department of Education's mission “is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.”⁴ However, despite gains made toward these goals, far too many of America’s students are still educated in racially-isolated, and woefully underfunded schools and school districts.⁵ To address these deep-seated problems and to close academic achievement gaps, any Secretary of Education must possess a commitment to and demonstrated experience with promoting education equity. The Secretary must be willing and prepared to take aggressive actions that promote racial and socio-economic school diversity, reduce exclusionary school discipline practices, and enhance the monitoring of school systems through the enforcement of civil rights laws. The Secretary must also be well equipped to closely monitor the implementation by states of obligations imposed by federal law, including the Every Student Succeeds Act of 2015 and the fair and efficient distribution of Title I funds, which are intended to provide critical resources to poor and historically disadvantaged students.

Ms. DeVos’ record of engagement with education issues suggests that she lacks both the experience and the demonstrated commitment to these core areas of education policy and law to undertake the responsibilities of leading the Department of Education.

³ 347 U.S. at 493.

⁴ U.S. Department of Education, *About ED/Overview—Mission*, <https://www2.ed.gov/about/overview/mission/mission.html>.

⁵ U.S. Government Accountability Office, *K-12 Education: Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination*, April 2016, <http://www.gao.gov/assets/680/676745.pdf>.



According to the questionnaire submitted to the Senate Health, Education, Labor and Pensions (HELP) Committee, Ms. DeVos has never been a public school teacher or administrator. Ms. DeVos has never served on the school board of a city or town. Ms. DeVos possesses no advanced degree in teaching, education policy or administration.⁶

Instead, she has conducted a great deal of her education work through her philanthropy. 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.⁷ This contribution calls into question Ms. DeVos' 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.⁸

Although there is no record of Ms. DeVos speaking publicly against racial segregation in public education, or a consistent record about the importance of diversity or equitable funding for schools in poor communities,⁹ she has been a strong supporter of

⁶ See, Elisabeth Prince DeVos, U.S. Senate Committee on Health, Education, Labor and Pensions Statement for Completion by Executive Branch Nominees, <http://static.politico.com/4b/0c/fce86acb43879694090fd430d601/senate-help-committee-paperwork-for-betsy-devos.pdf>.

⁷ Rick Docksai, Inside Philanthropy, *School Choice, But Much More: Making Sense of DeVos Family Philanthropy*, March 2016, <http://www.insidephilanthropy.com/home/2016/3/1/school-choice-but-much-more-making-sense-of-devos-family-phi.html>.

⁸ 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_resp_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.”)

⁹ We are not at all comforted by a quote attributed to Ms. DeVos stating that while she believed the University of Michigan's affirmative action policy was unfair, “the motives behind those policies are essentially good – to create more opportunities for minority students.” See, Associated Press, *Michigan Students, Faculty Weigh in on Rulings*, Fox News, June 23, 2003, <http://www.foxnews.com/story/2003/06/23/michigan-students-faculty-weigh-in-on-rulings.html>. Her willingness to provide resources to an organization that opposed the University's affirmative action plan without publicly stating what alternative plan she would have advanced to create more opportunities for minority students is troubling. Certainly, in this instance, her actions spoke louder than her words.

school vouchers.¹⁰ School vouchers, also referred to as opportunity scholarships, allow families to use public funds to enroll students in private schools, diverting much needed funding away from traditional public schools.¹¹ While Ms. DeVos argues that school vouchers allows parents to select schools of their choice regardless of zip code,¹² historically, school vouchers have been used as a strategy to preserve, and had the impact of perpetuating, racial segregation in public schools.¹³ Indeed, after promoting school voucher programs as beneficial to low-income families, states like Wisconsin have allowed higher-income families to send their students to private schools at tax payers' expense.¹⁴ And, sadly, there is little to no evidence that students in voucher schools, which are often unregulated, fare better academically when compared to traditional public school students.¹⁵ Ms. DeVos has also been a staunch supporter of the expansion 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.¹⁶

¹⁰ Emma Brown, *Trump picks billionaire Betsy DeVos, school voucher advocate, as education secretary*, The Washington Post, Nov. 23, 2016, https://www.washingtonpost.com/local/education/trump-picks-billionaire-betsy-devos-school-voucher-advocate-as-education-secretary/2016/11/23/c3d66b94-af96-11e6-840f-e3ebab6bcd3_story.html?utm_term=.ad451cd0f5ab.

¹¹ Kate Zernike, *Betsy DeVos, Trump's Education Pick, Has Steered Money Away from Public Schools*, N.Y. Times, Nov. 23, 2016, <http://www.nytimes.com/2016/11/23/us/politics/betsy-devos-trumps-education-pick-has-steered-money-from-public-schools.html>.

¹² Betsy DeVos, *Competition, Creativity, and Choice in the Classroom*, Prepared Remarks Before the SXSWedu Conference and Festival (Mar. 11, 2015), <http://www.federationforchildren.org/wp-content/uploads/2015/03/Betsy-SXSWedu-speech-final-remarks.pdf?e40fe9>.

¹³ 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=2SAUVfDONc25ogShlYC4Cw&ved=0CCYQ6AEwAA#v=onepage&q=%22school%20choice%20was%20widely%20understood%20by%20the%20courts%22&f=false>.

¹⁴ *Id.* See also Jonas Persson, *Vouchers on the Move: Return to School Segregation*, The Ctr. for Media and Democracy's PR Watch, Apr. 28, 2015 (noting that Wisconsin's school voucher scheme was applauded by the American Federation for Children, of which, until recently, Ms. DeVos served as chair of the board) <http://www.prwatch.org/news/2015/02/12730/segregation-school-vouchers>; Patrick Marley, *Past School Voucher Advocate Rips Gov. Walker's Plan*, Milwaukee Journal Sentinel, May 16, 2013, <http://archive.jsonline.com/blogs/news/207753841.html>.

¹⁵ National Education Association, *School Vouchers: The Emerging Track Record*, Mar. 2002, <http://www.nea.org/home/16970.htm>.

¹⁶ Caitlin Emma, Benjamin Wermund & Kimberly Hefling, *DeVos' Michigan Schools Experiment Gets Poor Grades*, Politico, Dec. 9, 2016, <http://www.politico.com/story/2016/12/betsy-devos-michigan-school-experiment-232399>.

Most troubling to LDF, little is known about Ms. DeVos' stance as it relates to the enforcement of civil rights laws – a primary responsibility of the Secretary of Education. There is no clear record of Ms. DeVos' opposing racial discrimination in education or supporting enforcement of federal laws that require racial equity in education. For decades, the Office for Civil Rights of the U.S. Department of Education (OCR) has enforced federal civil rights laws, including Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin by recipients of federal funds, through the issuance of policy guidance and the resolution of complaints. During the Obama Administration, OCR received over 76,000 complaints from school districts. Nearly ten thousand or more complaints were filed each year from 2014-2016 alleging discrimination based on race, sex, or disability.¹⁷ The high volume of complaints will require prompt attention and resolution. The Secretary of Education must lead in setting the resolution of these complaints as a priority to departmental staff.

Moreover, Ms. DeVos' charitable contributions to organizations that oppose the rights of lesbians, gay, bisexual, transgender, and queer (LGBTQ) communities suggest that she may hold similar anti-LGBTQ views that may influence the Education Department's civil rights enforcement obligations to students from those communities.¹⁸

Finally, OCR is also responsible for collecting data on academic and other educational outcomes of the nation's public school students. The most recent civil rights data collection report from the Education Department revealed that students of color and those with disabilities continue to be disproportionately disciplined when compared to their white peers.¹⁹ Ms. DeVos' position on school discipline is unknown, and we urge the HELP Committee to inquire about this and other issues relating to the civil rights of students during its January 17, 2017 hearing on Ms. DeVos nomination as Secretary of Education.

Education equity is one of the most important and cherished legacies of the civil rights movement. It is imperative that the leader of the agency entrusted with ensuring the educational success of all of our nation's students, regardless of race, ethnicity, sex, and disability, has the required experience and background that demonstrates a commitment to this goal. The public must have confidence that the Secretary of Education possesses an

¹⁷ U.S. Dep't of Educ. Office for Civil Rights, *Achieving Simple Justice: Highlights of Activities, Office of Civil Rights: 2009–2016* (2016), <https://www2.ed.gov/about/reports/annual/ocr/achieving-simple-justice.pdf>.

¹⁸ Benjamin Wermund & Kimberly Hefling, *Trump's Education Pick Supported Anti-Gay Causes*, Politico, Nov. 25, 2016, <http://www.politico.com/story/2016/11/betsy-devos-education-secretary-civil-rights-gay-transgender-students-231837>.

¹⁹ U.S. Dep't of Educ. Office for Civil Rights, *2013–2014 Civil Rights Data Collection: A First Look*, Oct. 28, 2016, <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.



unreserved commitment to issues of educational equity and integration. Ms. DeVos' record does not provide this reassurance to the public.

To the contrary, Ms. DeVos' private charitable donations and advocacy work call into question her commitment to principles of educational equity for all students and her commitment to strengthening public education. Finally, Ms. DeVos' lack of experience in the field of education as a teacher, administrator or scholar suggests that she is woefully unprepared to lead this Department.

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,

A handwritten signature in cursive script that reads "Sherrilyn A. Ifill".

Sherrilyn A. Ifill
President & Director Counsel

Todd A. Cox
Director of Policy