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Opening Statement
Rep. Matt Cartwright, 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

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

May 7, 2013

Thank you, Mr. Chairman. I would like to welcome our witnesses appearing here today. Ms. Slade will be able to clarify some significant misunderstandings that the majority seems to have about *qui tam* lawsuits, and I would like to welcome Mr. Newell, who by all accounts is an active citizen committed to advocating for economic opportunities for low income individuals and businesses.

The majority has staged today's hearing to discredit the President's nominee for Secretary of Labor with baseless accusations of a fabricated "dubious bargain."

We will hear these unsubstantiated allegations repeated tomorrow by Republican senators at the Senate Health, Education, Labor, and Pensions Committee's hearing on the nomination of Tom Perez.

It is unlikely, however, that those senators will repeat the only true facts that today's hearing will uncover: that experts say that Mr. Perez acted completely appropriately, within ethical boundaries, and in the best interest of the country.

Mr. Newell and his attorney were invited to give a "whistleblower's perspective" on DOJ's decision not to intervene in his false claims act lawsuit. However, neither Mr. Newell nor his attorney is an expert in the federal law on which Mr. Newell's lawsuit is based.

Experts we have consulted, including Ms. Shelley Slade, who is one of the preeminent false claims act litigators in the nation, have concluded that Mr. Newell's lawsuit brought through the advice of his attorney was weak, failed to fulfill statutory requirements, and was susceptible from the moment it was filed to dismissal.

These are the facts:

DOJ intervenes in 25% of all false claims lawsuits. Mr. Newell's lawsuit was therefore treated in the same manner as the majority of similar lawsuits brought to DOJ.

The Committee's investigation has turned up no evidence whatsoever of unethical or improper actions by the Department. In fact, the majority cannot point to a single ethics rule or standard of professional conduct that was violated.

The Department's decision not to intervene did not end the case, rather Mr. Newell was free to pursue his lawsuit without the federal government as all *qui tam* relators are. However, the case was dismissed by a federal court judge because Mr. Newell failed to meet the statutory requirement of a qualifying whistleblower – he did not have any original, independent knowledge of false claims by the City of St. Paul.

Thus DOJ's decision not to intervene was the correct one, and was supported by senior career officials regarded as the Government's preeminent experts in their field and based on the facts of the particular case.

The majority takes issue with efforts by DOJ and Tom Perez, then-Assistant Attorney General for Civil Rights and today President Obama's nominee for Secretary of Labor -- to preserve the concept of disparate impact, an important civil rights enforcement tool that helps prevent housing and lending discrimination, from a potentially adverse Supreme Court ruling in an unrelated legal matter.

Mr. Perez told Committee staff that disparate impact was used by DOJ in settling a case involving Countrywide Financial that was the largest residential fair lending settlement in the history of the Fair Housing Act. This settlement helped hundreds of thousands of victims harmed by widespread practices or patterns of discrimination in lending.

But this valuable enforcement tool faced potential problems in the context of a case, called *Magner v. Gallagher*, which was scheduled to be heard by the U.S. Supreme Court. As every lawyer knows, "bad facts make bad law" and *Magner* was a strange case with bad facts.

In *Magner*, landlords of low-income housing units sued the City of St. Paul for alleged aggressive enforcement of housing safety codes to address "rodent infestation, missing dead bolt locks, inoperable smoke detectors, poor sanitation, and inadequate heat." They claimed that if they were forced to fix these very basic problems, they would have to close the buildings causing people to lose housing options.

I find it hard to believe that anyone intended the Fair Housing Act to be used as a shield to prevent landlords from correcting housing code violations in their buildings. And I believe it was prudent of the Department of Justice and Tom Perez to be concerned that a majority of the

Supreme Court might take advantage of the irony to deliver a setback to enforcement of anti-discrimination laws. Working with St. Paul to withdraw the appeal was in the best interest of protecting civil rights law and in the best interest of DOJ.

In conclusion, the majority called Mr. Newell to today's hearing to serve as an unwitting prop to try to discredit Mr. Perez and campaign against DOJ's vigorous enforcement of the nation's anti-discrimination laws by insinuating an unethical quid pro quo.

An honest assessment of the evidence before us shows that DOJ behaved properly and defensibly in its decision to not intervene in Mr. Newell's case. The decision was based on relevant consideration of legal, factual and policy factors. Further, there is no reason to question the integrity of the process at DOJ, the career attorneys that recommended declining intervention, DOJ's actions in the *Magner* case, or the leadership of Mr. Perez.

Thank you, I yield back.

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