



March 4, 2021

The Honorable Chuck Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

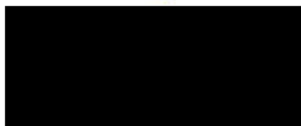
The Honorable Mitch McConnell
Minority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

Dear Leader Schumer and Leader McConnell:

The following letter is submitted by the American Center for Law and Justice (ACLJ), an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion.¹

We write today to express grave concern about the nomination of Xavier Becerra to be the Secretary of Health and Human Services (HHS). After careful review, we do not believe Mr. Becerra is well suited for this important role, especially at this critical juncture in our nation's history. Our conclusion is based on three primary concerns: 1) Mr. Becerra does not possess the requisite public health experience necessary in a time of pandemic, 2) Mr. Becerra has a well-documented history of hostility to the rights of the pre-born that is out of the American mainstream, and 3) Mr. Becerra does not satisfy President Biden's pledge to seek unity and common ground with his cabinet selections.

¹ See *Sumnum v. Pleasant Grove*, 555 U.S. 460 (2009); *NOW v. Scheidler*, 547 U.S. 9 (2006); *McConnell v. FEC*, 540 U.S. 93 (2003); *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993); *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987).



I. Mr. Becerra Does Not Bring the Requisite Public Health Experience Necessary in a Time of Pandemic

As you are well aware, our country is in the midst of an ongoing pandemic. President Biden campaigned on a promise to make our emergence from the COVID-19 crisis his highest priority. Few positions will be more central to fulfilling this promise than that of Secretary of HHS. It is of paramount importance that the next Secretary possess significant real world experience in the public health sector.

Mr. Becerra has had a lengthy and accomplished career in the field of law and politics, and has held public office for more than 30 years. His experience as a politician spans virtually all of his adult life. While it is true this experience might lend itself well to some jobs, it does not equip him to help lead our nation out of a pandemic. That effort calls for extensive public health expertise, which Mr. Becerra simply does not have.

II. Mr. Becerra Has a Well-Documented History of Hostility to the Rights of the Pre-Born that is Out of the American Mainstream

While there is an ongoing and robust public debate about the issue of abortion, and while it is not surprising that President Biden would nominate a person with a record supportive of abortion, it should be clear that Mr. Becerra's extreme pro-abortion stance and hostility toward pro-life Americans disqualifies him from this important post. His record demonstrates not just support for abortion without limits, but also an intense disdain for those who hold a sincere belief in the value and worth of the pre-born.

In addition to supporting late-term abortions (something that only seven countries in the world permit) and the use of partial birth abortion procedures (which President Biden as a then-Senator himself voted to ban), Mr. Becerra has repeatedly used his positions of authority to attack the conscience rights of Americans who hold a pro-life view. As a Member of Congress, Mr. Becerra consistently voted to deny the right of Americans to follow their religious beliefs and conscience dictates on the matter of abortion. As Attorney General of California, Mr. Becerra is in litigation against the Little Sisters of the Poor in an effort to force them to participate in the provision of contraception and abortifacients in violation of their conscience, a stance he could not coherently defend during his confirmation hearing. His efforts were so far out of the mainstream that the companion case to his was decided against his position by an overwhelming 7-2 majority of the Supreme Court. In addition, Mr. Becerra sought to fine and punish pro-life pregnancy centers who refused to refer for free abortions – something that the Supreme Court also found violated the First Amendment.

These actions and more demonstrate something far beyond just a sincerely-held belief in access to abortion. They demonstrate a level of disdain and hostility for pro-life Americans that is unbecoming—and even disqualifying—for a Secretary of HHS. It is critical that all Americans have confidence that their sincerely-held beliefs and rights will be respected and protected. Mr. Becerra's record conclusively belies that confidence.

III. Mr. Becerra Does Not Satisfy President Biden's Pledge to Seek Unity and Common Ground with His Cabinet Selections

President Biden campaigned on, and has continued to reiterate, a pledge to seek unity and common ground with his cabinet picks. As evidenced by a party line 14-14 vote in committee, it is clear Mr. Becerra does not clear this hurdle. Unlike other nominees, such as Attorney General nominee Judge Merrick Garland who was favorably referred out of committee by a convincing and bipartisan 15-7 vote, Mr. Becerra does not come close to fulfilling that promise. While it may be true that Mr. Becerra is an effective advocate for some of the causes in which he believes, it is simply not true that he inspires any promise of unity or common ground. If President Biden is serious about pursuing these objectives, he should withdraw Mr. Becerra's nomination and replace him with a nominee who will respect the views and rights of all Americans.

IV. Conclusion

Mr. Xavier Becerra may be an appropriately qualified candidate for some jobs, but he is simply not the proper person to be Secretary of HHS. While he, because of his demonstrated hostility to pro-life Americans, is not the ideal candidate for this job at any time, his lack of any medical background ensures he is not the proper candidate while we are in the midst of an ongoing pandemic. In light of these concerns, should President Biden refuse to withdraw his nomination, it is incumbent on the U.S. Senate to deny his confirmation, and to insist on a replacement nominee with more appropriate qualifications. We are joined in this conclusion by nearly 200,000 individuals who have signed our petition urging the U.S. Senate to reject Mr. Becerra's nomination.

Sincerely,



Jordan Sekulow
Executive Director

CC: Members of the United States Senate