



March 8, 2021

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

The United States Department of Justice (“DOJ” or “the Department”) should be guided by the principle that Thomas Jefferson believed was the “most sacred of the duties of government”: “to do equal and impartial justice” to all.<sup>1</sup> The Department plays a critical role in our country’s noble pursuit of equal and impartial justice, helping to realize values embedded in the Constitution and codified in a long list of federal statutes that help implement constitutional guarantees.

The Associate Attorney General (“AAG”), the third most senior person in the Department, contributes to making this principle a reality by advising and assisting “the Attorney General and the Deputy Attorney General in formulating and implementing Departmental policies and programs pertaining to a broad range of civil justice, federal and local law enforcement, and public safety matters.”<sup>2</sup> Specifically, the AAG oversees DOJ’s Antitrust Division, Civil Division, Civil Rights Division, Environment and Natural Resources Division, Tax Division, Office of Justice Programs, Community Oriented Policing Services, Community Relations Service, Office on Violence Against Women, Office of Information Policy, Executive Office for U.S. Trustees, Foreign Claims Settlement Commission, and the Servicemembers and Veterans Initiative.<sup>3</sup>

To contribute to the Department’s mission and guide relevant DOJ components, the AAG must have a certain set of values: a deep commitment to the core constitutional principles of liberty, equality, and fairness; a history of defending and/or advancing substantive fundamental rights; and a demonstrated willingness to respect the whole Constitution and the values therein, whatever their own policy preferences, or those of the President. These values are important, as they will guide the AAG in exercising one of the position’s greatest responsibilities—advising the Attorney General, the head of DOJ, on what issues, laws, regulations, and policies should receive the attention, support, and resources of the components under the AAG’s charge. The AAG must rise above partisan politics and, with independent

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<sup>1</sup> *About DOJ*, The United States Department of Justice (last visited Mar. 5, 2021), <https://www.justice.gov/about>.

<sup>2</sup> *About the Office*, The United States Department of Justice (last visited Mar. 5, 2021), <https://www.justice.gov/asg/about-office>.

<sup>3</sup> *Id.*

fortitude and objectivity, enforce the Constitution and the rule of law fairly, even if that means standing up to the Attorney General or President.

Vanita Gupta, President Joe Biden's nominee for Associate Attorney General of the United States, has had a career dedicated to exemplifying the qualities necessary for performing the job for which she has been nominated. She began her legal career as a fellow and assistant counsel at the NAACP Legal Defense and Education Fund, America's premier legal organization for fighting for racial justice, where she worked on criminal justice cases.<sup>4</sup> She then became a staff attorney at the American Civil Liberties Union,<sup>5</sup> an organization dedicated "to fight[ing] government abuse and to vigorously defend[ing] individual freedoms,"<sup>6</sup> eventually becoming its Deputy Legal Director and Director of its Center for Justice.<sup>7</sup> While a staff attorney at the ACLU's Racial Justice Program, Ms. Gupta engaged in litigation issues including education, indigent defense, immigration detention, and criminal justice reform.<sup>8</sup> And as Director of the ACLU's Center for Justice, she worked to remove racial bias from the criminal justice system, keep communities safe without relying too much on incarceration, and advance the organization's criminal justice reform goals.<sup>9</sup> President Barack Obama recognized Ms. Gupta's commitment to civil rights and appointed her as the U.S. Principal Deputy Assistant Attorney General for Civil Rights, a senior position in DOJ's Civil Rights Division.<sup>10</sup> Under her leadership, the division prosecuted hate crimes and human trafficking, protected the rights of LGBTQ+ individuals, promoted disability rights, and combatted discrimination in education, employment, housing, lending, and religious exercise.<sup>11</sup> And after a successful tenure at DOJ, Ms. Gupta became the President and CEO of The Leadership Conference on Civil and Human Rights, our nation's oldest, largest, and most diverse civil and human rights coalition, where she worked to achieve the organization's mission to safeguard civil and human rights through advocacy and outreach.<sup>12</sup>

Her career has thoroughly prepared her to be DOJ's next AAG, having experience in nearly each subject matter at the heart of the DOJ components under the charge of the AAG. Ms. Gupta has spent her legal career fighting for greater equity in our criminal justice system and advancing the rights and dignity of all people in America. She has demonstrated that, above all, she is committed to equal justice, equitable policies, and faithfulness to the text, history, and values of the U.S. Constitution.

Perhaps the most critical aspect of Ms. Gupta's career is her dedication to racial justice, particularly as her appointment comes at a time when our nation is reckoning with its history of white supremacy and racial oppression. We cannot truly have the just and free society our Constitution envisions if our

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<sup>4</sup> United States Senate Committee on the Judiciary: Questionnaire for Non-Judicial Nominee Vanita Gupta 107 (Jan. 27, 2021) [hereinafter "SJQ"]; *Our Mission*, NAACP Legal Defense and Educational Fund, Inc. (last visited Mar. 5, 2021), <https://www.naacpldf.org/about-us/>.

<sup>5</sup> SJQ at 107.

<sup>6</sup> *ACLU History*, American Civil Liberties Union (last visited Mar. 5, 2021), <https://www.aclu.org/about/aclu-history>.

<sup>7</sup> SJQ at 108.

<sup>8</sup> *Id.* at 107.

<sup>9</sup> *Id.* at 108.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 109; *see also Our History*, The Leadership Conference on Civil and Human Rights (last visited Mar. 5, 2021), <https://civilrights.org/about/history/>.

government—and particularly, our Department of Justice—is blind to the reality that systemic racism exists. And Ms. Gupta has been very clear on this score, stating, “This idea of systemic racism—that racism is not simply the moral ineptitude of individual bad actors, but that it is in fact built into the very mechanisms that undergird our democracy—is evident around our society. We can see it in employment, our criminal legal system, policing, and prominently in our voting laws and practices.”<sup>13</sup> She has fought racial injustice in the criminal justice space, particularly as a litigator with the NAACP Legal Defense Fund, where she learned the necessity of “transforming business as usual in the criminal justice system—a business that is usually masked as being racially neutral, bias-free, a just-the-crime-facts-ma’am industry. We have to transform that ‘business as usual’ into a counter-narrative about police practices, racial bias, and the irrationality of many of our criminal justice policies.”<sup>14</sup> She has fought systemic racism in voting by advocating for restoring the Voting Rights Act and identifying racist policies, plainly stating, “Shutting down polling places in neighborhoods of color; insisting upon forms of ID that require time and money to obtain; limiting access to polling locations so that only car owners with flexible jobs and childcare are able to vote – this is systemic racism and voter suppression.”<sup>15</sup> She has fought racial injustice in education, noting that “many American schools have a problem: separate and unequal discipline practices that discriminate on the basis of race.”<sup>16</sup> And she has fought racial injustice in policing, most notably, overseeing the investigations of the Ferguson, Baltimore, and Chicago police departments during her tenure at the DOJ’s Civil Rights Division.<sup>17</sup> America needs an AAG who can see and is determined to fight systemic racism embedded in our laws and policies. President Biden has nominated an AAG who would fight systemic racism and all forms of discrimination, as Ms. Gupta has also fought hate crimes and human trafficking, protected the rights of LGBTQ+ individuals, promoted disability rights, and combatted discrimination in education, employment, housing, lending, and religious exercise.<sup>18</sup>

If confirmed, Ms. Gupta would be the first civil rights lawyer to serve in one of the three most senior positions at DOJ. We are certain she will prove just how critical it is to have a civil rights attorney overseeing several DOJ components, as each component can have an impact on civil rights. For example, according to DOJ’s website, “[t]he mission of the Antitrust Division is to promote economic competition through enforcing and providing guidance on antitrust laws and principles.”<sup>19</sup> These antitrust laws have the goal of protecting economic freedom and opportunity by “promoting free and fair competition in the marketplace.”<sup>20</sup> However, Ms. Gupta realizes that concentrated economic power is not only bad for the marketplace. It can have a disastrous effect on civil and human rights as well for both the companies’ employees and society at large. In 2019, Ms. Gupta specifically noted Facebook’s policy that exempted politicians’ speech from its community standards as “extraordinarily reckless” as Facebook

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<sup>13</sup> Terri Sewell and Vanita Gupta, *Voting Is Our Most Fundamental Right – Let’s Make Sure It’s Open to Everyone*, The Guardian (June 26, 2020), <https://www.theguardian.com/us-news/2020/jun/26/voting-rights-act-shelby-county-hr4-bill>.

<sup>14</sup> Vanita Gupta, *Critical Race Lawyering in Tulia, Texas*, 73 Fordham L. Rev. 2055, 2071 (2005).

<sup>15</sup> Sewell and Gupta, *supra* note 13.

<sup>16</sup> Vanita Gupta & Catherine E. Lhamon, *Dear Betsy DeVos, Don’t Bring Back Discrimination in School Discipline*, Education Week (Mar. 27, 2018), <https://www.edweek.org/leadership/opinion-dear-betsy-devos-dont-bring-back-discrimination-in-school-discipline/2018/03>.

<sup>17</sup> SJQ at 108.

<sup>18</sup> *Id.*

<sup>19</sup> *Mission*, U.S. Department of Justice (last updated July 20, 2015), <https://www.justice.gov/atr/mission>.

<sup>20</sup> *Id.*

provided politicians “free rein to spread misinformation and racially divisive content with no accountability.”<sup>21</sup> The following year, she wrote to the House Subcommittee on Antitrust, Commercial, and Administrative Law on the dominance of Amazon, Apple, Facebook, and Google. In the letter, she asked Congress to “urge social media platforms and tech companies to (1) improve and enforce their current community standards policies on voter engagement/interference and civic activities to prevent voter suppression; (2) use COVID-19 policy and procedures as a model for how positive steps can be taken to both provide accurate information and prevent disinformation for voting and elections; (3) prevent disinformation in political ads; and (4) improve civil rights infrastructure.”<sup>22</sup> An AAG that does not come from a civil rights background might not bring such a perspective to the Antitrust Division or the Tax Division or the Office of Information Policy.

We at CAC have had the privilege of working closely with Ms. Gupta—Vanita to us—for years now, witnessing up close her genuine dedication to protecting and advancing core protections of the Constitution, furthering racial and social justice, and fighting for the most marginalized among us. **CAC enthusiastically supports Vanita Gupta’s confirmation to be the next Associate Attorney General of the United States and urges the Senate Judiciary Committee to report out favorably her nomination to the Senate floor for swift confirmation.**

If you have any questions or would like any additional information, please contact Kristine Kippins, CAC’s Director of Policy, at [kristine@theusconstitution.org](mailto:kristine@theusconstitution.org) or (202) 296-6889 x313.

Sincerely,



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cc: U.S. Senators on the Committee on the Judiciary

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<sup>21</sup> Vanita Gupta, *Facebook Is Threatening Our Elections – Again*, Politico (Oct. 11. 2019), <https://www.politico.com/magazine/story/2019/10/11/facebook-threatening-elections-again-229844/>.

<sup>22</sup> Letter from Vanita Gupta, President & CEO, and LaShawn Warren, Executive Vice President for Government Affairs, The Leadership Conference for Civil and Human Rights, to The Honorable David N. Cicilline, Chair, and The Honorable F. James Sensenbrenner, Ranking Member, House Subcommittee on Antitrust, Commercial, and Administrative Law 2 (Aug. 4, 2020), [http://civilrightsdocs.info/pdf/policy/letters/2020/Letter\\_for\\_Record-HJC\\_Antitrust\\_7.29.20\\_Hearing.pdf](http://civilrightsdocs.info/pdf/policy/letters/2020/Letter_for_Record-HJC_Antitrust_7.29.20_Hearing.pdf).