

United States Senate

February 4, 2021

Dear Colleague,

For almost a year now, our nation has been gripped by three simultaneous crises brought on by COVID-19 – a public health crisis, an economic crisis, and an education crisis.

In response to the public health crisis, America instituted Operation Warp Speed. This effort led to two different COVID-19 vaccines receiving swift Federal Drug Administration (FDA) authorization as well as the administration of nearly 30 million vaccine doses to the American public. In addition, other vaccines with promise are in the pipeline and could be authorized by the FDA in short order.

Despite these early successes in developing, authorizing, and administering vaccines, there remains what one publication described as an “historically complex challenge” to ensure that enough vaccines are distributed and administered in a rapid and effective manner.¹ The truth is that America has never undertaken the kind of ambitious vaccine program that will be necessary to distribute hundreds of millions of doses over such a short period of time. The responsibility to address this challenge will largely fall to President Biden’s nominee for Secretary of Health and Human Services (HHS).

What America needs in its next Secretary of HHS is an individual with extensive healthcare experience and expertise to continue the successful implementation of a nationwide COVID-19 vaccination program. Successfully achieving this goal is critical to ensuring that America can eradicate the virus, and to getting adults safely back to work and children safely back into the classroom.

Despite the gravity of the healthcare crisis and the clear challenges facing our country, President Biden has nominated an attorney – someone who lacks the necessary experience and skills to serve as Secretary of HHS. The nominee, Xavier Becerra, is not a medical doctor and he possesses no medical training. Mr. Becerra also lacks relevant experience, such as leading a federal, state, or local healthcare agency or system; state Medicaid program or Children’s Health Insurance Program; or medical practice, clinic, or hospital. He has no background in virology or infectious diseases. He possesses no pharmaceutical, medical device, or health-supply and equipment experience, and does not even have logistics or distribution business experience.

As we face this unprecedented global pandemic, voting to confirm an HHS Secretary with absolutely no medical or scientific experience is simply irresponsible. Science matters. As best I can tell, Mr. Becerra’s only healthcare experience is as a lawyer, suing the Little Sisters of the Poor.

Moreover, the next Secretary of HHS will also be responsible for defending against unprecedented attacks on patient privacy. For example, last week we learned that China has been attempting to set up COVID testing labs in at least five states.² These labs would enable China to “collect, store and exploit biometric information” gleaned from American COVID tests, raising concerns that China is exploiting the pandemic in order to “win a race to control the world's biodata.”³

¹ Josh Michaud and Jennifer Kates, Kaiser Family Foundation, “*Distributing a COVID-19 Vaccine Across the U.S. – A Look at Key Issues*,” October 20, 2020. Available at: <https://www.kff.org/report-section/distributing-a-covid-19-vaccine-across-the-u-s-a-look-at-key-issues-issue-brief/>

² CBS News, *U.S. intelligence officials say Chinese government is collecting Americans’ DNA*, January 28, 2021.

³ Id.

Mr. Becerra's record on protecting privacy should concern every American, as he has consistently chosen partisan power over individual privacy. As the Attorney General for the state of California, he has demanded that thousands of registered charities annually disclose to his office the names and addresses of their major donors, even though California law does not require these disclosures. This demand would be intolerably invasive even if Mr. Becerra's office kept this information closely guarded, but it has in fact done just the opposite. His office published information from nearly two thousand organizations, subjecting donors and non-profits to potential harassment and abuse. This disregard for privacy has led numerous charitable organizations to file suit to challenge or support challenges to Mr. Becerra's policy, including the Thomas More Law Center (a plaintiff), Americans for Prosperity (a plaintiff), the Chamber of Commerce, the Council on American-Islamic Relations, and the Hispanic Leadership Fund. Later this year, the Supreme Court will decide whether Mr. Becerra's invasion of privacy violates the First Amendment.⁴

Moreover, the next HHS Secretary will be responsible for upholding necessary conscience protections for health care workers, and Mr. Becerra has demonstrated overt hostility to anyone who dares practice medicine consistent with their faith. Americans have a range of views on the question of abortion, and people of good faith can have meaningful disagreements. But Mr. Becerra's record is that of an extreme ideological activist, and it demonstrates harsh intolerance for dissent. Indeed, he aggressively defended a California law that forced pro-life groups – whose sole mission was to encourage expectant mothers to give their children the opportunity for life – to advertise for abortion. He defended this law knowing that it was not a neutral law to protect women, but an attack on the pro-life community. As Justice Kennedy wrote in a concurrence to the Supreme Court's decision holding that the law violated the First Amendment: "This law is a paradigmatic example of the serious threat presented when government seeks to impose its own message in the place of individual speech, thought, and expression.... This [law] compels individuals to contradict their most deeply held beliefs, beliefs grounded in basic philosophical, ethical, or religious precepts, or all of these."⁵

In the midst of a global pandemic, America needs a Secretary of Health and Human Services with direct professional healthcare, medical research, or logistics experience, not a partisan lawyer with no regard for privacy or conscience protections. Given these realities, and the critical importance of this position for the lives of the American people, Mr. Becerra is simply the wrong person to lead the department.

For these reasons, I urge you to join me in rejecting Mr. Becerra's nomination, and in encouraging President Biden to nominate someone not only qualified to lead our nation's pandemic response, but also who someone does not have a demonstrated hostility towards patient privacy and the First Amendment.

Sincerely,



Ted Cruz
UNITED STATES SENATOR

⁴ See *Thomas More Law Center v. Becerra* (19-255); *Americans for Prosperity Foundation v. Becerra* (19-251).

⁵ *National Institute of Family and Life Advocated v. Becerra*, 585 U.S. ____; 138 S. Ct. 2361, 2379 (2018) (Kennedy, J., concurring).