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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

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VIA ELECTRONIC TRANSMISSION

The Honorable Bernard Sanders
Chair
U.S. Senate Committee on Health, Education, Labor, and Pensions
Washington, D.C. 20510

Chair Sanders:

I understand you intend to hold an off-the-floor markup on the nomination of Julie Su, President Joe Biden's nominee to lead the Department of Labor (DOL or the Department). It has been 339 days since Ms. Su assumed the role of Acting Secretary of Labor and 299 days since the Health, Education, Labor, and Pensions Committee held her nomination hearing on April 20, 2023.¹ Since the Committee's April hearing, Ms. Su's tenure as Acting Secretary has been plagued by ill-advised policy decisions and consistent mismanagement. For example, Ms. Su has failed to carry out her duties as Acting Secretary, is pursuing failed Democrat policies that have prolonged inflationary conditions for Americans, and continues to show clear favoritism for labor unions to the detriment of workers and businesses alike. These issues and more warrant additional public review by this Committee. Therefore, I respectfully request that you hold a hearing for Ms. Su's renomination so that Senators may question her record, and that you hold a public mark-up on her nomination. Any other act will circumvent this Committee's constitutionally mandated advice and consent role for Presidentially-appointed, Senate-confirmed (PAS) positions.

Issues Concerning Ms. Su's Management of the Department of Labor Warrant Review

Since the Committee's April 20, 2023 hearing, Ms. Su has pursued harmful policies and regulations as Acting Secretary that negatively impact workers and businesses. The sub-agencies Ms. Su oversees have also failed to deliver for the American people, and many have suffered as a result.

1. Ms. Su is Placing Employers in Limbo Waiting for H-2B Approvals for Foreign Workers

Under Ms. Su's leadership, DOL's Employment and Training Administration (ETA) struggles to process H-2B worker visas, creating substantial uncertainty for employers that rely on this program to meet their annual needs. The H-2B program allows American employers to temporarily hire

¹ *Nomination of Julie Su to Serve as Secretary of Labor before Senate Committee on Health, Education, Labor, and Pensions*, 118th Cong. (2023).

non-immigrant, foreign workers to perform non-agricultural labor in the United States.² Each year, the program allots up to 66,000 visas to a variety of employers: 33,000 visas in the first half of the year and 33,000 in the second half.³ Employers are required to apply for H-2B visas and are entered into a new lottery system at random.

In 2023, employers complained that they experienced longer delays than in previous years. In fact, although DOL is required to notify employers within seven business days that their application has been accepted or contains a deficiency, some employers report processing delays lasting over 90 days to receive such notice.⁴ These delays contribute to critical labor shortfalls that continue today as a result of “Bidenomics.”

2. Ms. Su is Failing to Curb the Unacceptable Trend of Illegal, Exploitative Child Labor Involving Migrant Children

As Acting Secretary, Ms. Su is failing to prevent the dramatic and disturbing increase in exploitative and dangerous child labor practices across the country. Last year, DOL found an 88 percent increase in illegal child labor since 2019, and a 50 percent increase since 2022.⁵ Instead of preventing illegal child labor at the outset, DOL boasts about increased fines levied against employers—nearly doubling from \$4.4 million in FY 2022 to more than \$8 million in FY 2023.⁶ DOL’s repeated failures to address this trend triggered the DOL Office of Inspector General (OIG) to open an investigation into “Wage and Hour Division’s efforts to curtail child labor violations,” as well as the underlying cause for rising child labor law violations.⁷ Despite DOL OIG’s investigation and widespread media reports that the Biden Administration and DOL ignored or missed red flags of exploitative child labor practices,⁸ Ms. Su insists that “the Department of Labor [is] doing [its] job.”⁹

² H-2B Temporary Non-agricultural Program, U.S. Department of Labor (Last Accessed January 18, 2024) <https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2b>.

³ *Cap Count for H-2B Nonimmigrants*, U.S. DEPT. OF HOMELAND SECURITY, CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-for-h-2b-nonimmigrants> (last visited Jan. 31, 2024).

⁴ Press Release, U.S. Senate Committee on Health, Education, Labor, and Pensions, Ranking Member Cassidy, Collins, Capito Seek Answers on DOL’s Mismanagement of Guest Worker Visa Program, <https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-collins-capito-seek-answers-on-dols-mismanagement-of-guest-worker-visa-program>.

⁵ *Child Labor Enforcement: Keeping Young Workers Safe*, U.S. DEPARTMENT OF LABOR, <https://www.dol.gov/agencies/whd/data/child-labor> (last visited Jan. 31, 2024); Rebecca Rainey, *Child Labor Violations Up 50% in 2023 Amid Federal Crackdown*, BLOOMBERG LAW (Oct. 19, 2023), <https://news.bloomberglaw.com/daily-labor-report/documented-child-labor-violations-up-by-50-in-fiscal-year-2023>.

⁶ Rebecca Rainey, *Wage Enforcers Report Banner Year for Fines, Record Low Actions*, Bloomberg Government (Dec. 21, 2023), <https://www.bgov.com/next/news/S60HPFDWRGG0>.

⁷ Memorandum from Carolyn R. Hantz, Assistant Inspector Gen. for Audit, to Jessica Looman, Principal Deputy Adm’r for Wage & Hour Div. (Aug. 21, 2023), <https://www.oig.dol.gov/public/oaprojects/Child%20Labor%20Laws%20Engagement%20Letter%20Discretionary%20Audit.pdf>.

⁸ Hannah Dreier, *As Migrant Children Were Put to Work, U.S. Ignored Warnings*, THE NEW YORK TIMES (Apr. 17, 2023), <https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html>; Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, THE NEW YORK TIMES (Feb. 25, 2023), <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

⁹ Examining the Policies and Priorities of the Department of Labor: Hearing Before the H. Comm. on Educ. & the Workforce, 118th Cong. (2023) (question of Rep. Jim Banks).

3. Ms. Su is Delaying Necessary Medical Treatment for American Energy Workers

Ms. Su is mismanaging DOL's Office of Workers' Compensation Programs (OWCP), leading to adverse medical impacts and financial uncertainty for workers. OWCP is responsible for administering four major disability compensation programs, including the Energy Employees Occupational Injury Compensation Program Act (EEOICPA) and the Federal Employees Compensation Act (FECA). EEOICPA provides medical treatment and other services to federal workers and contractors at Department of Energy facilities who have been exposed to radiation and other toxic substances, including up to 90 days of emergency treatments for a variety of conditions such as chronic complex respiratory conditions.¹⁰ Workers complain that EEOICPA beneficiaries are waiting more than 90 days for DOL to approve treatment for their critical and time-sensitive conditions.¹¹ OWCP's processes have left beneficiaries in limbo as to when they will receive the treatment they need.

Federal employees who file claims under FECA similarly report that OWCP is making inconsistent decisions regarding what medical equipment and procedures are eligible for OWCP reimbursement, and is failing to manage funds meant to purchase drugs that are safe for patients. These failures and inconsistencies are emblematic of Ms. Su's broad mismanagement in her time as Acting Secretary, and warrant review by this Committee.

4. Ms. Su is Neglecting to Seek Repayment of Taxpayer Dollars Overpaid to Union Pension Funds

As Acting Secretary of Labor, Ms. Su sits as the Chair of the Board of Directors at the Pensions Benefit Guaranty Corporation (PBGC), the federal government agency responsible for protecting the retirement incomes of American workers enrolled in private sector defined benefit pension plans.¹² Through the American Rescue Plan of 2021, Democrats passed President Biden's union pension fund bailout, which ultimately resulted in nearly \$90 billion in bailout funding.¹³ Chief among the applicants for bailout funding was the Central States Pension Fund—the pension fund used by the International Brotherhood of Teamsters.¹⁴

In November 2023, the PBGC's OIG issued a report documenting that PBGC overpaid the Teamsters' pension fund by \$127 million when the fund included 3,479 dead individuals as active plan participants on its bailout application.¹⁵ Following the OIG's report, Ms. Su stood by as PBGC refused to seek repayment of that money, and as the Teamsters' pension fund refused to pay back

¹⁰ Press Release, U.S. Senate Committee on Health, Education, Labor, and Pensions, Ranking Member Cassidy Rebukes DOL's Delays in Providing Health Care to American Energy Workers (Nov. 29, 2023), <https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-rebukes-dols-delays-in-providing-health-care-to-american-energy-workers>.

¹¹ *Id.*

¹² *Who We Are*, PENSION BENEFIT GUARANTY CORPORATION, <https://www.pbgc.gov/about/who-we-are> (last visited Jan. 31, 2024).

¹³ Greg Iacurci, *Covid Relief Bill Gives \$86 Billion Bailout to Failing Union Pension Plans*, CNBC (Mar. 8, 2021), <https://www.cnbc.com/2021/03/08/covid-relief-bill-gives-86-billion-bailout-to-failing-union-pension-plans.html>.

¹⁴ *Id.*

¹⁵ PENSIONS BENEFIT GUARANTY CORPORATION OFFICE OF INSPECTOR GENERAL, REPORT NO. EVAL-2024-01, *Management Alert: Deceased Participants in The Central States' Special Financial Assistance Calculation*, at 2 (Nov. 1, 2023), <https://oig.pbgc.gov/pdfs/EVAL-2024-01.pdf>.

the windfall it received. Americans deserve a Secretary of Labor that focuses on protecting taxpayers, not favored constituencies.

5. Ms. Su is Pursuing Failed Democrat Priorities as Acting Secretary of Labor

As Acting Secretary of Labor, Ms. Su continues to pursue failed Democrat policies that eliminate worker flexibility, create additional and substantial burdens on employers and employees, and that exclusively benefit key Democrat constituencies. DOL is supposed to work on behalf of the American economy and all workers across the country regardless of status or affiliation. However, Ms. Su has shown no interest in being an advocate for either. Instead, she has shown her allegiance to pushing the failed Democrat priorities.

i. Ms. Su Plans to Strip American Workers of Their Right to Choose Their Own Work Status

During the Committee’s hearing, Ms. Su committed to Senators that DOL will not implement the ABC worker classification test similar to the one adopted in California that resulted in widespread job loss. However, on January 10, 2024, DOL finalized its rule to determine whether an individual is classified as an employee or independent contractor and created a new test for making that fact-specific legal determination.¹⁶ The new rule—which abandons a straight-forward test to determine a worker’s classification—adopts a six-factor, ambiguous test that deprives potential employers and workers of much-needed certainty and creates an unnecessary risk of substantial liability for employers. Although DOL’s rule is not the California ABC test, its practical effects will be the same.

DOL’s new worker classification test is a prime example of why “Bidenomics” isn’t working. Nearly 27 million Americans work as independent contractors because this status gives them the flexibility and control over their job.¹⁷ Independent contractors include the gig economy, truck drivers, financial advisors, housing contractors, direct sellers, musicians, actors, software designers, physicians, hair stylists, and journalists. DOL’s new rule, however, will strip independent contractors of that flexibility, and will cost them their jobs if their newly-classified employers cannot afford to pay them as employees.

Unsurprisingly, this new rule is a gift to two major Democrat benefactors: organized labor and trial lawyers. By classifying more individuals as employees, Ms. Su will create a larger pool of employees who can be unionized. Further, this new rule will result in more litigation against companies across the country, clogging the federal court system while lining the pockets of trial attorneys.

ii. Ms. Su’s New Overtime Rule Will Eliminate Jobs and Hurt Small Businesses

Under Ms. Su’s leadership, DOL filed a notice of proposed rulemaking (NPRM) to increase the overtime exemption threshold under the Fair Labor Standards Act (FLSA).¹⁸ Under the current

¹⁶ 89 FR § 1638 (January 10, 2024).

¹⁷ *SOI Tax Stats – Filing Season Statistics: Mid-November Filing Season Statistics by AGI*, INTERNAL REVENUE SERVICE, <https://www.irs.gov/statistics/filing-season-statistics> (last visited Jan. 31, 2024).

¹⁸ 29 CFR § 514 (Sept. 8, 2023).

rule, employers must pay an employee overtime if that employee makes less than \$684 per week (\$35,568 per year) and does not perform specific duties listed in the FLSA.¹⁹ Under DOL’s new proposed rule, the exemption threshold will increase by at least 55 percent to \$1,059 per week (\$55,068 per year), which is estimated to extend overtime eligibility to an additional 3.6 million employees.²⁰ This substantial increase comes only three years after the Trump administration increased the overtime threshold, and at a time when small businesses are still recovering from the COVID-19 pandemic and the catastrophic effects of runaway inflation caused by “Bidenomics.” Even President Biden’s chief economic advisor, Jared Bernstein, admits “[t]he costs of increased [overtime] coverage would ultimately be borne by workers as employers set base wages taking expected overtime pay into account.”²¹

This new mandate will negatively impact the American economy by eroding worker flexibility, making it harder for non-profits to provide services, increasing labor costs in colleges, and decreasing employees’ base pay by inevitably decreasing the number of hours employees can expect to work. In fact, 14 higher education associations, representing 4,300 two- and four-year public and non-profit colleges and universities in all 50 states, argue that the proposed overtime rule will severely undermine employees’ ownership over their own schedules.²²

This rule is also an expanded version of the rule the Obama administration attempted to implement, which was blocked in federal court in 2017. When the Obama administration sought to raise the overtime threshold from \$455 to \$913 per week (nearly a 50 percent increase), a federal court found the threshold “would essentially make the employee’s duties, functions, or tasks irrelevant,” and that DOL had “exceeded its authority” by improperly making “salary rather than an employee’s duties determinative of whether a ‘bona fide executive, administrative, or professional capacity’ employee should be exempt from overtime pay.”²³ Under Ms. Su’s leadership, DOL’s new proposal goes further than the rejected Obama Rule, willfully ignoring the 2017 decision of what constitutes a “reasonable interpretation” of the FLSA.²⁴

6. Ms. Su is Prioritizing a Pro-Union Agenda Despite Claiming that She Could “Build Big Tables” As Secretary of Labor

Despite her claims that she will “build big tables” as Secretary of Labor, Ms. Su instead uses her time as Acting Secretary to benefit unions, taking a whole-of-government approach to support them at the expense of non-unionized companies and employees—which make up 94 percent of the private sector workforce.²⁵

¹⁹ 29 CFR § 514 (Sept. 27, 2019).

²⁰ 29 CFR § 514 (Sept. 8, 2023).

²¹ Jared Bernstein & Ross Eisenbrey, *New inflation-adjusted salary test would bring needed clarity to FLSA overtime rules*, ECON. POL’Y INST. (Mar. 13, 2014), <https://www.epi.org/publication/inflation-adjusted-salary-test-bringneeded/> (emphasis added).

²² Letter from Bailey Graves, CUPA-HR, to Jessica Looman, Acting Adm’r, Wage & Hour Div., U.S. Dept. of Lab. (Feb. 8, 2022), <https://www.cupahr.org/wp-content/uploads/advocacy/CUPA-HR-Overtime-Letter-to-DOL.pdf>.

²³ *Nevada v. U.S. Dep’t of Lab.*, 275 F. Supp. 3d 795, 807 (E.D. Tex. 2017).

²⁴ *Id.*

²⁵ News Release, Union Members – 2023 (Jan. 23, 2024), <https://www.bls.gov/news.release/pdf/union2.pdf>.

i. Ms. Su Implemented New Prevailing Wage Standards for Federal Contracts That Give More Taxpayer Money to Union Bosses

Under Ms. Su’s leadership, on October 23, 2023, DOL implemented new regulations to the Davis-Bacon and Related Acts (DBRA),²⁶ which requires that employees working on a variety of federal contracts be paid no less than the local “prevailing wage” for similar projects in that area. Under the new rule, DOL changed DBRA’s definitions, wage rate calculations, fringe benefits, wage determinations, and scope of coverage.²⁷ The new rule redefines the term “prevailing wage” to require high wages for employees, thereby raising the cost to the federal government to complete much needed construction projects. It also discriminates against non-unionized construction workers by requiring that union wages and benefits drive the prevailing wage determination, even though unions represent less than 20 percent of American construction workers.²⁸

Under this new rule, American taxpayers will pay an estimated \$21.5 billion more for less projects, small business contractors will not be able to compete for government contracts, contractor compliance costs will skyrocket, and rural areas will be drowned out as more expensive urban areas will drive the prevailing wage.²⁹ At the same time, unionized contractors will be in a better position to win these contracts, benefiting union leaders and bolstering unions’ efforts to unionize more workplaces.

ii. Ms. Su is Relaxing Union Reporting Requirements Designed to Protect Union Members

The Landrum-Griffith Labor Management Reporting and Disclosure Act (LMRDA) prevents union racketeering and corruption by imposing reporting requirements, election standards, and safeguards for protecting labor organization funds and assets.³⁰ Despite DOL’s efforts to implement new reporting requirements on employers,³¹ DOL is simultaneously rescinding reporting requirements on unions. For example, DOL now requires that employers report expenditures made by a company employee in the course of their daily conversations with other employees about their right to unionize, even though this is clearly exempt from LMRDA reporting.³² At the same time, DOL is relaxing the financial reporting requirements for unions

²⁶ 88 FR § 57526 (August 23, 2023).

²⁷ Eric Leonard, Craig Smith, W. Benjamin Phillips III, *DOL’s Davis Bacon Act Overhaul Brings Significant Changes to Federal Construction Contracting*, WILEY REIN LLP (Aug. 14, 2023), <https://www.wiley.law/alert-DOLs-Davis-Bacon-Act-Overhaul-Brings-Significant-Changes-to-Federal-Construction-Contracting>.

²⁸ Clair McAnaw Gallagher, *The Construction Industry: Characteristics of the Employed, 2003-20*, U.S. BUREAU OF LABOR STATISTICS (April 2022), <https://www.bls.gov/spotlight/2022/the-construction-industry-labor-force-2003-to-2020/home.htm>.

²⁹ Rachel Greszler, *Davis-Bacon Act: End It, Don’t Amend It*, THE HERITAGE FOUNDATION (Aug. 29, 2023), <https://www.heritage.org/jobs-and-labor/commentary/davis-bacon-act-end-it-dont-amend-it>.

³⁰ Laws – Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), DEPT. OF LABOR, <https://www.dol.gov/agencies/olms/laws> (last visited Jan. 31, 2024).

³¹ Jeffrey Freund, *Putting ‘Management’ Back Into the Labor-Management Reporting and Disclosure Act*, U.S. DEP’T OF LAB. BLOG (Jan. 5, 2022), <https://blog.dol.gov/2022/01/05/putting-management-back-iinto-the-LMRDA> (OLMS has claimed that “management is an equally important part of [OLMS’s] reporting and disclosure program).

³² 29 U.S.C. § 433(e).

meant to protect union members, even in the face of numerous union corruption cases in recent years, and a longer history of the same.³³

Transparency in reporting for both unions and employers is necessary for the proper administration of LMRDA. Equally as important is ensuring that Ms. Su fairly applies the law to unions and employers alike. Ms. Su has not shown a willingness or ability to do that during her time at DOL.

iii. Ms. Su's New Walkaround Proposal Prioritizes Union Organizing Over Workplace Safety

On August 30, 2023, DOL announced a new proposed rule that will allow union representatives to accompany Occupational Safety and Health Administration (OSHA) during facility inspections, even if the workplace is not unionized.³⁴ This rule will allow union representatives who have not yet won the right to represent employees, or perhaps even failed to win a representation election, to piggyback a union's organizing efforts onto an OSHA inspection. In other words, Ms. Su creates the appearance that the government endorses union representation, using the OSHA inspection process—which is supposed to revolve entirely around ensuring employee safety and health—for political purposes to help unions gain a foothold with employees.

Allowing a union official to participate in an inspection destroys the government's neutrality in the union organizing process by implying to workers that the union has government support. Moreover, the presence of a union organizer could very well incentivize a non-unionized employer to deny OSHA access to the workplace, thereby requiring OSHA to spend additional resources obtaining a warrant before being permitted to conduct the safety inspections necessary and jeopardizing employee safety and health. Ms. Su's efforts to help unions avoid accountability and to force unions into workplaces regardless of the adverse effects their presence creates is indicative of her misplaced priorities and mismanagement of DOL.

**Issues Concerning Ms. Su's Legal Authority to Lead the Department as Acting Secretary
Warrant Review**

Ms. Su is currently serving as Acting Secretary without accountability and has been allowed to perform the function and duties of the Secretary of Labor for all intents and purposes. Not only does this bypass the Senate's constitutionally mandated advice and consent role, but it allows Ms. Su to serve without legitimacy and oversight.

³³ See Press Release, U.S. Att'y's Off., E.D. Mich., *Former UAW Official Sentenced to 57 Months in Prison For Embezzling Over \$2 Million in Union Funds* (July 26, 2022), <https://www.justice.gov/usao-edmi/pr/former-uawofficial-sentenced-57-months-prison-embezzling-over-2-million-union-funds>; Letter from Elizabeth H. Shuler et al. to U.S. Sens. (June 7, 2023), <https://aflcio.org/about/advocacy/legislativealerts/letter-supporting-julie-sus-nomination-labor-secretary>; Judy L. Thomas, *'This misuse is shocking.'* *Kansas City, KS-based union president ousted by executive staff*, YAHOO! NEWS (June 5, 2023), <https://ca.news.yahoo.com/misuse-shocking-kansas-city-ks-103000141.html>.

³⁴ 29 CFR § 1903 (Aug. 30, 2023)

7. Ms. Su has served as Acting Secretary for 339 days under a DOL-succession statute, allowing her to bypass the Committee’s constitutionally mandated advice and consent role

The Vacancies Act is typically the exclusive means for an acting official to perform the function and duties of most vacant PAS positions temporarily unless a statutory exception applies.³⁵ Under 29 U.S.C. § 552, a DOL-specific succession statute, “[t]he Deputy Secretary [of Labor] shall (1) in case of the death, resignation, or removal from office of the Secretary, perform the duties of the Secretary until a successor is appointed.”³⁶ The Government Accountability Office (GAO), has further held that, when an agency officer is serving under a statutory exception, the time limitations of the Vacancies Act do not apply.

On March 11, 2023, former-Secretary Martin Walsh resigned as Secretary of DOL.³⁷ On March 14, 2023, President Biden nominated Ms. Su and, on March 21, 2023, DOL transmitted a submission to GAO stating that Ms. Su is serving as Acting Secretary of Labor not under the Vacancies Act, but under a DOL-specific succession statute.³⁸ Under the DOL succession statute, Ms. Su has been serving as Acting Secretary for 339 days—the longest time in history that an acting secretary has served in a vacant PAS position.³⁹ Despite GAO’s holding that the limitations of the Vacancies Act do not apply to Ms. Su, I strongly disagree with its assessment that she can open-endedly assume these authorities without the Senate’s approval and have introduced legislation to prevent Ms. Su from serving indefinitely.⁴⁰ Given that Ms. Su has only appeared once before this Committee, on April 20, 2023, it is imperative that she appear again for Committee members to consider her record as Acting Secretary before voting on her nomination.

8. President Biden Quietly Added Acting Secretary of Labor Su to the Presidential Line of Succession

The U.S. Constitution provides for the succession to the presidency and vice presidency.⁴¹ Under the Presidential Succession Act of 1947, if there is no President, Vice President, or President Pro Tempore, then the highest-ranking officer shall act as President.⁴² The Secretary of Labor is listed as an eligible officer under the Presidential Succession Act.⁴³ However, the Presidential Succession Act clarifies that the Act only applies “to such officers as are eligible to the office of the President under the Constitution . . . [and] officers appointed, by and with the advice and consent of the Senate.”⁴⁴

³⁵ 5 U.S.C. § 3347.

³⁶ 29 U.S.C. § 552

³⁷ U.S. GOVT. ACCOUNTABILITY OFF., B-335451, U.S. DEPT. OF LABOR – LEGALITY OF SERVICES OF ACTING SECRETARY OF LABOR (2023).

³⁸ *Id.* at 2.

³⁹ Prior to Ms. Su, the longest serving acting secretary was Acting Secretary Kevin McAleenan, nominated to be Acting Secretary of Homeland Security. He served as acting secretary for 215 days.

⁴⁰ <https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-introduces-bill-preventing-julie-su-from-serving-as-secretary-of-labor-indefinitely-without-senate-confirmation>.

⁴¹ U.S. Const. Amend. XXV.

⁴² 3 U.S.C. § 19(d)(1).

⁴³ *Id.*

⁴⁴ 3 U.S.C. § 19(e).

In October 2023, President Biden quietly added Ms. Su to the presidential line of succession.⁴⁵ Ms. Su has not been confirmed by the Senate, and her role as Deputy Secretary of Labor is not a position listed as “eligible to the office of the President.” This Committee must have the opportunity to ask questions about Ms. Su’s legal authority to act in the event the President is unable to perform his duties.

Conclusion

It has been 339 days since Ms. Su was nominated, and 299 days since she appeared before this Committee. In that time, she has advanced failed Democrat policies to the detriment of Americans and businesses and is serving as Acting Secretary on legally dubious grounds. These are serious matters that deserve this Committee’s full attention. Again, I urge you to hold a second nomination hearing for Ms. Su so members of this Committee may question her record as Acting Secretary of Labor before calling for a vote on her nomination, as well as a public mark-up.

Sincerely,



Bill Cassidy, M.D.

Ranking Member

U.S. Senate Committee on Health,
Education, Labor, and Pensions

⁴⁵ Rebecca Rainey, *GOP Senators Grill Biden Over Su Addition To Line Of Succession*, BLOOMBERG LAW (Oct. 18, 2023), <https://news.bloomberglaw.com/daily-labor-report/gop-senators-grill-biden-over-su-addition-to-line-of-succession>.