

March 30, 2023

Senator Bernie Sanders  
Chair  
Senate HELP Committee  
428 Dirksen Senate Office Building  
Washington, DC 20510

Senator Bill Cassidy  
Ranking Member  
Senate HELP Committee  
520 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Sanders and Ranking Member Cassidy:

The 32 undersigned organizations write to express our concerns with Secretary of Labor nominee, Julie Su. Ms. Su's track record as California's Secretary of Labor raises legitimate questions about her ability to lead the U.S. Department of Labor ("DOL"), particularly at a time when our country faces supply chain challenges, inflation, and workforce shortages. Moreover, upcoming labor negotiations at the West Coast Ports and elsewhere could, without adequate leadership, effectively shut down our nation's economy. We urge the Committee to examine Ms. Su's record and request that she fully detail her plans to address our nation's challenges in a manner that advances our collective goals of reducing inflation, ensuring stable supply chains, and supporting economic opportunities for employers and employees alike. Confirming a labor secretary with a track record of putting roadblocks in the way of solving the current workforce shortage would negatively affect every American, every business (particularly small businesses), and the economy.

In the coming year, several high-profile, highly consequential labor negotiations will take place, which, if mismanaged, could have devastating consequences for the U.S. economy. Negotiations are currently underway between the Pacific Maritime Association, which represents employers at the nation's West Coast ports, and the International Longshore and Warehouse Union ("ILWU"), which represents more than 22,000 workers at 29 seaports from California to Washington State. Failure to reach an agreement would again devastate the economy. A 10-day lockout in the West Coast ports in 2002 cost the economy an estimated \$1 billion per day.<sup>1</sup> The current talks have been ongoing since May 2022. It is imperative that the Administration provide much-needed leadership in these discussions.

Additionally, on July 31, 2023, the current collective bargaining agreement between UPS and the International Brotherhood of Teamsters, which covers over 340,000 UPS workers, will expire. A strike would cause significant damage to a company that is vital to the nation's supply chain, delivering an average of 28 million packages per day across the world in Q4 of 2022.<sup>2</sup> Again, a failure in these negotiations would negatively impact customers throughout the economy, including businesses of every size, sector, and region.

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<sup>1</sup> Stevens, Laura, "West Coast Ports Face Several Months' Backlog," *Wall Street Journal*, February 22, 2015, available at <https://www.wsj.com/articles/with-tentative-labor-deal-reached-west-cost-ports-resume-full-operations-1424630077>.

<sup>2</sup> Piciotto, Rebecca, "UPS and the Teamsters prepare for high-stakes talks with union contract set to expire," CNBC, February 3, 2023, available at <https://www.cnbc.com/2023/02/03/ups-teamsters-labor-fight-union-contract.html>.

In the past, Secretaries of Labor have encouraged settlement where a failure in labor negotiations could have a substantial impact on the economic wellbeing of the nation. For example, Secretary Chao actively engaged parties during the negotiations at the West Coast ports in 2002, as did Secretary Perez in 2015. More recently, in 2022, Secretary Walsh engaged in the negotiations between freight railroad companies and the various unions representing their employees. If handled properly, engagement by Secretaries can facilitate a peaceful resolution. The Committee should seek answers from Ms. Su as to how she will approach these challenges.

The groups listed below are further concerned that when Ms. Su led the California Labor and Workforce Development Agency, she spearheaded initiatives that jeopardized millions of independent contractor relationships. The independent contractor business model has created prosperity for millions of workers and entrepreneurs. In her capacity as the state's chief labor officer, Ms. Su was integral in the formation and implementation of A.B. 5, which codified language that effectively banned such arrangements in California. The law left millions unsure as to whether they could continue to work as self-employed individuals or would have to seek jobs elsewhere. Controversy and chaos ensued, resulting in a patchwork of legislative solutions with over 200 industries and occupations seeking and securing exemptions from the law. Even with the exemptions, the law proved so unpopular that voters of California overwhelmingly rejected it by passing Proposition 22 in 2020.

Su has also supported California's Fast Food Accountability and Standards Recovery Act (or FAST Act), which gives a board of unelected individuals complete autonomy over the fast food industry, including the power to set wages, establish employment conditions, and create new regulations. This law was opposed by the state's own Department of Finance, which stated enforcement would increase government costs and "could lead to a fragmented regulatory and legal environment for employers and raise long-term costs across industries."<sup>3</sup> Fortunately for small businesses and entrepreneurs in the state, implementation was put on hold until the 2024 election after hundreds of thousands of Californians signed petitions disapproving of the law and demanding it be put on the ballot as a referendum.

In 2020, Ms. Su oversaw the implementation of California's emergency COVID-19 workplace safety rule. Without even so much as a notice-and-comment process, she chose to hold employers liable for something they neither caused nor created. Under California's rule, employers were required to provide weekly testing to all employees and paid leave for an infinite duration to any employee who tested positive, regardless of whether they contracted the virus at work or not. The rule California imposed on employers was overly broad, unworkable, burdensome, and wholly unfair. Moreover, the state agencies never produced a single study supporting the notion that employers were contributing to, much less causing, the rampant community spread of COVID-19. In the end, of course, COVID-19 was not a hazard created by the nature of the workplace. California effectively imposed a massive burden on California employers to address a public health crisis.

Ms. Su also led California's Employment Development Department ("EDD") during the

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<sup>3</sup> Department of Finance Bill Analysis, AB 257, June 16, 2022, available at <https://esd.dof.ca.gov/LegAnalysis/getPdf/066D8BA5-C012-ED11-913B-00505685B5D1>.

mismanagement of COVID-19-related unemployment insurance funds. Under Su’s tenure, EDD issued an estimated \$30 billion in fraudulent payments, hundreds of thousands of Californians experienced delays in receiving their benefits, and thousands were improperly denied benefits. The California State Auditor<sup>4</sup> did not equivocate when she said, “EDD's inefficient processes and lack of advanced planning led to significant delays in its payment of UI claims,” and EDD “compromis[ed] the integrity of the UI program” when it suspended eligibility determinations for benefits. Nearly a year after COVID-19 first emerged in the U.S., EDD still “[had] not yet adopted best practices for managing the call center, leaving it ill prepared to assist Californians effectively.”

In closing, we thank the Committee for your consideration of this nomination. Again, we urge the Committee to explore Ms. Su’s record as a regulator of California employers in detail. Moreover, we request that you seek answers as to how she intends to resolve the pending labor negotiations and work with employers and employees alike to best achieve our shared economic goals.

Sincerely,

Air Conditioning Contractors of America  
American Hotel & Lodging Association  
American Trucking Associations  
Americans for Tax Reform  
Associated Builders and Contractors  
Association Of Bi-State Motor Carriers  
Center for the Defense of Free Enterprise  
Coalition of Franchisee Associations  
Consumer Technology Association  
Franchise Business Services  
Heating, Air-conditioning, & Refrigeration Distributors International  
Independent Bakers Association  
Independent Electrical Contractors  
Institute for the American Worker  
International Franchise Association  
International Warehouse Logistics Association (IWLA)  
IPSE (Independent Professionals and Self-Employed) Association  
Leading Builders of America  
National Armored Car Association  
National Association of Home Builders  
National Association of Wholesaler-Distributors  
National Council of Chain Restaurants  
National Federation of Independent Business  
National Franchisee Association  
National Grocers Association  
National Ready Mixed Concrete Association  
National Restaurant Association

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<sup>4</sup> Letter from California State Auditor to Governor and Legislative Leaders, January 256, 2021, available at <https://www.auditor.ca.gov/reports/2020-128and628.1/index.html>.

National Retail Federation  
Open Competition Center  
Small Business & Entrepreneurship Council  
Workforce Fairness Institute  
Workplace Policy Institute

CC:

U.S. Senate Majority Leader Chuck Schumer  
U.S. Senate Minority Leader Mitch McConnell  
U.S. House of Representative Speaker Kevin McCarthy  
U.S. House of Representative Minority Leader Hakeem Jeffries