

Dear Senator:

The undersigned organizations write to express our opposition to 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, current labor negotiations at the West Coast Ports and upcoming negotiations elsewhere could, without adequate leadership, effectively shut down our nation's economy. At the recent Senate Committee on Health, Education, Labor and Pensions, Ms. Su failed to adequately address questions about her record and 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. 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. Ms. Su, however, has a record of disregarding legitimate concerns raised by businesses and appeasing extreme demands by labor and other stakeholders. Such an approach could exacerbate and prolong rather than help resolve labor disputes at great costs to our economy and the workers, consumers, and small businesses who depend on operational supply chains.

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 100 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 Recovery 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.”¹ 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 mismanagement of COVID-19-related unemployment insurance (“UI”) 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 Auditor² 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 ask you to vote against Ms. Su for Secretary of Labor based on her troubling record and her failure to adequately explain how she would run the Department in a manner that engages employers and employees alike to best achieve our shared economic goals.

¹ Department of Finance Bill Analysis, A.B. 257, June 16, 2022, available at <https://esd.dof.ca.gov/LegAnalysis/getPdf/066D8BA5-C012-ED11-913B-00505685B5D1>.

² 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>.