

Congress of the United States
Washington, DC 20515

April 6, 2023

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20050

Dear President Biden:

On March 11, Secretary of Labor Martin J. Walsh resigned from federal service—leaving Acting Secretary of Labor Julie Su as the *de facto* head of the U.S. Department of Labor (DOL) until a new Secretary of Labor is sworn in.¹ You have nominated Acting Secretary Su to become the next Secretary of Labor.² We are deeply concerned by the prospect of Ms. Su serving as the head of DOL on an acting basis or as the Secretary of Labor.

Ms. Su’s record as Secretary of California’s Labor and Workforce Development Agency (LWDA) includes failing to prevent fraud in the state’s unemployment insurance (UI) system, resulting in billions of misspent taxpayer dollars,³ and promoting radical policies such as California Assembly Bill 5 (AB-5) that imposes a rigid worker classification test which restricts Americans’ right to work as independent contractors and weakens supply chains. Similar actions at the federal level would be a disaster for workers and our economy. Accordingly, we will closely monitor her tenure as Acting Secretary of Labor, and we will strongly oppose her confirmation by the Senate.

As the head of LWDA, Ms. Su oversaw the Employment Development Department (EDD), which manages UI claims and other benefits programs for the state. In that role, Ms. Su presided over severe operational failures at EDD. A January 2021 report issued by the California State Auditor found significant weaknesses in EDD’s approach to fraud prevention, which led to billions of dollars in improper UI benefit payments.⁴ According to the report, EDD paid \$10.4 billion on claims that it later determined may be fraudulent. The report specifically stated that \$1 billion of this \$10.4 billion was due in part to a decision to streamline EDD’s process by removing a basic safeguard against paying individuals with unconfirmed identities. As explained by the state’s auditor, “because the EDD leadership who made these decisions did not adequately understand how the stop payments worked, EDD waived the barriers to payment for almost 77,000 claims and paid more than \$1 billion on claims that it has determined are potentially

¹ DOL, OFF. OF THE SEC’Y, ACTING SEC’Y JULIE A. SU, <https://www.dol.gov/agencies/osec>.

² Release, The White House, President Biden Nominates Julie Su for Secretary of the Department of Labor (Feb. 28, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/28/president-biden-nominates-julie-su-for-secretary-of-the-department-of-labor/>.

³ AUDITOR OF THE STATE OF CAL., SIGNIFICANT WEAKNESSES IN EDD’S APPROACH TO FRAUD PREVENTION HAVE LED TO BILLIONS OF DOLLARS IN IMPROPER BENEFIT PAYMENTS (Report No. 2020-628.2) (Jan. 28 2021), <https://www.auditor.ca.gov/reports/2020-628.2/index.html>.

⁴ *Id.*

fraudulent.” While EDD later estimated the amount of fraud to be \$20 billion,⁵ an analysis from Lexis Nexis Risk Solutions estimated total fraud of \$32.6 billion when other benefit programs administered by EDD were also considered.⁶

Ms. Su demonstrated an inability to ensure taxpayer funds were appropriately spent in California and admitted as much in comments following the January 2021 audit report, stating, “There is no sugarcoating the reality, California did not have enough security measures in place.” Ms. Su admitted that at least 10 percent of the more than \$100 billion in state and federal benefits EDD paid out were fraudulent and added that the final total could be much higher. Ms. Su put blame on shoddy rulemaking by federal officials but said those failings “do not excuse EDD for being under-prepared.”⁷

Also, during her tenure at LWDA, Ms. Su supported problematic public policies that have only magnified the supply chain crisis in the United States. California law AB-5 implemented a statewide “ABC test” stating that in order to be classified as an independent contractor, the hiring entity of the worker must demonstrate that all of the following conditions are satisfied: a) the person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; b) the person performs work that is outside the usual course of the hiring entity’s business; and c) the person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.⁸ Such a test severely restricts the ability of many types of independent workers, including gig workers, to continue doing the work they wanted, in the way they wanted.⁹ In fact, the bill’s passage was so unpopular that lawmakers had to carve out dozens of exemptions to favored industries because the law’s requirements were unworkable and unrealistic in today’s economy.¹⁰ In addition, California voters overwhelmingly supported a ballot initiative called Proposition 22 to roll back the reach of AB-5 further.¹¹

Unfortunately, many other industries are still struggling under the new ABC test regime. One example comes from American Trucking Association (ATA) President Chris Spear, who recently underscored these problems in testimony to Congress by highlighting that “these policies not only threaten the supply chain—they rob scores of hardworking entrepreneurs of the choice, dream and freedom to run their own business.”¹² Yet, Ms. Su was and remains a

⁵ News Release, EDD, Employment Development Department Issues Unemployment Insurance Program Updates (Oct. 7, 2022), <https://edd.ca.gov/siteassets/files/pdf/news-22-34.pdf>.

⁶ David Manoucheri, *Analysis Shows California EDD Fraud At \$32.6 Billion*, KCRA, Oct. 6, 2022, <https://www.kcra.com/article/analysis-edd-fraud-326-billion-and-counting/41281662>.

⁷ Dan Walters, *California’s Unemployment Insurance Mess Laid Bare*, CAL MATTERS, Jan. 28, 2021, <https://calmatters.org/commentary/2021/01/californias-unemployment-fraud-political-newsom-julie-su/>.

⁸ See 2019 Cal. Assemb. Bill No. 5, § 2750.3..

⁹ CAL. LEG. INFO., AB-5 WORKER STATUS: EMPLOYEES AND INDEPENDENT CONTRACTORS (Sept. 19, 2019), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB5.

¹⁰ CAL. LEG. INFO., AB-1561 WORKER CLASSIFICATION: EMPLOYEES AND INDEPENDENT CONTRACTORS (Oct. 1, 2021) https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1561.

¹¹ OFFICIAL DECLARATION OF THE VOTE RESULTS ON NOVEMBER 3, 2020, STATE BALLOT MEASURES, <https://elections.cdn.sos.ca.gov/sov/2020-general/sov/official-dec-vote-results-bm.pdf>.

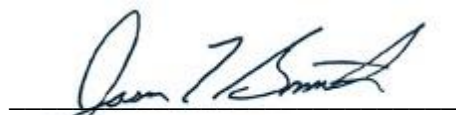
¹² ATA, 4 TAKEAWAYS FROM SPEAR’S CAPITOL HILL TESTIMONY (Feb. 3, 2023), <https://www.trucking.org/news-insights/4-keys-spear-hill-testimony>.

proponent of the ABC test which puts millions of Americans at risk of losing the power to choose when, where, and how to work.¹³ As Secretary of Labor, Deputy Secretary Su would oversee the implementation of the final rulemaking that many industry stakeholders have said would harm gig workers and independent, entrepreneurial men and women by severely undermining flexible work arrangements and inappropriately presuming most workers are employees.

At a time when American businesses are struggling with workforce shortages, high inflation, and supply chain disruptions, they need stability from the administration. American taxpayers also deserve accountability. Among the challenges facing DOL at this time is responding to widespread UI fraud across the country—the same challenge plaguing EDD in California. The Labor Department Inspector General recently estimated that improper payments in pandemic unemployment programs nationally totaled at least \$191 billion, with a substantial portion due to fraud. Outside experts put the number much higher at \$400 billion. Yet, so far, only \$5 billion has been recovered.¹⁴

Because of her misguided record in California, we have major concerns about potential disastrous ramifications at the federal level if Ms. Su becomes Secretary. For these reasons, we request that you withdraw her nomination to serve as your next Secretary of Labor.

Sincerely,




Jason Smith (R-MO)
Chairman
Committee on Ways and Means



Virginia Foxx (R-NC)
Chairwoman
Committee on Education and Workforce



Kevin McCarthy (R-CA)
Speaker of the House




Michelle Steel (R-CA)
Member of Congress

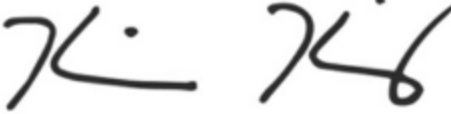
¹³ Sasha Abramsky, *Meet Julie Su, California's Fighter for Workers*, THE NATION, Mar. 9, 2021, <https://www.thenation.com/article/society/labor-su-biden-workers/>.


¹⁴ "All Overpayment Recovery Amounts.xls., 2020-03-01 thru 2022-12-31," U.S. Department of Labor, Employment and Training Administration, UI Payment Integrity Information.

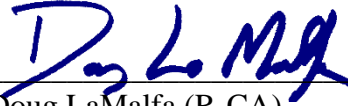

Ken Calvert (R-CA)
Member of Congress


Tom McClintock (R-CA)
Member of Congress



John Duarte (R-CA)
Member of Congress



Kevin Kiley (R-CA)
Member of Congress


Darrell Issa (R-CA)
Member of Congress


Doug LaMalfa (R-CA)
Member of Congress


Young Kim (R-CA)
Member of Congress


Jay Obernole (R-CA)
Member of Congress


David Valadao (R-CA)
Member of Congress

cc: Senator Bernie Sanders, *Chairman, Senate Health, Education, Labor, and Pensions Committee*
Senator Bill Cassidy, *Ranking Member, Senate Health, Education, Labor, and Pensions Committee*