



April 20, 2023

The Honorable Bernie Sanders
Chair
Senate HELP Committee
428 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Bill Cassidy
Ranking Member
Senate HELP Committee
520 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Sanders and Ranking Member Cassidy,

I am writing on behalf of the National Restaurant Association to express our opposition to the nomination of Julie Su to serve as the next Secretary of Labor.

The National Restaurant Association represents all segments of the restaurant industry. With more than 15 million people working in the restaurant industry, and food and beverage sales forecast to reach \$997 billion this year, the restaurant industry is a vital part of the American economy.¹

As our industry is one of the country's largest employers, the Department of Labor (DOL) impacts it daily. DOL develops binding regulations and directives, as well as enforces a variety of workplace laws. The DOL is currently considering numerous proposals that will significantly affect the industry's future. As Secretary of Labor, Ms. Su would both set and implement critical policy.

Unfortunately, Ms. Su has a long history of supporting policies detrimental to the restaurant industry. As Secretary of California's Labor and Workforce Development Agency, she championed Assembly Bill 5 (AB 5), which attempted to drastically change worker classification, threatening to reclassify independent contractors as employees. Independent contractors play a critical role in the restaurant industry. Many restaurants rely on independent contractors, such as delivery drivers, to operate successfully. Fortunately, California voters overwhelmingly rejected AB 5 in 2020 by passing Proposition 22. However, if Ms. Su is confirmed as Secretary of Labor, she will likely make it more difficult for independent contractors to work in the restaurant industry, supporting initiatives that mirror California's AB 5 at the federal level. This would devastate the industry and the millions of workers who rely on independent contracting to make a living.

Further, Ms. Su's support for another California bill, AB 257, the Fast Food Accountability and Standards Recovery Act (FAST Act), is deeply concerning. The FAST Act hands power over quick service restaurants to unelected political appointees without accountability. The Fast Food Council established by the legislation can set regulations without consulting the California Legislature, including rules concerning wages, training requirements, health and safety standards, and more. The FAST Act sets a dangerous precedent that undermines local restaurant owners and grants unelected political appointees excessive and unchecked power over one segment of the industry. It is so radical that California's own Department of

¹ National Restaurant Association. "2023 State of the Restaurant Industry." February 28, 2023. <https://restaurant.org/research-and-media/research/research-reports/state-of-the-industry/>

Finance opposed the bill² and over one million California voters³ signed a referendum to put the law on hold until they could have their say.

Ms. Su backed the FAST Act when it included a provision that would have made every franchisor covered by the law a joint employer, liable for any labor code violations committed by its franchisees. This would have imposed significant new liabilities on franchisors, potentially exposing them to costly litigation and making operating their businesses more difficult. This, in turn, would upend the franchise business model and harm small business franchisees and their employees. After industry pushback, the joint employer provisions were removed from the FAST Act. However, the U.S. Department of Labor is expected to consider changes to the joint employer legal standard under the Fair Labor Standards Act (FLSA.) Therefore, Ms. Su's support for an expanded definition is of great concern to the industry.

Throughout Ms. Su's time in public office, she has advanced onerous regulations and policies, often targeting specific industries, raising serious questions about her ability to serve as Secretary of Labor fairly and impartially. As Deputy Secretary of Labor, Ms. Su has been a vocal advocate for eliminating the tip credit. Under the FLSA, an employer may count a limited amount of the tips its tipped employees receive as a credit toward its minimum wage obligation—a practice known as a tip credit. If the combination of a tipped employee's base wage plus tips does not meet or exceed the federal or applicable local minimum wage, then the employer must make up the difference. Tipped servers and bartenders often have the highest incomes in a restaurant. Maintaining the tipped credit provides tipped employees with greater earning potential—waitstaff at full-service restaurants earn a median of \$27 an hour, with the highest-paid tipped employees making \$41.50.⁴ Despite this, Ms. Su has characterized the tip credit as abusive and oppressive. Tipped employees continue to oppose the elimination of the tip credit and deserve a Secretary of Labor who will listen to their concerns.⁵

Finally, Ms. Su's administration of the unemployment insurance (UI) program during the COVID-19 pandemic gives restaurants significant pause. Ms. Su, as head of the California Employment Development Department (EDD), was responsible for overseeing the UI program in California. Mismanagement of the program led to billions of dollars in fraudulent claims being paid out to criminals while legitimate claims went unpaid.⁶ This directly impacted small businesses and restaurant operators, who have been forced to pay higher taxes to cover the shortfalls caused by the fraud.⁷ These increased costs have been a burden on businesses that are already struggling to survive in the current economic climate.

² California Department of Finance. "Department of Finance Bill Analysis – AB 257." June 16, 2022. <https://esd.dof.ca.gov/LegAnalysis/getPdf/066D8BA5-C012-ED11-913B-00505685B5D1>

³ National Law Review. "Not so FAST – AB 257 on Hold Pending Voter Referendum in 2024." February 1, 2023. <https://www.natlawreview.com/article/not-so-fast-ab-257-hold-pending-voter-referendum-2024>

⁴ National Restaurant Association. "Maintaining the Tip Credit and Tipping System is Critical for Employee Earnings and Restaurant Growth." January 20, 2023. <https://restaurant.org/nra/media/downloads/pdfs/advocacy/tip-credit.pdf>

⁵ Portland Press Herald. "Commentary: Nominee to head federal Department of Labor has it wrong on tipping." April 10, 2023. <https://www.pressherald.com/2023/04/10/commentary-nominee-to-head-federal-department-of-labor-has-it-wrong-on-tipping/>

⁶ ABC News. "CA EDD admits paying as much as \$31 billion in unemployment funds to criminals." January 25, 2021. <https://abc7news.com/california-edd-unemployment-fraud-ca-scam-insurance/10011810/>

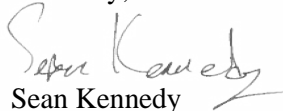
⁷ Bloomberg Tax "California Employment Department Issues Income Tax Information on Federal Unemployment Tax Act for 2022 Wages." October 31, 2022. <https://shorturl.at/kmpAZ>

Chairman Sanders
Ranking Member Cassidy
April 20, 2023
Page Three

The restaurant industry faces several challenges, including a labor shortage, inflationary pressures, and supply chain disruptions. These challenges are especially acute as restaurants settle into a new normal following the COVID-19 pandemic. The policies Ms. Su supports would devastate the restaurant industry and the millions of hard-working individuals who go to work at restaurants every day. Consequently, we urge you to oppose her nomination for Secretary of Labor. We are committed to working with the Department of Labor to find solutions that support our employees' well-being and our industry's success. We hope to have a partner in this effort who understands the unique challenges we face.

Thank you for your attention to this critical matter.

Sincerely,



Sean Kennedy
Executive Vice President for Public Affairs