

PATTY MURRAY, WASHINGTON
ROBERT P. CASEY, JR., PENNSYLVANIA
TAMMY BALDWIN, WISCONSIN
CHRISTOPHER MURPHY, CONNECTICUT
TIM Kaine, VIRGINIA
MARGARET WOOD HASSAN, NEW HAMPSHIRE
TINA SMITH, MINNESOTA
BEN RAY LUJAN, NEW MEXICO
JOHN W. HICKENLOOPER, COLORADO
EDWARD J. MARKEY, MASSACHUSETTS

BILL CASSIDY, LOUISIANA
RAND PAUL, KENTUCKY
SUSAN M. COLLINS, MAINE
LISA MURKOWSKI, ALASKA
MIKE BRAUN, INDIANA
ROGER MARSHALL, KANSAS
MITT ROMNEY, UTAH
TOMMY TUBERVILLE, ALABAMA
MARKWAYNE MULLIN, OKLAHOMA
TED BUDD, NORTH CAROLINA

United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

WARREN GUNNELS, MAJORITY STAFF DIRECTOR
AMANDA LINCOLN, REPUBLICAN STAFF DIRECTOR

www.help.senate.gov

July 19, 2023

VIA ELECTRONIC TRANSMISSION

President Joseph R. Biden
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

Dear President Biden:

On March 21, 2023, the Department of Labor (DOL) transmitted a submission to the Government Accountability Office (GAO) stating that Julie Su is serving as Acting Secretary of Labor, not under the Vacancies Act, but under 29 U.S.C. § 552, a DOL-agency succession statute which allows the Deputy Secretary to perform the duties of the Secretary of Labor.¹

The intent of the Vacancies Act is “to create a clear and exclusive process to govern the performance of duties of offices in the Executive Branch” and to prevent the President from appointing unelected bureaucrats to roles that require the advice and consent of the Senate.² The Vacancies Act also places limits on the amount of time—210 days—that an advice and consent position may be filled by an acting officer.³ Congress enacted this time limitation to incentivize the President to submit nominations in a timely manner, but also to give the Senate ample opportunity to complete its constitutional mandate.⁴ Unlike the Vacancies Act, however, the DOL-agency succession statute does not prescribe a time limit on Ms. Su’s ability to perform the duties of Acting Secretary.

White House officials have communicated to the press that your administration does not have the votes in the Senate to confirm Julie Su’s nomination. This creates the perception that DOL’s decision to utilize its authority under 29 U.S.C. § 552 is an attempt to protect Ms. Su’s ability to serve as Acting Secretary, in perpetuity, even if she is unable to secure the votes required for Senate confirmation. It is my view that this use of the Succession Act violates the constitutional provision of advice and consent and would potentially open any DOL action under Julie Su’s leadership to legal challenges.

¹ Attachment A. 29 U.S.C. § 552. *See also* Max Kutner, *DOL Says Julie Su Can Run Agency Without Sent Approval*, LAW360 (June 2, 2023), <https://www.law360.com/employment-authority/articles/1684354/dol-says-julie-su-can-run-agency-without-senate-approval>.

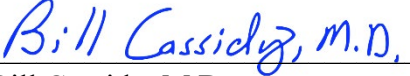
² S. Rep. No. 105-250, at 16–17 (1998).

³ 5 U.S.C. § 3346(a).

⁴ S. Rep. No. 105-250, at 4 (1998).

Over four and a half months have elapsed since President Biden [announced Ms. Su's nomination](#) --126 days since it was officially transmitted to the Senate. No Cabinet level nominee has waited longer for a floor vote when the Senate and White House were controlled by the same political party.⁵ If your administration believes Ms. Su cannot receive the necessary votes for confirmation, then you should rescind her nomination. Any attempts to bypass the will of Congress, especially its constitutionally mandated advice and consent role, is unacceptable.

Sincerely,



Bill Cassidy, M.D.

Ranking Member

Senate Committee on Health,

Education, Labor, and Pensions

⁵ <https://www.congress.gov/nomination/112th-congress/677?q=%7B%22search%22%3A%22bryson+commerce%22%7D&s=3&r=1>