

United States Senate

WASHINGTON, DC 20510

October 17, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President,

We write today to express grave concerns with your Administration's apparent belief that Acting Secretary of Labor Julie Su is eligible to assume the office of President of the United States pursuant to the presidential line of succession as established by Congress in the Presidential Succession Act of 1947.¹

As you are well aware, since March 14, 2023, the United States Senate has declined to confirm Ms. Su's nomination as Secretary of Labor, and she continues to lack adequate support from both Republican and Democratic members of the Senate to be confirmed to that position.

Despite that reality and Ms. Su becoming the longest-ever Cabinet nominee to await confirmation in a time when the same party controls the White House and the Senate, the White House has chosen to keep her in place as Acting Secretary of Labor on an indefinite basis and has also listed her on the White House website as a member of the Cabinet "[i]n order of succession to the Presidency."²

While you and your Administration have clearly decided to ignore congressional intent in keeping Ms. Su in place in her current role, it would be unfortunate if you have decided to further discount congressional intent – and violate the law – by taking the position that Ms. Su is eligible for placement in the presidential line of succession.

While the Twenty Fifth Amendment to the U.S. Constitution states that the Vice President shall assume the presidency upon the removal from office, death, or resignation of the sitting President, Article II, Section 1, clause 6 of the Constitution vests in Congress the power to set the presidential line of succession beyond the Vice President.

Congress exercised that authority in passing the Presidential Succession Act of 1947, which established the current presidential line of succession. Specifically, 3 U.S.C. §19(d)(1) lists the members of the President's Cabinet, including the Secretary of Labor, in the order in which they would succeed to the presidency, beginning with the Secretary of State and ending with the Secretary of Homeland Security.

However, 3 U.S.C. §19(e) further states that, with respect to Cabinet members, they are only eligible to be in the line of presidential succession and assume the office of President of the

¹ Codified at 3 U.S.C. §19.

² The White House, "The Cabinet," available at <https://www.whitehouse.gov/administration/cabinet/>.

United States if they are an officer “appointed, by and with the advice and consent of the Senate.”

As Ms. Su has failed to be “appointed, by and with the advice and consent of the Senate” as Secretary of Labor, we strongly urge the White House to clarify its position and views regarding Ms. Su’s eligibility for the presidential line of succession and, in the event it was to become necessary, to assume the presidency.

It is unimaginable to think that this Administration believes someone who has neither been duly elected nor confirmed by the Senate to the position of Secretary of Labor could be President of the United States. Suggesting that Ms. Su is eligible to be in the presidential line of succession is antithetical to our system of governance and the bedrock principles on which our Republic rests.

Furthermore, as many of our Senate colleagues have done in the past, we once again call upon you to withdraw Ms. Su’s nomination and put forward a nominee for Secretary of Labor who is capable of garnering sufficient support on a bipartisan basis to be confirmed.

Sincerely,



Katie Boyd Britt
United States Senator



John Barrasso, M.D.
United States Senator



Marsha Blackburn
United States Senator



Mike Braun
United States Senator



Ted Budd
United States Senator



Shelley Moore Capito
United States Senator



Susan M. Collins
United States Senator



Bill Cassidy, M.D.
United States Senator



Tom Cotton
United States Senator



Mike Crapo
United States Senator



Joni K. Ernst
United States Senator



Deb Fischer
United States Senator



Lindsey Graham
United States Senator



Bill Hagerty
United States Senator



John Hoeven
United States Senator



Ron Johnson
United States Senator




John Kennedy
United States Senator



James Lankford
United States Senator



Michael S. Lee
United States Senator



Cynthia M. Lummis
United States Senator



Roger Marshall, M.D.
United States Senator



Mitch McConnell
United States Senator



Markwayne Mullin
United States Senator



Pete Ricketts
United States Senator



James E. Risch
United States Senator



Tim Scott
United States Senator



John Thune
United States Senator



Thom Tillis
United States Senator



Roger F. Wicker
United States Senator



Todd Young
United States Senator