

Ranking Labor Senator Warns Su's Acting Status Risks Agency Work

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Republicans are doubling down on concerns that Julie Su's indefinite status as acting head of the US Labor Department raises constitutional questions, signaling a potential pathway to legal action against the agency's work under her leadership.

Sen. Bill Cassidy (R-La.) is the latest lawmaker to raise questions about the White House's move to keep Su at the top of the DOL as acting leader, despite the [Biden administration admitting](#) she doesn't have the votes to be confirmed to the permanent position.

"If your administration believes Ms. Su cannot receive the necessary votes for confirmation, then you should rescind her nomination," [Cassidy wrote to the White House July 19](#). "Any attempts to bypass the will of Congress, especially its constitutionally mandated advice and consent role, is unacceptable."

Su, who was nominated to serve as secretary of labor in February, has been serving as acting leader of the agency for four and a half months. That's the longest a cabinet level nominee has waited for a floor vote when the Senate and White House were controlled by the same political party, according to Cassidy.

White House officials have pointed to a statute that established the Labor Department, which says that because Su has already been serving as the number two leader at the agency, she should be the next in line for labor secretary following the departure of her predecessor Marty Walsh.

That statute doesn't contain a time limit on Su filling the role upon the departure of the labor secretary, and the White House has taken the position that Su "can serve as acting secretary indefinitely."

But Cassidy said if the administration were to allow Su to lead the agency without confirmation, it could put the DOL's work—including its forthcoming high-profile rulemakings on [independent contractor status](#) and [overtime protections](#)—at legal risk.

"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," Cassidy wrote.

Cassidy isn't the only Republican to raise concerns about whether Su can head the agency in a temporary capacity absent Senate confirmation.

Earlier this month, House Education and the Workforce Committee Chairwoman Virginia Foxx (R-N.C.) sent a [letter](#) to the Government Accountability Office asking for clarity on the legal authority permitting Su's acting service, suggesting that the statute Su is serving under could conflict with the law that governs most executive vacancies.

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