

February 13, 2017

Andrew Puzder  
CEO  
CKE Restaurants  
6307 Carpinteria Avenue, Suite A  
Carpinteria, CA 93013

Dear Mr. Puzder,

On December 8<sup>th</sup>, 2016, President Trump nominated you to serve as Secretary of the Department of Labor (“Labor Secretary”) in his Administration.<sup>1</sup> On February 16, 2017, you are scheduled to appear before the U.S Senate Committee on Health, Education, Labor, and Pensions (“HELP Committee”) for a confirmation hearing that will precede a vote on your nomination.<sup>2</sup>

As a member of the HELP Committee, I will attend this confirmation hearing to ask you questions that will help me determine whether you are qualified to fulfill the Department of Labor’s (“DOL”) mission to “foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States.”<sup>3</sup> If you are confirmed, you will be responsible for overseeing and enforcing labor laws that guarantee a minimum wage and establish a forty-hour work week, and federal health and safety laws that ensure that workers are safe on the job.<sup>4</sup> 150 million American workers and their families will depend on you for their economic security, their safety, and their livelihoods.<sup>5</sup>

My staff’s review of your 16-year tenure as CEO of CKE Restaurants, Inc., the parent company of Hardee’s and Carl’s Jr., reveals that you’ve made your fortune by squeezing the very workers you’d be charged with protecting as Labor Secretary out of wages and benefits.<sup>6</sup> Your company’s record of prolific labor law abuses and discrimination suits—the most of any major burger chain — gives me great pause given that as Labor Secretary you’d be charged with

---

<sup>1</sup> “President-Elect Donald J. Trump Nominates Andy Puzder as Secretary of the Department of Labor.” The Transition Team. *Great Again* (Dec. 8, 2016). Online at: <https://greatagain.gov/president-elect-trump-nominates-andy-puzder-as-secretary-of-the-department-of-labor-b8ec0bfc9818#.lZr3zoo9j>.

<sup>2</sup> “Nomination of Andrew Puzder to serve as Secretary of Labor.” (online at <http://www.help.senate.gov/hearings/nomination-of-andrew-puzder-to-serve-as-secretary-of-labor>).

<sup>3</sup> “Our Mission,” *United States Department of Labor* (online at <https://www.dol.gov/opa/aboutdol/mission.htm>).

<sup>4</sup> “Summary of the Major Laws of the Department of Labor.” *United States Department of Labor*. Online at: <https://www.dol.gov/general/aboutdol/majorlaws>.

<sup>5</sup> “Labor Force Statistics from the Current Population Survey.” Databases, Tables & Calculators by Subject. Bureau of Labor Statistics. *United States Department of Labor*. Online at: <https://data.bls.gov/cgi-bin/surveymost>.

<sup>6</sup> “Andrew F. Puzder.” Management Team. *CKE Restaurants*. Online at: [http://www.ckr.com/about\\_management.html#puzder](http://www.ckr.com/about_management.html#puzder).

enforcing these very laws.<sup>7</sup> Further, the painful first-hand accounts of these abuses by the workers in your company and its franchises that have surfaced since your nomination (including three accounts from workers I heard from in person at a public forum) should sound an alarm for every member of the committee and the Senate.<sup>8</sup>

In addition to your role as CEO at CKE, your long record of public comments reveals a sneering contempt for the workers in your stores, and a vehement opposition to the laws you will be charged with enforcing. You've referred to your workers as the "the worst," (albeit the "best of the worst)."<sup>9</sup> You've said you'd replace them with robots because robots "...always upsell, they never take a vacation, they never show up late, there's never a slip and fall, or an age, sex, or race discrimination case."<sup>10</sup> You've opposed minimum wage increases that would overwhelmingly benefit the workers in your stores and you've vehemently opposed a DOL overtime rule that would give 4.2 million Americans, including the managers in your stores, a \$1.5 billion raise in 2017 alone.<sup>11</sup>

Given the breadth of the responsibility you will hold to protect workers if you are confirmed, I have a large number of outstanding questions and concerns I would like you to address before I vote on your nomination. Unfortunately, despite repeated requests from me and my Democratic colleagues on the committee, and contrary to established committee precedent, the Republican Chairman has only allowed a few minutes for questions in previous confirmation hearings this Congress.<sup>12</sup> To ensure that the Senate and the public can obtain answers about your readiness for this job and determine whether you are indeed qualified for this position, this letter contains my additional questions.

The remainder of this letter details my concerns and asks you a set of questions that will help me to better understand how you would approach the position of Secretary of Labor. In order for me to have a complete understanding of your views, please provide me with answers to the following questions no later than February 21, 2017.

---

<sup>7</sup> "Andy Puzder's 16-Year Record of Discrimination Lawsuits." *Capital & Main: Investigating Power and Politics*. Online at: <http://capitalandmain.com/under-labor-secretary-nominee-puzder-company-hit-with-race-discrimination-and-sexual-harassment-lawsuits-0123>

<sup>8</sup> "Senators Warren, Murray, Stabenow Host Forum with Workers Mistreated by Puzder." *U.S. Senator Elizabeth Warren* (Jan. 10, 2017). Online at: [http://www.warren.senate.gov/?p=press\\_release&id=1350](http://www.warren.senate.gov/?p=press_release&id=1350).

<sup>9</sup> Kaczynski, A. "Trump labor pick in 2011 on his fast-food workers: We hire 'the best of the worst'." *CNN Money* (Jan. 23, 2017). Online at: <http://money.cnn.com/2017/01/23/news/kfile-puzder-best-of-the-worst/>.

<sup>10</sup> Taylor, K. "Fast-food CEO says he's investing in machines because the government is making it difficult to afford employees." *Business Insider* (Mar. 16, 2016). Online at: <http://www.businessinsider.com/carls-jr-wants-open-automated-location-2016-3>.

<sup>11</sup> "Facts on the updated overtime rule." *Economic Policy Institute* (May 17, 2016). Online at: <http://www.epi.org/publication/facts-on-the-updated-overtime-rule/>; "Final Rule: Overtime—Questions and Answers." *United States Department of Labor*. Online at: <https://www.dol.gov/WHD/overtime/final2016/faq.htm#G14>; "Overtime Final Rule: Summary of the Economic Impact Study." *United States Department of Labor*. Online at: <https://www.dol.gov/whd/overtime/final2016/overtimeFinalRule.pdf>.

<sup>12</sup> Strauss, V. "How Sen. Lamar Alexander slammed Betsy DeVos's confirmation hearing through committee." *The Washington Post* (Jan. 17, 2017). Online at: <https://www.washingtonpost.com/news/answer-sheet/wp/2017/01/17/how-sen-lamar-alexander-slammed-betsy-devoss-confirmation-hearing-through-his-committee/>.

## CONFLICTS OF INTEREST

The next Labor Secretary will be responsible for improving working conditions across the country; providing opportunities for employment to those seeking it; and guaranteeing employment-related rights and benefits. That is why our next Labor Secretary must work exclusively for American workers and families.

Because of your inextricable ties to the industry that you will be tasked with regulating, I am deeply concerned that you will be unable to work exclusively for the American people. You have spent 16 years as President and CEO of CKE Restaurants, the parent company of several fast food chains that have been repeatedly investigated for violating labor regulations.<sup>13</sup> You have made millions of dollars in that role, and you have millions more invested in your company.<sup>14</sup>

During your time at CKE, DOL investigated dozens of allegations of wage theft, occupational safety hazards, and other potential labor violations at numerous Hardee's and Carl's Jr. locations.<sup>15</sup> They found violations in almost 60% of these cases.<sup>16</sup> It is DOL's job to investigate claims of both wage-and-hour law violations and occupational safety hazards.<sup>17</sup> In fact, the labor secretary is sometimes involved in company-specific investigations.

While leading CKE, you have stated numerous times your opposition to increasing the minimum wage and paying overtime to your employees.<sup>18</sup> Since 2004, DOL has closed 108 investigations at stores affiliated with CKE, resulting in those stores paying over \$150,000 in back wages to nearly 1,000 employees – mostly for violations of minimum wage and overtime pay laws.<sup>19</sup> Additionally, you've settled for millions of dollars in wage theft and overtime suits and have several more suits ongoing.<sup>20</sup>

---

<sup>13</sup> Ben Penn, "Burger Executive as Labor Chief Could Pose Conflict," *Bloomberg BNA* (Dec. 2, 2016) (online at <https://www.bna.com/burger-executive-labor-n73014448061/>).

<sup>14</sup> Walter Hamilton and Tiffany Hsu, "Carl's Jr. and Hardee's parent company CKE agrees to buyout," *Los Angeles Times* (Feb. 27, 2010) (online at <http://articles.latimes.com/2010/feb/27/business/la-fi-carls27-2010feb27>).

<sup>15</sup> Jeremy Venook, "The Trump Administration's Conflicts of Interest: Scott Pruitt Edition," *The Atlantic* Jan. 18, 2017) (online at <https://www.theatlantic.com/business/archive/2017/01/trumps-appointees-conflicts-of-interest-a-crib-sheet/512711/>).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Andy Puzder, "Wages With Minimal Wiggle Room," *The Wall Street Journal* (Dec. 28, 2015) (online at <http://www.wsj.com/articles/wages-with-minimal-wiggle-room-1451259371>); "The Harsh Reality Of Regulating Overtime Pay," *Forbes* (online at <http://www.forbes.com/sites/realspin/2016/05/18/the-harsh-reality-of-regulating-overtime-pay/#5d75ba262321>).

<sup>19</sup> *Supra* note 13.

<sup>20</sup> Jodi Kantor and Jennifer Medina, "Workers say Andrew Puzder Is 'Not the One to Protect' Them, but He's Chosen To." *New York Times* (Jan. 15, 2017) (online at: <https://www.nytimes.com/2017/01/15/us/politics/andrew-puzder-labor-secretary.html>)

You have opposed the expansion of DOL's joint employer doctrine, which increases accountability for large corporations when their franchisees break the law.<sup>21</sup> CKE Restaurants is the parent company of many fast-food chain locations owned and operated by franchisees.<sup>22</sup>

While you have reached an agreement with the Office of Government Ethics to disclose and divest all of your conflicts of interest, President Trump has made it abundantly clear that he will not appropriately divest.<sup>23</sup> Mr. Trump's company, like yours, has a long record of mistreating workers and violating federal labor laws.<sup>24</sup> President Trump still owns his business.<sup>25</sup> President Trump appointed you to run the agency responsible for enforcing the law against his own company, presenting an inextricable conflict for you.

Our next Labor Secretary must hold *all* employers accountable for unfair practices, and I hope that if confirmed, you will not put the interests of the man who appointed you above those of the American people.

Based on these facts, I have the following questions on this subject:

*Will you permanently relinquish your ownership in all stocks related to CKE Restaurants and permanently give up your position as President and CEO?*

The Labor Secretary is responsible for enforcing the laws against wage theft and other labor abuses that you have personally fought, and that your company has been fined or penalized for violating dozens of times.

*Given this history, how can workers trust you to enforce these laws fairly and aggressively?*

*If confirmed, will you agree to recuse yourself from any and all DOL actions and decisions affecting CKE during your entire term as Labor Secretary?*

*Do you believe President Trump should fully divest from The Trump Organization in order to prevent conflicts of interest for you and other federal government agencies?*

---

<sup>21</sup> Noam Scheiber, "Trump's Labor Pick, Andrew Puzder, Is Critic of Minimum Wage Increases," *The New York Times* (Dec. 8, 2016) (online at <https://www.nytimes.com/2016/12/08/us/politics/andrew-puzder-labor-secretary-trump.html>); Scott T. Allen, "DOL Asserts 'As Broad as Possible' Joint Employer Standard for Wage and Hour Enforcement," *Labor & Employment Law Perspectives* (Jan. 25, 2016) (online at <https://www.laboremploymentperspectives.com/2016/01/25/dol-asserts-as-broad-as-possible-joint-employer-standard-for-wage-and-hour-enforcement/>).

<sup>22</sup> "Our Story," *CKE Restaurants* (online at <http://www.cke.com/about.html>).

<sup>23</sup> Andy Sullivan, Emily Stephenson, and Steve Holland, "Trump says won't divest from his business while president," *Reuters* (Jan. 11, 2017) (online at <http://www.reuters.com/article/us-usa-trump-finance-idUSKBN14V211>).

<sup>24</sup> See Cogan Schneider, "Labor board: Trump hotel violated labor law," *Politico* (Nov. 3, 2016) (online at <http://www.politico.com/story/2016/11/labor-board-trump-hotel-230720>); see also Steve Reilly, "Hundreds allege Donald Trump doesn't pay his bills," *USA Today* (online at <http://www.usatoday.com/story/news/politics/elections/2016/06/09/donald-trump-unpaid-bills-republican-president-lasvuits/85297274/>).

<sup>25</sup> *Supra* note 11.

*Will you commit to enforce wage and hour regulations against The Trump Organization if the company violates these laws and harms its employees?*

*What is your specific plan for insulating yourself and DOL from conflicts of interest related to DOL actions that may impact the Trump Organization?*

## ENFORCEMENT AND REGULATION

DOL is responsible for implementing and enforcing more than 180 federal laws that have been passed by Congress. These laws include the Fair Labor Standards Act (FLSA), which sets a federal minimum wage and provides overtime protections; the Occupational Safety and Health Act (OSHA), which requires that workplaces are free from safety hazards; the Family and Medical Leave Act (FMLA), which grants workers up to 12 weeks of leave for births or serious illnesses; several laws that require government contractors to pay “prevailing wages;” and the Employee Retirement Income Security Act (ERISA), which contains various requirements for retirement plans.<sup>26</sup>

If confirmed, your job will be to ensure that employers follow these laws, whether or not you personally agree with them. I have significant concerns about your commitment to enforcing labor laws based on your public comments and your company’s failure to follow them.

Your frequent public comments on labor laws indicate that you take issue with both their existence and their enforcement. During the presidential campaign, you praised President Trump for wanting to “immediately repeal dozens of President Obama’s antibusiness executive orders.”<sup>27</sup> You also expressed disdain for several important labor regulations, including safety regulations, paid time off, and discrimination protections, when you explained your preference of robots to workers. You said robots “never take a vacation,..there’s never a slip-and-fall, or an age, sex, or race discrimination case.”<sup>28</sup>

Since 1938, the federal minimum wage has protected working families by ensuring that workers are fairly compensated for their time and effort.<sup>29</sup> As one of our nation’s most fundamental labor protections, the minimum wage has been periodically raised through the years to keep up with the rising cost of living. But you have criticized any attempt to require employers to pay workers a living wage. Today’s federal minimum wage of \$7.25 is 17% below the poverty line for a family of four, and an increase to just \$10.10 per hour would lift at least 4.6 million

---

<sup>26</sup> “Summary of the Major Laws of the Department of Labor.” *United States Department of Labor*. Online at: <https://www.dol.gov/general/aboutdol/majorlaws>.

<sup>27</sup> Puzder, A. & Moore, S. “A Trump Economy Beats Clinton’s.” *The Wall Street Journal* (July 14, 2016). Online at: <http://www.wsj.com/articles/a-trump-economy-beats-clintons-1468537348>.

<sup>28</sup> Taylor, K. “Fast-food CEO says he’s investing in machines because the government is making it difficult to afford employees.” *Business Insider* (March 16, 2015). Online at: <http://www.businessinsider.com/carls-jr-wants-open-automated-location-2016-3>.

<sup>29</sup> “Minimum Wage—U.S. Department of Labor.” *United States Department of Labor*. Online at: <https://www.dol.gov/featured/minimum-wage/chart1>.

people out of poverty.<sup>30</sup> Yet you have written that “some jobs don’t produce enough economic value to bear the increase” and accused the Obama administration of raising the minimum wage for federal contractors to \$10.10 for purely political reasons.<sup>31</sup>

You have also strongly opposed the Obama administration’s Overtime Rule, which would allow all workers making less than \$47,500 per year to receive overtime pay, securing protections for 4.2 million workers.<sup>32</sup> You decried this policy as “rewarding time spent rather than time well spent,” adding that “what [workers] lose in overtime pay they gain in the stature and sense of accomplishment that comes from being a salaried manager.” The overtime threshold you were defending defines an overtime-ineligible “salaried manager” as a worker making just \$23,660 per year—a situation you mocked as “hardly oppressive.”<sup>33</sup>

You defended loopholes that were closed by the Obama Administration during your tenure at CKE. Faced with the fact that FLSA exempts “bona fide executives” from overtime protections, you went to extreme lengths to define your ordinary line workers as managers, arguing that “managers may help their employees stock shelves or perform other ‘physical work’ while performing their ‘primary duty’ as a manager.”<sup>34</sup>

I am concerned that your anti-worker rhetoric is a disturbing sign of how you will enforce labor laws because it is consistent with your own company’s abuse of its workers on a large scale, both by illegally underpaying workers and by putting them in dangerous and unhealthy situations.<sup>35</sup> Since your nomination, I have heard from dozens of CKE workers about how they have been mistreated by management on the job.<sup>36</sup> Laura McDonald, a general manager at Carl’s Jr. from 1998 to 2012, said that she had repeatedly experienced wage theft by working unpaid overtime and being called into work on her vacation days. She said that the company’s policies “make it impossible to do the job without working off the clock, and she has joined one of several class action lawsuits against CKE for labor law violations.”<sup>37</sup> Ms. McDonald’s story is not unique.

---

<sup>30</sup> “Raising the Minimum Wage: A Progress Update.” *Executive Office of the President* (October 2016). Online at: [https://www.whitehouse.gov/sites/default/files/6\\_october\\_2016\\_min\\_wage\\_report.pdf](https://www.whitehouse.gov/sites/default/files/6_october_2016_min_wage_report.pdf)

<sup>31</sup> Puzder, A. “Minimum Wage, Maximum Politics.” *The Wall Street Journal* (October 5, 2014). Online at: <http://www.wsj.com/articles/andy-puzder-minimum-wage-maximum-politics-1412543682>.

<sup>32</sup> “The Overtime Rule.” *United States Department of Labor*.

<sup>33</sup> Cite to “hardly oppressive”

<sup>34</sup> Puzder, A. “Obama’s Overtime-Pay Boomerang.” *The Wall Street Journal* (March 25, 2014). Online at: <http://www.wsj.com/news/articles/SB10001424052702304256404579449811698734216>.

<sup>35</sup> Penn, B. “Is Franchise Model a Recipe for Fast-Food Wage Violations?” *Bloomberg BNA* (September 14, 2016). Online at: <https://www.bna.com/franchise-model-recipe-n57982076930/>; Jamieson, D. “Donald Trump’s Labor Pick Should Know Worker Safety Laws. His Company’s Been Fined For Breaking Them.” *The Huffington Post* (December 12, 2016). Online at: [http://www.huffingtonpost.com/entry/andrew-puzder-workplace-safety\\_us\\_584f1709e4b04c8e2bb14947](http://www.huffingtonpost.com/entry/andrew-puzder-workplace-safety_us_584f1709e4b04c8e2bb14947).

<sup>36</sup> “Charbroiled: Workers tell all about life under Puzder.” A HELP committee Minority Staff Report. Online at: <http://www.warren.senate.gov/files/documents/CharbroiledReport.pdf>

<sup>37</sup> McDonald, L. “Senate Democrats Forum with Workers Mistreated by Puzder” [Youtube video]. *Senate Democrats* (January 10, 2017). Online at: <https://www.youtube.com/watch?v=Ca1bvcCt8Pc>.

Your public comments and your company's treatment of workers call into question your suitability for a position in which you will be responsible for enforcement of federal labor law. To address these concerns, please provide answers to the following questions:

*How do you explain your company's numerous violations of federal labor laws?*

*What did you mean when you referred to your workers as the "best of the worst?"*

*Do you still believe that it is preferable to replace CKEs workers with robots? Do you believe the same is true of employees and workers in other businesses and industries?*

*Will you commit to continuing enforcement of DOL wage and hour and workplace safety standards? What metrics will you use to assess the effectiveness of your enforcement efforts?*

*Will you commit to advocating for the maintenance of current funding levels for the Wage and Hour Division, the Occupational Safety and Health Administration, and other divisions of DOL that are crucial to enforcing federal labor law?*

*You have, in your public comments, been highly critical of the DOL Overtime Rule. Will you commit to defending in court and enforcing the Overtime Rule, which would extend overtime protections for millions of American workers?*

*If not, what are your specific plans for updating regulations so that only bona fide executives, rather than low-income workers, are exempt from overtime protections, as the FLSA requires?*

*What will you do to improve the implementation and enforcement of federal labor law and ensure that all American workers can work in a safe and healthy environment, achieve financial security, and retire in old age?*

## **WELLS FARGO, RESTAURANT ASSOCIATES, AND OTHER ONGOING INVESTIGATIONS**

The Obama administration collected nearly \$1.6 billion in back wages for more than 1.7 million American workers between 2009 and 2016.<sup>38</sup> Because of robust DOL Wage and Hour Division enforcement of wage and hour laws, these hardworking Americans were finally paid the wages they were owed for their work. During my time in the Senate, I have joined my colleagues to initiate two major wage and hour investigations. The first investigation involved Restaurant Associates, the company that holds the federal contract for the United States Senate Cafeteria.

---

<sup>38</sup> Secretary Thomas E. Perez. "Department of Labor: Memorandum to the American People" Online at: <https://www.dol.gov/sites/default/files/dol-exit-memo.pdf>



In the summer of 2015, a series of reports featured United States Senate Cafeteria workers that were living below the poverty line, in part because they were not being paid the wages they were owed.<sup>39</sup> After speaking with a number of these workers in my office, and consulting the Architect of the Capitol, I joined the entire Democratic caucus in sending a letter to DOL, asking them to investigate these alleged wage and hour violations by Restaurant Associates in the Senate cafeteria, and in their other contracts throughout the federal government.<sup>40</sup>

On July 26<sup>th</sup>, 2106, DOL found that Restaurant Associates owed more than \$1 million in back wages to 674 employees for violations of the McNamara-O'Hara Service Contract, which governs wages for contract workers.<sup>41</sup> Because of these labor violations DOL initiated debarment proceedings against Restaurant Associates and their principal officer, Dick Cattani, on December 30<sup>th</sup>, 2016.<sup>42</sup> If debarred, the company could be unable to bid for federal contracts for three years.<sup>43</sup>

Federal contractors who steal wages from workers should not be eligible for a single additional federal dollar. Companies like this are bad for American workers, and their contracts are an irresponsible use of taxpayer money.

The second investigation pertains to alleged wage and hour violations at Wells Fargo. On September 22, 2016, shortly after the Consumer Financial Protection Bureau (CFPB) fined Wells Fargo \$100 million for opening 1.5 million unauthorized deposit accounts,<sup>44</sup> I wrote to DOL with seven of my Senate colleagues asking them to open an investigation into potential violations of the FLSA at the company.<sup>45</sup>

The CFPB's agreement cited a sales culture at Wells Fargo characterized by stringent quotas, and in the wake of the scandal current and former employees came forward in droves to describe threats of termination, mandated unpaid overtime, harassment, and other forms of

---

<sup>39</sup> Mike DeBonis. "National Push for \$15 Minimum Wage Hits Home for U.S. Senate Workers." The Washington Post. Online at: [https://www.washingtonpost.com/politics/national-push-for-15-minimum-wage-hits-home-for-us-senate-workers/2015/07/21/54dd7e14-2fe0-11e5-8f36-18d1d501920d\\_story.html?utm\\_term=.ff6fce0039db](https://www.washingtonpost.com/politics/national-push-for-15-minimum-wage-hits-home-for-us-senate-workers/2015/07/21/54dd7e14-2fe0-11e5-8f36-18d1d501920d_story.html?utm_term=.ff6fce0039db) & Bertrand Olatara. "I'm a Cook in the US Senate but I still need food stamps to feed my children." Guardian Opinion. Online at: <https://www.theguardian.com/commentisfree/2015/apr/22/i-am-a-cook-in-the-us-senate-but-i-still-need-food-stamps-to-feed-my-children>

<sup>40</sup> Bridget Bowman, "Senators Want Labor Department Audit of Food Vendor." (Mar. 22, 2016) (Online at: <http://www.rolfcall.com/news/policy/senators-call-labor-department-audit-food-vendor>)

<sup>41</sup> Department of Labor. News Release. (July 7, 2016) (online at: <https://www.dol.gov/newsroom/releases/whd/whd20160726>)

<sup>42</sup> Theodore Schleifer. "Feds to Ban Firms that stiffed Senate cafeteria workers over \$1 million in wages." CNN. Online at: <http://www.cnn.com/2016/12/30/politics/senate-cafeteria-department-of-labor/> & Department of Labor. News Release. Online at: <https://www.dol.gov/newsroom/releases/whd/whd20160726>

<sup>43</sup> Federal Acquisitions Regulation. Subpart 9.4—Debarment, Suspension, and Ineligibility. (online at: [https://www.acquisition.gov/far/html/Subpart%209\\_4.html](https://www.acquisition.gov/far/html/Subpart%209_4.html))

<sup>44</sup> Consumer Financial Protection Bureau, (Sep. 8, 2016) (Online at: <http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/>)

<sup>45</sup> Elizabeth Warren. (Sep. 22, 2016). (Online at: [http://www.warren.senate.gov/files/documents/2016-9-22WellsFLSAletter\\_OCR.pdf](http://www.warren.senate.gov/files/documents/2016-9-22WellsFLSAletter_OCR.pdf))



retaliation that they experienced when these quotas weren't met.<sup>46</sup> Given these first-hand accounts, academic reports describing similar incidences at Wells Fargo and at other retail banks across the industry, and a number of legal cases citing wage and hour violations at Wells Fargo, I asked DOL to open a formal investigation to ensure that all current and former employees were fully being paid for every hour they worked.<sup>47</sup>

DOL replied on September 26 agreeing to begin a "top to bottom" review<sup>48</sup> of all labor violations at the company and opened a webpage, [www.dol.gov/wellsfargo](http://www.dol.gov/wellsfargo) to help current and former Wells Fargo employees become aware of their rights under labor law.<sup>49</sup> As of early January, DOL's investigations into possible wage and hour violations at Wells Fargo were ongoing; however, reports indicated that they were being hampered by Tammy McCutchen, an attorney with possible ties to the Trump administration who was also representing Wells Fargo during the presidential transition period.<sup>50</sup>

To determine whether you are committed to following through with these and other ongoing investigations at the Wage and Hour Division, I ask that you answer the following questions:

*Will you continue all ongoing investigations at the Wage and Hour Division of the Department of Labor to ensure that workers will not suffer setbacks in their effort to recover lost wages as a result of the change in leadership?*

*Will you continue with debarment proceedings of Restaurant Associates to ensure that the workers who feed federal workers and Senate employees aren't cheated out of their wages and to ensure that federal taxpayer dollars are being used responsibly?*

*Will you continue with any other ongoing debarment proceedings?*

*Will you promise to continue the Department's ongoing investigation of wage and hour violations at Wells Fargo?*

*Will you ensure that Tammy McCutchen, and any other individuals who have defended parties to ongoing labor investigations and therefore have conflicts of interest with*

---

<sup>46</sup> Matt Egan, "Workers tell Wells Fargo horror stories," Time (September 9, 2016)

"Wells Fargo settled over its bogus accounts. but it still faces a fight from customers and ex-employees," Los Angeles Times (September 10, 2016) (on line at <http://www.latimes.com/business/la-fi-wells-lawsuits-20160909-snap-story.html>):

<sup>47</sup> Anastasia Christman, "Banking on the Hard Sell: Low Wages and Aggressive Sales Metrics Put Bank Workers and Customers at Risk," National Employment Law Project (June 2016). & Elizabeth Warren. Letter to DOL. [http://www.warren.senate.gov/files/documents/2016-9-22WellsFLSAletter\\_OCR.pdf](http://www.warren.senate.gov/files/documents/2016-9-22WellsFLSAletter_OCR.pdf)

<sup>48</sup> Elizabeth Dexheimer "Wells Fargo Faces Top to Bottom Review" Labor Department Says." Bloomberg. Online at: <https://www.bloomberg.com/news/articles/2016-09-27/wells-fargo-faces-top-to-bottom-review-labor-department-says>

<sup>49</sup> Department of Labor. Online at: <https://www.dol.gov/wellsfargo>

<sup>50</sup> Emily Glazer, "Wells Fargo Investigation Hampered by Outside Attorney Citing a Trump Tie, Labor Department Claims." Wall Street Journal. Online at: <http://www.wsj.com/articles/wells-fargo-investigation-hampered-by-outside-attorney-citing-a-trump-tie-labor-department-claims-1483646713>

*ongoing federal labor investigations are not given positions in the Department or are recused from any and all involvement in the Wells Fargo case or any other related case?*

## IMPLEMENTING DOL'S CONFLICT OF INTEREST RULE

If confirmed as Labor Secretary, you will be responsible for overseeing the Employee Benefit Security Administration (EBSA), the agency at DOL charged with “foster[ing], promote[ing], and develop[ing] the welfare...of retirees.”<sup>51</sup> EBSA enforces ERISA the federal law that sets standards for and protects employees in employment-based pensions and retirement plans.<sup>52</sup>

One-third of households on the verge of retirement don't have a single dollar saved for retirement and nearly two-thirds have saved less than one year's income.<sup>53</sup> With 10,000 of these baby boomers expected to turn 65 every single day for the next twenty years, we are on the precipice of a deep retirement crisis.<sup>54</sup> Given the size of the pension and retirement savings shortfall in the United States, it is critical that we have strong EBSA enforcement at DOL.

Part of your job as Labor Secretary will be to ensure that DOL's rule to protect savers from financial adviser conflicts of interest is fully implemented and enforced. In April of 2016 DOL finalized this rule to require all investment advisers to give retirement investment advice in their clients' best interest.<sup>55</sup> Conflicts of interest in retirement investment advice are costing Americans more than \$17 billion in lost retirement savings every year.<sup>56</sup> Implementation of the rule begins April 10, 2017 unless the Office of Management and Budget permits the Trump Administration's requested delay.<sup>57</sup>

Even before the rule has been implemented, major financial institutions such as Fidelity, Charles Schwab, BlackRock, and others have *already* announced that they are slashing fees for their funds.<sup>58</sup> That is money that used to be going to giant financial institutions and financial advisers that is now going straight to the retirement accounts of hardworking Americans.

---

<sup>51</sup> “Our Mission,” *United States Department of Labor* (online at <https://www.dol.gov/opa/aboutdol/mission.htm>).

<sup>52</sup> 29 US Code Chapter 18. Employee Retirement Income Security Program. Online at:

<https://www.law.cornell.edu/uscode/text/29/chapter-18>

<sup>53</sup> Nanci Hellmich. “One-third have almost no retirement savings.” USA Today. Online at:

<http://www.usatoday.com/story/money/2015/04/21/no-retirement-savings/26070017/>

<sup>54</sup> D'Vera Cohn and Paul Taylor. “Baby Boomers Approach 65—Glumly.” Pew. Online at:

<http://www.pewsocialtrends.org/2010/12/20/baby-boomers-approach-65-glumly/>

<sup>55</sup> Federal Register. Vol. 81. No. 68. April 8, 2016. Online at:

<http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=28806>

<sup>56</sup> The White House. “Fact Sheet: Middle Class Economics: Strengthening Retirement Security by Cracking Down on Backdoor Payments and Hidden Fees.” Online at: <https://obamawhitehouse.archives.gov/the-press-office/2015/02/23/fact-sheet-middle-class-economics-strengthening-retirement-security-crack>

<sup>57</sup> Sarah Lynch. “Labor Department to Delay, Revisit fiduciary rule.” Reuters. Online at:

<http://www.reuters.com/article/us-usa-brokerage-regulation-exclusive-idUSKBN15P007>

<sup>58</sup> Tom Anderson. “Fidelity joins BlackRock, Schwab in cutting ETF expenses.” CNBC. Online at:

<http://www.cnbc.com/2016/10/05/what-blackrocks-fee-cuts-mean-for-index-investors.html>

In addition to bringing down sky-high fees, the rule also puts a stop to kickbacks, fancy vacations, and other problematic incentives that benefit financial advisors but not retirees. Several large Fortune 500 companies have already announced that they will no longer offer investment advisory services on a commission basis—effectively removing the incentive for financial advisers to sell products that net the adviser a bigger payday but are not in the consumer’s best interest.<sup>59</sup>

On Friday, February 3 2017, President Trump issued a memorandum directing DOL to “examine the Fiduciary Duty Rule,” and “prepare an updated economic and legal analysis concerning [its] likely impact.”<sup>60</sup> The memorandum also directs DOL to “publish for notice and comment a proposed rule rescinding or revising the Rule” should it determine that the rule is “inconsistent” with “administration priorities.”<sup>61</sup> If confirmed as Labor Secretary, you will be charged with overseeing this examination and analysis.

Given the positive changes in the market identified above, any efforts to roll back these new protections will be devastating to consumers.

Rollbacks would also disadvantage those honest and hardworking financial advisers and broker dealers who will now be able to compete on a level playing field. Dismantling this rule would mean that advisers who already put their customers’ interests first will once again have to compete against the ones who don’t.

In addition to ensuring that this rule is implemented without delay, you also have the authority to enforce the new rule. Every time a company skirts this new rule, retirees will suffer. Strong enforcement is the best way to deter future violations. Your company’s track record with employer-sponsored retirement accounts at CKE calls into question your ability to protect Americans saving for their retirement at work.<sup>62</sup> According to an analysis by Reuters and Brightscope, an industry research firm, of your company’s retirement plan based on information you disclosed to EBSA, your company’s retirement plan was riddled with high-fee investments and low participation rates and was less generous than the plans of your peer companies in the fast food industry.<sup>63</sup>

To determine whether you will enforce the laws that protect hardworking Americans that are saving money for their retirement in employment-based retirement accounts, I have the following questions on this subject:

---

<sup>59</sup> Investment News, Bank of America Merrill Lynch tells advisers to stop selling mutual funds in brokerage IRAs now (Nov. 1, 2016) (<http://www.investmentnews.com/article/20161101/FREE/161109984/bank-of-america-merrill-lynch-tells-advisers-to-stop-selling-mutual>); Investment News, JPMorgan Chase will stop charging commissions on IRAs due to DOL fiduciary rule (Nov. 10, 2016) (<http://www.investmentnews.com/article/20161110/FREE/161119998/jpmorgan-chase-will-stop-charging-commissions-on-iras-due-to-dol>)

<sup>60</sup> “Presidential Memorandum on Fiduciary Duty Rule.” The White House. Online at: <https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule>

<sup>61</sup> *Id*

<sup>62</sup> “Trump’s Labor Pick Stiffs Own Workers on Retirement Plan.” Reuters. Online at: <http://fortune.com/2016/12/09/donald-trump-andy-puzder-labor-401k/>

<sup>63</sup> *Id*

The memorandum President Trump issued on February 3 requires you to conduct a new economic and legal analysis of the Fiduciary Rule, and, depending on the results of this analysis, publish a new rule or rescind the rule.

*Did the President or anyone in the White House, on the transition team, or at DOL consult you about the contents of his memorandum? If so, please list the names of all parties you consulted with and send any correspondence on this topic.*

*What information will you review as part of this assessment? Will you commit to only reviewing information that is independent and is not funded or otherwise compromised by financial industry players with a vested interest in the findings?*

*Please identify all career and political staff at DOL that will conduct the analysis.*

*Do you have any reason to believe that the findings of the new analysis will be any different from the detailed, multi-year analysis of the costs and benefits of the rule that was already conducted by DOL before the proposed rule was issued or in the extensive Regulatory Impact Analysis that was issued at the time the rule was finalized? If so, why?*

*The memorandum asks you to consider litigation costs and possible disruptions to the financial services sector in your economic and legal analysis. Will you also consider the full benefits of the rule for retirees and consumers in addition to any potential costs for the financial industry?*

*Will you refrain from taking any additional action to delay or limit the rule until your analysis is complete?*

*Will you inform Congress on an ongoing basis of the status of your efforts?*

*If the rule becomes applicable on April 10, 2017, will you enforce it to the fullest extent of the law? What criteria will you review to determine if the rule is working as expected and to determine if your enforcement efforts are effective?*

*My office has issued two reports on kickbacks like lavish vacations, tropical cruises, and other prizes that are offered as incentives to salespersons in the annuities industry.<sup>64</sup> Do you believe that these incentives could encourage a salesperson to recommend a product that is not in the best interest of the customer?*

---

<sup>64</sup> Elizabeth Warren. "Villas, Castles, and Vacations: How Perks and Giveaways Create Conflicts of Interest in the Annuity Industry." Online at: [http://www.warren.senate.gov/files/documents/2015-10-27\\_Senator\\_Warren\\_Report\\_on\\_Annuity\\_Industry.pdf](http://www.warren.senate.gov/files/documents/2015-10-27_Senator_Warren_Report_on_Annuity_Industry.pdf)

## GENDER- AND RACE-BASED DISCRIMINATION AT CKE AND ITS FRANCHISES

Throughout your tenure as CEO of CKE Restaurants, you have defended the company's record on economic issues affecting women and minorities, noting that CKE "provide[s] significant employment opportunities for minorities...[and] significant employment opportunities for women": "[a]bout 62% of our Company employees are minorities...[and] 62% of our employees are women."<sup>65</sup> You claim to be "proud" of CKE's diversity.<sup>66</sup>

During the early stages of the recent presidential campaign, you also expressed concern over the treatment of women and minorities by the Republican Party. In October 2015, you criticized then-candidate Donald Trump for his derogatory comments towards women and minorities. Mr. Trump, you stated, should not "be telling female voters that the one woman running for the Republican nomination isn't attractive enough to president."<sup>67</sup> You wrote in your blog that his statements "confirm[ed] the Democrats' narrative of Republicans as the bigoted, anti-woman, anti-immigrant party."<sup>68</sup>

Your actions as CEO of CKE Restaurants, however, are not consistent with your statements in support of women, minorities, and families. CKE Restaurants has a poor record when it comes to gender- and sex-based discrimination. Under your leadership, CKE has consistently spent approximately \$130 million annually on advertisements—advertisements featuring scantily clad women eating hamburgers in sexually alluring postures, designed to attract "young, hungry guys."<sup>69</sup> According to you, "beautiful women eating burgers in bikinis" is "very American" and reflects your personal values: "I used to hear, brands take on the personality of the CEO...in this case, [Carl's Jr. and Hardee's]...did take on my personality."<sup>70</sup>

By allowing CKE's advertisements to reflect your "personality," however, you have exposed your company's employees to tangible harm. A recent survey of CKE Restaurant workers found sexual harassment was "uniquely pervasive" at your stores: 66% of female employees had experienced "unwanted sexual behaviors at work"—compared to just 40% of

---

<sup>65</sup> Andrew Puzder, *Written Testimony of Andrew F. Puzder, CEO of CKE Restaurants Holdings, Inc., On the Forty Hours is Full Time Act Before the Senate Health, Education, Labor and Pensions Committee* (online at <http://www.help.senate.gov/imo/media/doc/Puzder.pdf>).

<sup>66</sup> Andrew Puzder, *Written Testimony of Andrew F. Puzder, CEO of CKE Restaurants Holdings, Inc., On the Forty Hours is Full Time Act Before the Senate Health, Education, Labor and Pensions Committee* (online at <http://www.help.senate.gov/imo/media/doc/Puzder.pdf>).

<sup>67</sup> Andy Puzder, "What an Election Cycle This Should Be for Republicans," *Real Clear Politics* (October 2, 2015) (online at <http://www.realeclearpolitics.com/articles/2015/10/02/what-an-election-cycle-this-should-be-for-republicans-128281.html>).

<sup>68</sup> Andy Puzder, "The important thing is finding a candidates who can win the presidency, not just the Republican nomination," *Andy Puzder's Blog* (October 14, 2015) (online at <http://andy.puzder.com/the-important-thing-is-finding-a-candidate-who-can-win-the-presidency-not-just-the-republican-nomination/>).

<sup>69</sup> Suzanne Vranica, "For Hardee's and Carl's Jr., Sex Sells," *Wall Street Journal* (May 26, 2015) (online at <http://blogs.wsj.com/cmo/2015/05/26/for-hardees-and-carls-jr-sex-sells>); Stephanie Clifford, "Carl's Jr. Tries to Go After the Young, and Hungry, Skateboarding Fan," *New York Times* (March 17, 2009) (online at <http://www.nytimes.com/2009/03/18/business/media/18adco.html>).

<sup>70</sup> Jacob Pramuk, "Trump expected to name fast food CEO Andy Puzder as pick for Labor secretary: Source," *CNBC* (December 8, 2016) (online at <http://www.cnn.com/2016/12/08/trump-expected-to-name-fast-food-ceo-andy-puzder-as-pick-for-labor-secretary-source.html>).

women in the fast food industry as a whole.<sup>71</sup> One driver of this sexual harassment appears to be CKE's sexualized commercials: one employee, for example, has reported harassment from customers who ask "why I don't dress like the women in the commercials."<sup>72</sup> Indeed, gender discrimination was "flagrant" at CKE—workers in Tennessee, for example, have reported working with male co-workers who "rubbed or touched [their] buttocks or breasts at work."<sup>73</sup>

Racial discrimination is also pervasive at CKE Restaurants and its franchises. In fact, since you took over CKE in 2000, Hardee's and Carl's Jr. stores "have been hit with more federal employment discrimination lawsuits than any other major U.S. hamburger chain." Race discrimination complaints against CKE-run and franchisee-run stores "read like stories from the 1940s or '50s, before civil rights laws were ever enacted."<sup>74</sup> In one case, a Hardee's supervisor in Tennessee peppered an African-American employee with racial slurs as a general manager looked on; later, the general manager texted the employee "a picture of what appeared to be a Ku Klux Klan lynching." In another, an African-American teenager in California worked with a white supervisor who "shared his view that white people were superior to those of other races" and bragged about a tattoo "he planned to ink...on his forehead depicting a black lynching victim."<sup>75</sup>

As Labor Secretary, you would be responsible for enforcing the laws that protect female and minority employees from discrimination and harassment. Sexual harassment is a form of sex discrimination that violates the Civil Rights Act.<sup>76</sup> DOL is responsible for issuing guidelines and implementing rules that target "a variety of barriers to equal opportunity and fair pay, including pay discrimination, sexual harassment, hostile work environments, [and] gender identity and family caregiving discrimination."<sup>77</sup> In addition, DOL oversees Equal Employment Opportunity (EEO) programs—which prohibit discrimination on the basis of race, religion, sex, national origin, disability, or genetic information—funded with federal dollars through its Civil Rights Center.<sup>78</sup> The "uniquely pervasive" sexual harassment and racial discrimination that occurs at your restaurants raises concerns about your willingness to follow and enforce DOL rules.

---

<sup>71</sup> Restaurant Opportunities Centers United and Corporate Accountability International, *Secretary of Labor Violations? The Low Road Business Model of CKE Restaurant Inc's Andrew Puzder* (January 10, 2017) (online at [http://rocunited.org/wp-content/uploads/2017/01/PuzdersLaborProblem\\_Report\\_0117.pdf](http://rocunited.org/wp-content/uploads/2017/01/PuzdersLaborProblem_Report_0117.pdf)).

<sup>72</sup> *Id.*

<sup>73</sup> Robin Urevich, Capital & Main, "Civil Rights Suits Plague Corporation Run by Labor Pick Andrew Puzder," *Newsweek* (January 23, 2017) (online at <http://www.newsweek.com/civil-rights-suits-plague-corporation-labor-pick-puzder-546327>).

<sup>74</sup> Robin Urevich, Capital & Main, "Civil Rights Suits Plague Corporation Run by Labor Pick Andrew Puzder," *Newsweek* (January 23, 2017) (online at <http://www.newsweek.com/civil-rights-suits-plague-corporation-labor-pick-puzder-546327>).

<sup>75</sup> Robin Urevich, Capital & Main, "Civil Rights Suits Plague Corporation Run by Labor Pick Andrew Puzder," *Newsweek* (January 23, 2017) (online at <http://www.newsweek.com/civil-rights-suits-plague-corporation-labor-pick-puzder-546327>).

<sup>76</sup> American Association of University Women, "Know Your Rights: Workplace Sexual Harassment" (online at <http://www.aauw.org/what-we-do/legal-resources/know-your-rights-at-work/workplace-sexual-harassment/>).

<sup>77</sup> See Donna Lenhoff, "That Was Then. This is Now," *U.S. Department of Labor Blog* (January 28, 2015) (online at <https://blog.dol.gov/2015/01/28/was-then-now>); Office of Federal Contract Compliance Programs, "OFCCP Proposes Updated Sex Discrimination," *U.S. Department of Labor* (January 28, 2015) (online at <https://www.dol.gov/ofccp/sdnprm/>).

<sup>78</sup> United States Department of Labor, "Equal Employment Opportunity" (online at <https://www.dol.gov/general/topic/discrimination>).

Americans of all races and genders deserve to know whether you will enforce the laws that protect them at their jobs. To help me understand your positions, I have the following questions on this subject:

*Why do you believe that sexual harassment has been "uniquely pervasive" at Hardee's and Carl's Jr. stores? What steps have you taken as CEO to address these problems?*

*Why do you believe that Carl's Jr. and Hardee's restaurants have "been hit with more federal employment discrimination lawsuits than any other major U.S. hamburger chain?" What steps have you taken as CEO to address race-based discrimination occurring within CKE restaurants?*

On June 14, 2016, the Office of Federal Contract Compliance Programs (OFCCP) at DOL issued a final rule, Discrimination on the Basis of Sex, which updated OFCCP's sex discrimination regulations to explicitly include "the protections against compensation discrimination; sexually hostile work environments; discrimination based on pregnancy, childbirth or related medical conditions; and discrimination based on unlawful sex stereotypes, gender identity, and transgender status."<sup>79</sup>

*Do you agree with the substance of these regulations? Would you commit to fully enforcing this rule, should you be confirmed as Labor Secretary? Please describe the specific steps you would take to improve enforcement of this rule, and the specific metrics you will use to measure the effectiveness of the rule and its enforcement by DOL.*

DOL's Civil Rights Center "oversees EEO in programs and activities receiving federal financial assistance" from DOL. The Office of Federal Contract Compliance Programs, meanwhile, oversees EEO programs among "employers holding federal contracts and subcontracts."<sup>80</sup>

*Will you ensure that DOL's Civil Rights Center is fully funded, so that Americans are protected from discrimination on the basis of race, religion, sex, national origin, disability, or genetic information?*

*Will you ensure that DOL's Office of Federal Contract Compliance Programs is fully funded, so that employees of federal contractors are protected from discrimination on the basis of race, religion, sex, national origin, disability, or genetic information?*

---

<sup>79</sup> United States Department of Labor, "U.S. Labor Department Announces Updated Sex Discrimination Regulations for Federal Contractors" (June 14, 2016) (online at <https://www.dol.gov/newsroom/releases/ofccp/ofccp20160614>).

<sup>80</sup> U.S. Department of Labor, "Equal Employment Opportunity" (online at <https://www.dol.gov/general/topic/discrimination>).



## FEDERAL CONTRACTORS

A large fraction of the American workforce—around 22%, as estimated in 2002—is employed by contractors of the federal government, and taxpayers dole out around \$500 billion every year to these companies.<sup>81</sup> DOL is responsible for enforcing several laws specific to these contractors, including the Davis-Bacon and Related Acts, McNamara-O’Hara Service Contract Act, and the Contract Work Hours and Safety Standards Act.<sup>82</sup> Enforcement of these laws is particularly important because they protect the rights of many workers and ensure that taxpayer dollars that pay for federal contracts are used responsibly.

Contractors provide a wide variety goods and services, from airplanes for our military to cutting-edge medical research to serving the food at cafeterias on federal property. Unfortunately, many federal contractors, including some of the largest, have been caught in repeated and serious violations of labor laws. A 2010 Government Accountability Office Report found that half of the largest wage theft penalties were paid by 20 federal contractors.<sup>83</sup> And a report by the staff of the Senate HELP Committee found that between 2007 and 2012, nearly half of the penalty dollars assessed by OSHA were paid by federal contractors, and that 42 Americans died as a result of OSHA violations by contractors.<sup>84</sup>

The executive branch maintains significant control over the procurement process, and President Obama has taken several steps (mostly via executive order) to address the rampant labor abuses by the federal government’s contractors. The 2014 Fair Pay and Safe Workplaces Executive Order, for example, standardizes acquisition regulations across agencies, allowing contracting officers to assess companies in light of their labor violations over the prior three years.<sup>85</sup> Other rules have established basic protections such as paid sick leave, a \$10.10 minimum wage, and discrimination protections for employees of contractors.<sup>86</sup> Ending labor

---

<sup>81</sup> O’Leary, A. “Making Government Work for Families: The federal government’s role as employer and contractor in improving family-friendly policies.” *Center for American Progress & UC Berkeley School of Law* (July 2009). Online at: [https://near.ucar.edu/sites/default/files/images/Making Govt Work for Families%20Article.pdf](https://near.ucar.edu/sites/default/files/images/Making_Govt_Work_for_Families%20Article.pdf); “Overview of Awards by Fiscal Year.” *USASpending.gov* (2016). Online at: <https://www.usaspending.gov/transparency/Pages/OverviewOfAwards.aspx>.

<sup>82</sup> “Government Contracts.” Department of Labor. Online at: <https://www.dol.gov/general/topic/wages/govtcontracts>

<sup>83</sup> “Assessments and Citations of Federal Labor Law Violations by Selected Federal Contractors.” *U.S. Government Accountability Office* (September 17, 2010). Online at: <http://www.gao.gov/products/GAO-10-1033>.

<sup>84</sup> “Acting Responsibly? Federal Contractors Frequently Put Workers’ Lives and Livelihoods at Risk” [Majority Committee Staff Report]. *Health, Education, Labor, and Pensions Committee, United States Senate*. Online at: <http://www.help.senate.gov/imo/media/doc/Labor%20Law%20Violations%20by%20Contractors%20Report.pdf>.

<sup>85</sup> “Executive Order--Fair Pay and Safe Workplaces.” *The White House, Office of the Press Secretary* (July 31, 2014). Online at: <https://www.whitehouse.gov/the-press-office/2014/07/31/executive-order-fair-pay-and-safe-workplaces>.

<sup>86</sup> “Final Rule: Executive Order 13706, Establishing a Paid Sick Leave for Federal Contractors.” *Wage and Hour Division, United States Department of Labor*. Online at: <https://www.dol.gov/whd/govcontracts/eo13706/>; “OFCCP’s Sex Discrimination Final Rule, Fact Sheet.” *United States Department of Labor*. Online at: [https://www.dol.gov/ofccp/SexDiscrimination/SexDiscrimFinalRuleFactSheet\\_JRFQA508c.pdf](https://www.dol.gov/ofccp/SexDiscrimination/SexDiscrimFinalRuleFactSheet_JRFQA508c.pdf); “Amended Regulation: Executive Order 11246 Prohibiting Discrimination Based on Sexual Orientation and Gender Identity.” *Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor*. Online at: <https://www.dol.gov/ofccp/lgbt.html>; “Fact Sheet: Final Rule to Implement Executive Order 13658, Establishing a Minimum Wage for Contractors.” *Wage and Hour Division, United States Department of Labor*. Online at: <https://www.dol.gov/whd/flsa/eo13658/fr-factsheet.htm>.

abuses by contractors will require continued strong leadership in the White House and at DOL to protect and build on these steps and cooperation by all government entities that award federal contracts.

Yet despite this recent progress and the troubling trends that prompted actions to address them, some have predicted that the Trump administration would target these basic protections. The Fair Pay and Safe Workplaces Executive Order is in danger under the new administration and House Republicans have already taken up a resolution in committee to overturn these important labor standards.<sup>87</sup> Given your statements on the Obama administration's regulations, I am concerned about your commitment to enforcing laws that ensure that the millions of employees of federal contractors can work in a safe environment and build economic security for themselves and their families.

To determine how you will enforce the labor laws that protect the Americans who work for federal contractors, and whether you will ensure that taxpayer dollars are spent responsibly, I have the following questions on this subject:

The Fair Pay and Safe Workplaces Executive Order (Executive Order 13673) allows contracting officers to consider past labor abuses when making procurement decisions.<sup>88</sup>

*Would you advise President Trump to retain this Executive Order?*

*Will you commit to enforcing this Executive Order?*

*Key provisions of this Executive Order go into effect on April 25, 2017, and October 25, 2017.<sup>89</sup> Will you implement these provisions as scheduled? How will you ensure compliance with this Executive Order once it is implemented?*

The Establishing Paid Sick Leave for Federal Contractors Executive Order (Executive Order 13706) requires federal contractors to offer covered employees up to 7 days of paid sick leave each year, giving sick leave to around 1.15 million workers.<sup>90</sup>

*Would you advise President Trump to retain this Executive Order?*

*Will you commit to enforcing this Executive Order?*

---

<sup>87</sup> "Workplace Law Under President-Elect Donald Trump: What to Expect." *Jackson Lewis* (November 10, 2016). Online at: <http://www.jacksonlewis.com/publication/workplace-law-under-president-elect-donald-trump-what-expect/>; Penn, B. "Trump Win Puts Labor Regulations on Life Support." *Bloomberg BNA* (November 10, 2016). Online at: <https://www.bna.com/trump-win-puts-n57982082660/>.

<sup>88</sup> "Executive Order--Fair Pay and Safe Workplaces." *The White House, Office of the Press Secretary* (July 31, 2014). Online at: <https://www.whitehouse.gov/the-press-office/2014/07/31/executive-order-fair-pay-and-safe-workplaces>.

<sup>89</sup> "Executive Order 13673: Fair Pay and Safe Workplaces." Office of the Assistant Secretary for Policy. *United States Department of Labor*. Online at: <https://www.dol.gov/asp/fairpayandsafeworkplaces/>.

<sup>90</sup> "Final Rule: Executive Order 13706, Establishing a Paid Sick Leave for Federal Contractors." *Wage and Hour Division, United States Department of Labor*. Online at: <https://www.dol.gov/whd/govcontracts/eo13706/>;

The Establishing a Minimum Wage for Contractors Executive Order (Executive Order 13658) gave 200,000 workers raises by setting the minimum wage for federal contractors at \$10.10, with modest cost-of-living increases going forward.<sup>91</sup>

*Would you advise President Trump to retain this executive order?*

*Will you commit to enforcing this executive order?*

The Sex Discrimination Regulations Executive Order (Executive Order 11246) prohibited discrimination on the basis of pregnancy and childbirth, gender identity, and sexual orientation, and updated guidelines on fair pay and sexual harassment for contractors.<sup>92</sup>

*Would you advise President Trump to retain this executive order?*

*Will you commit to enforcing this executive order?*

*In addition to the Executive Orders described above, what are your specific plans to address the widespread labor law violations by contractors of the federal government? If confirmed as Labor Secretary, what will you do to ensure that taxpayer dollars are spent more responsibly?*

## WORKPLACE HEALTH AND SAFETY

If confirmed Labor Secretary, you will be charged with enforcing OSHA. This law—which was created in 1970 after a decade of public outcry about surging rates of disabling injuries and deaths in workplaces across America—ensures that workers are safe on the job by requiring employers to eliminate and remove serious hazards.<sup>93</sup> Although injury and fatality rates have fallen dramatically since the law was passed, in 2015 there were 2.9 million workplace injuries reported by private industry employers and 4,836 deaths.<sup>94,95</sup>

Your tenure at CKE and your public comments call into question your suitability for and willingness to take on the responsibility of preventing these injuries and fatalities. For example, you once wrote that you intended to open 300 more Carl's Jr. locations in Texas, because "Texas...is dominated by pro-business Republicans" and is "known for minimal environmental

---

<sup>91</sup> "Fact Sheet: Final Rule to Implement Executive Order 13658, Establishing a Minimum Wage for Contractors." *Wage and Hour Division, United States Department of Labor*. Online at: <https://www.dol.gov/whd/flsa/eo13658/fr-factsheet.htm>.

<sup>92</sup> "OFCCP's Sex Discrimination Final Rule, Fact Sheet." *United States Department of Labor*. Online at: [https://www.dol.gov/ofccp/SexDiscrimination/SexDiscrimFinalRuleFactSheet\\_JRFQA508c.pdf](https://www.dol.gov/ofccp/SexDiscrimination/SexDiscrimFinalRuleFactSheet_JRFQA508c.pdf);

<sup>93</sup> "OSHA's 30<sup>th</sup> Anniversary." OSHA. Online at: <https://www.osha.gov/as/opa/osha-at-30.html>

<sup>94</sup> Bureau of Labor Statistics. "Employer Reported Workplace Injuries and Illnesses 2015." Online at: [https://www.bls.gov/news.release/archives/osh\\_10272016.pdf](https://www.bls.gov/news.release/archives/osh_10272016.pdf)

<sup>95</sup> Bureau of Labor Statistics. "National Census of Fatal Occupational Injuries in 2015." Online at: <https://www.bls.gov/news.release/pdf/cfoi.pdf>

and worker health and safety regulations.”<sup>96</sup> And since you became CEO of CKE your restaurants have received 98 safety violations. More than a third of those violations were for incidents that could have resulted in death or grave physical harm.<sup>97</sup>

In a report my office released with Senator Murray on January 31<sup>st</sup>, several current and former Hardee’s and Carl’s Jr. employees wrote first-hand accounts of injuries they suffered while working in your restaurants. One former Hardee’s employee from Tennessee wrote that “While working on the grill, many of the employees, including myself, would get burned from the grease that would shoot up from the sizzling hot grill. When I asked about obtaining burn cream to alleviate the pain, I was told that they did not have any at the time.”

Another former Hardee’s employee from North Carolina wrote: “Once, while I was cleaning equipment, I was burned. The store manager wanted me to use my personal insurance to go to the doctor because she did not want it to be reported. I refused and filed a claim. She tried to make it seem like it was in my best interest to use my own insurance, but I knew she didn’t want me to file a claim because workplace injuries impacted her bonus.”<sup>98</sup>

Your record of safety violations at CKE is troublesome given that if confirmed, you will be charged with ensuring the health and safety of all American workers, not just those in your stores. To help me understand how you will enforce OSHA and conduct inspections to ensure that workplaces are in compliance with OSHA standards, I have the following questions on this subject:

*Will you commit to pursue all penalties allowed by law for employers who put their workers in harm's way? Will you commit to pursuing criminal penalties, including jail time, for employers who willfully violate OSHA and cause the death of an employee?*

*Will you commit to ensuring that OSHA is fully funded so that it can continue its inspections and enforcement efforts?*

*Even when OSHA is fully funded, it can't inspect every workplace every year. What types of inspections will be the highest priority in the agency and what industries will you prioritize?*

*In June, OSHA's new Silica Rule, which will save hundreds of lives by protecting the 2.2 million workers exposed to silica in their workplaces from diseases like silicosis and lung cancer, went into effect. Will you commit to ensuring that the upcoming compliance dates for industry are implemented as currently set forth in the final rule? Will you commit to enforcing this rule and inspecting workplaces to ensure that this rule is being properly*

---

<sup>96</sup> “Texas and California spar over Jobs and Taxes.” Andy Puzder’s Blog. Online at: <http://andy.puzder.com/texas-and-california-spar-over-jobs-and-taxes/>

<sup>97</sup> Dave Jamleson. “Donald Trump’s Labor Pick Should Know Worker Safety Laws. His Company’s Been Fined for Breaking Them.” [http://www.huffingtonpost.com/entry/andrew-puzder-workplace-safety\\_us\\_584f1709e4b04c8e2bb14947](http://www.huffingtonpost.com/entry/andrew-puzder-workplace-safety_us_584f1709e4b04c8e2bb14947)

<sup>98</sup> “Charbroiled: Workers tell all about life under Puzder.” A HELP committee Minority Staff Report. Online at: <http://www.warren.senate.gov/files/documents/CharbroiledReport.pdf>

implemented? And, will you defend the rule against any ongoing legal challenges in the courts?<sup>99</sup>

In late March of 2017, a newly finalized rule to protect workers from exposure to beryllium, a chemical that can cause lung cancer and chronic beryllium disease, will go into effect.<sup>100</sup> Will you enforce the beryllium rule if you are confirmed? Will you commit to adhere to the currently scheduled compliance waterfall and not delay compliance of this life-saving rule any further?

## CORPORATE WELFARE

As a result of low wages in the fast food industry, 20% of fast-food workers live below the poverty line, and 43% live on wages that are double the poverty line or less.<sup>101</sup> Consequently, over half of front-line fast-food workers rely on at least one public program—such as the Supplemental Nutrition Assistance Program (SNAP, aka food stamps), Medicaid, the Children’s Health Insurance Program (CHIP), the Earned Income Tax Credit (EITC), and Temporary Assistance for Needy Families (TANF)—to make ends meet for their families. To help support the underpaid employees in your industry, taxpayers dish out nearly \$7 billion a year.<sup>102</sup>

A recent estimate from the National Employment Law Center suggest that taxpayer-funded safety net programs provide CKE employees with \$247 million per year to offset the low wages you pay them.<sup>103</sup> Meanwhile, the most recent public records on CKE Restaurants show that your company reported \$1.28 billion in revenue—totaling over \$68 million in profits—in 2012 alone.<sup>104</sup>

---

<sup>99</sup> “OSHA’s Final Rule to Protect Workers from Exposure to Respirable Crystalline Silica.” Occupational Safety and Health Administration. *United States Department of Labor*. Online at: [https://www.osha.gov/silica/factsheets/OSHA\\_FS-3683\\_Silica\\_Overview.html](https://www.osha.gov/silica/factsheets/OSHA_FS-3683_Silica_Overview.html).

<sup>100</sup> “Final Rule to Protect Workers from Beryllium Exposure.” OSHA, Online at: <https://www.osha.gov/berylliumrule/>

<sup>101</sup> Sylvia A. Allegretto, Marc Doussard, Dave Graham-Squire, Ken Jacobs, Dan Thompson, and Jeremy Thompson, *Fast Food, Poverty Wages: This Public Cost of Low-Wage Jobs in the Fast-Food Industry* (October 15, 2013) (online at <http://laborcenter.berkeley.edu/fast-food-poverty-wages-the-public-cost-of-low-wage-jobs-in-the-fast-food-industry/>).

<sup>102</sup> Sylvia A. Allegretto, Marc Doussard, Dave Graham-Squire, Ken Jacobs, Dan Thompson, and Jeremy Thompson, *Fast Food, Poverty Wages: This Public Cost of Low-Wage Jobs in the Fast-Food Industry* (October 15, 2013) (online at <http://laborcenter.berkeley.edu/fast-food-poverty-wages-the-public-cost-of-low-wage-jobs-in-the-fast-food-industry/>).

<sup>103</sup> National Employment Law Project, *Bilked: How Trump’s Labor Secretary Pick Costs Taxpayers \$250 Million per Year* (January 2017) (online at <http://www.nelp.org/content/uploads/Bilked-How-Trump-Labor-Secretary-Pick-Costs-Taxpayers-250-Million-Per-Year.pdf>).

<sup>104</sup> CKE, “CKE Restaurants, Inc. Reports Fourth Quarter and Full Fiscal Year 2012 Results” (April 10, 2012) (online at <http://investor.ckr.com/press-release/cke/cke-restaurants-inc-reports-fourth-quarter-and-full-fiscal-year-2012-results>).

In other words, as CEO of CKE Restaurants, you have implemented a business model based on paying your workers poverty-level wages, allowing your company to rake in millions of dollars in profits, and relying on taxpayers to foot the bill for you workers' basic needs.

To clarify your position and your views on paying workers a fair wage, please answer the following questions:

*You became CEO of CKE Restaurants in 2000.<sup>105</sup> For each year from 2000-2016, what were the average annual wages of CKE restaurant workers, and by how much did the average annual wages of CKE Restaurant workers, and the workers in its franchises, increase (indexed for inflation)?*

*For each year from 2000-2016, what was your annual take-home pay, and by how much did your annual take home pay increase (indexed for inflation)?*

*For each year from 2000-2016, how many workers at CKE Restaurants and its affiliated franchises received taxpayer-funded benefits geared to low-income individuals, including food stamps, Medicaid, and public housing assistance? How much do you estimate that they received?*

You have argued that the availability of benefits for low-income workers and families causes them to turn down raises and promotions, stating that: "You get to a point where if you make a few more dollars you actually lose thousands of dollars in benefits. And, quite honestly, these benefits are essential for some people. They are how they pay their rent; they are how they feed their kids. **So, what happens is, we have people who turn down promotions or, if minimum wage goes up, they want fewer hours. They want less hours because they are afraid they'll go over that cliff.**"<sup>106</sup>

*Is this statement accurate? For each year from 2000-2016, please provide an estimate of the number of your employees who have turned down promotions or asked for reduced hours because of the "welfare cliff?"*

*As Labor Secretary, your mission will be to "foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States."<sup>107</sup> Is it consistent with this mission to allow full-time workers to be paid wages that are so low they must rely on government benefits?*

*As Labor Secretary, what specific steps would you take to tangibly improve the lives of workers who are forced to rely on government benefits to make ends meet?*

---

<sup>105</sup> CKE Restaurants, "Andrew F. Puzder, Chief Executive Officer" (online at [http://www.ckr.com/about\\_management.html](http://www.ckr.com/about_management.html)).

<sup>106</sup> Craig Harrington, "Fox Claims Fast Food Workers Forego Higher Salaries To Keep Receiving 'Free Stuff From the Government,'" *Media Matters for America* (June 24, 2015) (online at <https://mediamatters.org/blog/2015/06/24/fox-claims-fast-food-workers-forego-higher-sala/204120>).

<sup>107</sup> United States Department of Labor, "Our Mission" (online at <https://www.dol.gov/opa/aboutdol/mission.htm>).

## CKE RESTUARANTS AS A PRIVATE COMPANY

When companies are publicly traded, they are subject to extensive disclosure rules and auditing requirements that help shareholders, and the general public, assess the value and the business practices of these companies. Although candidates for cabinet positions have to disclose certain financial documents detailing their personal financial holdings, they are not required to disclose all aspects of their company's financials.

These disclosures allow the public to scrutinize the business practices of nominees that run publicly-held companies. This is not the case when nominees run privately held companies.

In July 2010, under your leadership, CKE Restaurants was acquired by an affiliate of Apollo Management VII, L.P., a private company.<sup>108</sup> At the time you turned CKE Restaurants from a public company to a private one, the business was struggling. Sales at your largest chain of restaurants, Carl's Jr., had plummeted 5.2% in the fiscal third quarter, and same-store sales dropped by 4.2% in the early part of 2010.<sup>109</sup>

Your decision to make CKE a private company removed both you and your company from the public eye, granting you more freedom to operate without scrutiny. In fact, you even said as much at the time, claiming that the "most positive thing for me is...[w]e no longer have all the regulatory requirements..."<sup>110</sup> And just two years later your company aborted its plan to go public, citing "market conditions" as your rationale for keeping your business operations hidden from the public amid continued struggles.<sup>111</sup> As a private company, you are not accountable to your shareholders. As a private company, you are not held responsible for your actions by the American public.

Because you took your company private, you do not have to follow the laws that apply to public companies, including extensive disclosure rules and important auditing requirements. This decision deprived the public of the following information:

- **Annual Financial Statements:** Unlike all public companies, CKE Restaurants does not have to provide yearly updates on its business. As a private company, you have not had to disclose your business operations, profits, revenues, risks, business results, and other important information to the SEC for the past 5 years.<sup>112</sup>

---

<sup>108</sup> Kelsey Volkmann, "CKE goes private in \$1B sale to Apollo," *St. Louis Business Journal* (Jul. 12, 2010) (online at <http://www.bizjournals.com/stlouis/stories/2010/07/12/daily12.html>).

<sup>109</sup> *Supra* note 27; Pacific Coast Business Times Staff, "CKE to go private, stay local," *Pacific Coast Business Times* (Mar. 8, 2010) (online at <https://www.pacbiztimes.com/2010/03/08/cke-to-go-private-stay-local/>).

<sup>110</sup> Rebecca Boyle, "Going private a premium as CKE sells to equity firm," *St. Louis Business Journal* (Dec. 17, 2010) (online at <http://www.bizjournals.com/stlouis/print-edition/2010/12/17/going-private-a-premium-as-cke-sells.html>).

<sup>111</sup> Carol Tice, *Forbes*, (Aug. 10, 2012) (online at: <http://www.forbes.com/sites/caroltice/2012/08/10/carls-jr-hardees-withdrawn-ipo-start-of-slump/>)

<sup>112</sup> "Form 10-K," *U.S. Securities and Exchange Commission* (online at <https://www.sec.gov/answers/form10k.htm>); "Public Company SEC Reporting Requirements," *Legal & Compliance* (online at <http://www.legalandcompliance.com/securities-resources/sec-requirements-for-public-companies/>); Evan Tarver, "Is a private company required to disclose financial information to the public?" *Investopedia* (June 24, 2015) (online at



- Executive Salaries: We also don't know how much CKE Restaurants pays its executives – including you.<sup>113</sup>

But disclosure isn't the only thing CKE Restaurants has avoided by going private. Both you and your company have not been required to follow other SEC rules, including:

- Say-On-Pay: Public companies have to ask their shareholders for approval of all compensation plans for corporate executives. CKE Restaurants can pay executives – such as its CEO and President – whatever it wants.<sup>114</sup>
- Clawback: At a public company, if an executive receives a bonus or other compensation based on a misstatement of the company's accounts, they may have to pay it back. Since you made CKE a private company, you don't.<sup>115</sup>
- Auditing: Under the Sarbanes-Oxley Act, public companies must develop internal controls for financial reporting, and must have an independent auditor attest to both the controls and the financial statements. This ensures that a company reports true and accurate information to both the public and its shareholders. CKE Restaurants is under no such obligations.<sup>116</sup>

The next Labor Secretary will be in charge of programs impacting millions of workers and businesses. It will be his or her duty to enact regulations protecting workers from discrimination and unsafe working conditions; to enforce rules ensuring economic opportunity for all workers; and to administer programs providing for millions of unemployed men and women. Your record as President and CEO of a large corporation speaks directly to your ability to serve as our next Labor Secretary.

Americans deserve to know how their next Labor Secretary has handled his own employees and business operations. To help determine your qualifications, I have the following questions on this subject:

*As a private company, you were not required to gain approval from your shareholders for executive compensation packages. Will you disclose the last five years' worth of*

---

<http://www.investopedia.com/ask/answers/062415/private-company-required-disclose-financial-information-public.asp>).

<sup>113</sup> See *id.*

<sup>114</sup> 15 U.S.C. § 78j-4(b)(2); see Matthew J. O'Hara, "Staying Private Avoids SEC, but Not All Regulation," *American Bar Association* (May 8, 2012) (online at <http://apps.americanbar.org/litigation/committees/businessstorts/articles/spring2012-0512-private-public-securities-regulation.html>).

<sup>115</sup> *Supra* note 22; see Dave Michaels, "SEC Proposes Executive-Pay Clawbacks When Companies Restate," *Bloomberg* (Jul. 1, 2015) (online at <https://www.bloomberg.com/news/articles/2015-07-01/sec-to-propose-executive-bonus-clawbacks-when-companies-restate>).

<sup>116</sup> 15 U.S.C. § 7262; see Matthew J. O'Hara, "Staying Private Avoids SEC, but Not All Regulation," *American Bar Association* (May 8, 2012) (online at <http://apps.americanbar.org/litigation/committees/businessstorts/articles/spring2012-0512-private-public-securities-regulation.html>).

*executive compensation packages, including salary, bonuses, stock options, and any other form of compensation? Will you also disclose the average salary of workers in Hardee's and Carl's Jr. stores?*

*CKE Restaurants does not have to be accountable to the public for its internal accounting and reporting systems. Will you submit to an independent audit of your company's internal controls and financial statements from the last five years?*

*By taking CKE Restaurants private, you sacrificed the interests of the public in order to save your struggling company. Will you disclose all financial information for CKE Restaurants for the last five years in order to provide the public with complete disclosure on your business activities and financial performance?*

*You will be in charge of programs impacting millions of workers. Will you provide information regarding the compensation, benefits, and advancement opportunities for employees of Hardee's and Carl's Jr. restaurants over the last five years?*

## FAIR SCHEDULING LEGISLATION

The use of on-demand scheduling practices has increased in recent years, particularly in service sector jobs in the restaurant, retail, and cleaning sectors. On-demand scheduling includes calling workers into work at a moment's notice, or sending workers home unexpectedly before the end of their scheduled shift when business is slow. These practices are particularly problematic for women, who are the primary or co-breadwinners in almost two-thirds of working families, and are more likely than men to work in jobs with nonstandard hours.<sup>117</sup>

On-call and on-demand scheduling makes it virtually impossible for workers to plan a monthly budget, to accommodate a second job or go back to school, or to arrange for childcare or other family obligations. Recent research suggests that unstable and unpredictable schedules are associated with income volatility, psychological stress, and less time spent with children.<sup>118</sup>

According to first-hand accounts from workers in Hardee's and Carl's Jr., your company frequently used on-demand scheduling practices. Workers described being forced to clock out early and receiving smaller weekly checks than they expected, and managers described being forced to cut hours, sending workers home unexpectedly.<sup>119</sup>

---

<sup>117</sup> National Partnership for Children and Families, *Schedules That Work Fact Sheet* (July 2015) (online at <http://www.nationalpartnership.org/research-library/workplace-fairness/equal-opportunity/schedules-that-work-act-fact-sheet.pdf>).

<sup>118</sup> Bridget Ansel, "Are Unpredictable Schedules Harming U.S. Workers' Health?" Washington Center for Equitable Growth. Online at: <http://equitablegrowth.org/equitablog/unpredictable-schedules-us-workers-health/>

<sup>119</sup> "Charbroiled: Workers tell all about life under Puzder." A HELP committee Minority Staff Report. Online at: <http://www.warren.senate.gov/files/documents/CharbroiledReport.pdf>

In 2015, I reintroduced the Schedules that Work Act with 18 of my colleagues in the Senate to bring some basic fairness back to work schedules. This bill provides for two weeks advance notice of schedules for workers in the food service, retail, and cleaning sectors and allows workers to request changes to their schedules to accommodate family obligations, a second job, or continued education without fear of retaliation.<sup>120</sup> In a recent focus group on work family policy with working-class parents in Ohio, mostly supporters of President Trump, the Schedules that Work Act was by far the most popular policy option among the participants.<sup>121</sup>

I have the following questions for you on this matter:

*As Secretary of Labor, what specific steps would you take to improve the working conditions of low-wage workers in the food service, retail, and cleaning sectors?*

*Will you support the passage of the Schedules that Work Act? If not, what are your plans for introducing fairness into work schedules so that workers are able to arrange for childcare, juggle a second job, or go back to school?*

## FRANCHISING AND SMALL BUSINESS OWNERS

As the CEO of a franchisor and the past director of the International Franchise Association you've spoken out on numerous policy matters related to the franchise business model.<sup>122</sup> Indeed, CKE Restaurants' business model, like those of many fast food chain companies, relies largely on franchising for its success. CKE's most recent SEC filings (in 2012) revealed that there were 1,349 Carl's Jr. restaurants, 926 of which were franchises, and 1,936 Hardee's restaurants, 1,466 of which were franchises.<sup>123</sup>

One topic you have discussed at length is the National Labor Relations Board's joint employer doctrine which holds that both the parent company (franchisor) and franchisee are jointly responsible for the employees with respect to collective bargaining.<sup>124</sup> This means that employees can negotiate for higher wages and better workplace safety protections with the parent company that ultimately controls the core aspects of the business, and not just the owner of their particular franchise. You've said that requiring parent companies to be jointly

---

<sup>120</sup> The Schedules that Work Act. Introduced in the 114<sup>th</sup> Congress. Online at: <https://www.congress.gov/bills/114/congress/senate-bill/1772>

<sup>121</sup> Institute for Family Studies. "Work-family Policy in Trump's America: Insights from a Focus Group of Working Class Millennial Parents in Ohio." Online at: <http://ifstudies.org/wp-content/uploads/2016/12/FINAL2-LappFocusGroupReportonWorkingClass.pdf>

<sup>122</sup> "IFA Names Seven Franchise Leaders to its Board of Directors." International Franchise Association. (Online at: <http://www.franchise.org/ifa-names-seven-franchise-leaders-to-its-board-of-directors>)

<sup>123</sup> "Form 10-Q." CKE Restaurants, Inc. *United States Securities and Exchange Commission* (December 12, 2012). Online at: [http://investor.ckr.com/sec\\_filings](http://investor.ckr.com/sec_filings).

<sup>124</sup> "Board Issues Decision in Browning-Ferris Industries." National Labor Relations Board. Online at: <https://www.nlrb.gov/news-outreach/news-story/board-issues-decision-browning-ferris-industries>

responsible for collective bargaining would “destroy that [franchise business] model” and have said that the “franchisee alone is responsible” for labor decisions.<sup>125</sup>

You’ve also publicly opposed the longstanding joint employer doctrine with regard to the FLSA, which takes the FLSA’s and other laws’ broad definition of employment to hold the multiple entities responsible for each worker accountable for violations of labor laws.<sup>126</sup> This is important because it ensures that large parent companies are held responsible for systematic labor violations that happen in their franchises and among their subcontractors. You have argued that CKE should be exempt from responsibility for workers in its franchised restaurants because it would interfere with an “entrepreneurial system that works.”<sup>127</sup>

Ultimately, however, your company benefits greatly from a narrower joint employer standard because it would allow you to hide behind the franchise model to dodge all legal responsibilities to your workers. This allows you to squeeze every dollar of profit possible out of workers and franchisees at as little risk and as little cost possible to your company.

In fact, it’s not just labor liability that the franchise model shields you from; it also allows you to pass many of the costs of doing business along to the franchisee. CKE’s Franchise Disclosure Document for Hardee’s, for example, estimates the initial investment required to open a Hardee’s restaurant to be between \$1,426,500 and \$1,949,000, including as much as \$45,000 in fees paid to CKE and not including real estate costs and annual royalties.<sup>128</sup> These costs are all paid by franchisees.

The steep initial costs of opening a franchise with CKE belie your justification to your opposition to labor laws and regulations, such as the minimum wage, by claiming that they damage the “small business” franchisees of Carl’s Jr. and Hardee’s.<sup>129</sup> Potential buyers need substantial resources to become a franchisee at CKE. Characterizing this “entrepreneurial system” as a ladder to the middle class through small business ownership is a mischaracterization given the sizable the initial investment required to franchise with CKE.<sup>130</sup>

Given the substantial start-up costs required to open a franchise, and relatively little help or risk-sharing from CKE once opened, it is no wonder most of CKE’s franchisees are not actually small business owners. Together, the Franchise Disclosure Documents for Hardee’s and

---

<sup>125</sup> “Written Testimony of Andrew F. Puzder, CEO of CKE Restaurants Holding, Inc.” Testimony to the House of Representatives Education and the Workforce Committee. Online at: [http://edworkforce.house.gov/uploadedfiles/puzder\\_testimony\\_revised.pdf](http://edworkforce.house.gov/uploadedfiles/puzder_testimony_revised.pdf)

<sup>126</sup> “Joint Employment Under the FLSA and MSPA.” *United States Department of Labor*. Online at: <https://www.dol.gov/whd/flsa/jointemployment.htm>.

<sup>127</sup> “Labeling Franchises as Joint Employers will Negatively Alter the Employment Landscape: Andy Puzder’s Blog. Online at: <http://andy.puzder.com/labeling-franchisees-as-joint-employers-will-negatively-alter-the-employment-landscape/>

<sup>128</sup> “Franchise Disclosure Document.” *Hardee’s Restaurants, LLC* (May 24, 2016).

<sup>129</sup> Levine, M. & Schneier, C. “Trump chooses Puzder as labor secretary.” *Politico* (December 8, 2016). Online at: <http://www.politico.com/blogs/donald-trump-administration/2016/12/andrew-puzder-labor-secretary-trump-232368>.

<sup>130</sup> Puzder, A. “Labeling Franchisees as “Joint-Employer” Will Negatively Alter the Employment Landscape.” *Andy Puzder’s Blog* (June 26, 2014). Online at: <http://andy.puzder.com/labeling-franchisees-as-joint-employers-will-negatively-alter-the-employment-landscape/>.

Carl's Jr., both from 2016, list a total of 2,679 franchises, but only 249 franchisees.<sup>131</sup> This means that the average Hardees and Carl's Jr. franchisee owns 11 restaurants.<sup>132,133</sup>

The average CKE franchisee is not a small business owner. Rather, the average franchisee spent millions of dollars opening restaurants, employs hundreds of workers, and is often part of a large investment group that owns dozens of franchises with CKE and with other brands. Boddie-Noell Enterprises, Inc., for example, owns more than 330 Hardee's franchises in four states and employs nearly 10,000 people.<sup>134</sup>

Americans deserve to know how your business model effects small business owners, whether your company hid behind franchising arrangements to dodge legal responsibilities to its workers, and whether your statements about promoting upward mobility for your workers are borne out in your record at CKE. I therefore have the following questions on this subject:

*Could you clarify how your current business, CKE Restaurants, benefits small business owners and promotes "upward mobility" when it costs at least a million dollars to open up a franchise and the average franchisee owns 11 restaurants?*

*How many of your current franchisees began as hourly workers at either Hardee's or Carl's Jr.?*

*What is the default rate for franchisees of CKE?*

*Will you commit to enforcing the FLSA and other relevant laws consistent with the longstanding joint employer doctrine?*

*Will you hold parent companies responsible for violations of the minimum wage or overtime laws of the workers in their franchises where the parent company is legally culpable?*

*What are your specific plans to protect the rights of workers of franchised companies? How will you stop abuses such as wage theft that take place in workplaces like Carl's Jr. and Hardee's?*

---

<sup>131</sup> These figures should be interpreted as rough estimates, because the Franchise Disclosure Document lists names of companies that appear to be affiliates, perhaps subsidiaries of the same parent company, but are counted separately by this letter's calculation so as to provide a conservative estimate of franchises per franchisee. If this is the case, the same franchisee may have been counted multiple times, which would mean that the real number of franchises per franchisee is even higher than indicated in this letter.

<sup>132</sup> "Franchise Disclosure Document." *McDonald's USA, LCC* (July 26, 2015).

<sup>133</sup> "The QSR 50." *QSR* (August 2012). Online at: <https://www.qsrmagazine.com/reports/qs50-2012-top-50-chart>.

<sup>134</sup> "About Boddie-Noell Enterprises, inc." *Boddie-Noell Enterprises, Inc.* Online at: <http://bneinc.com/about/>

## CONCLUSION

If confirmed as Labor Secretary, your decisions will profoundly impact the lives of 150 million American workers. Your policy choices will affect their paychecks, their ability to build financial security for themselves and their families, and their health and safety. It will be your job to enforce the hard-won labor protections that keep workers out of harm's way and ensure that they are paid a fair day's wage for a hard day's work.

America's labor force built this country and America's labor force is essential to the future success of our economy and our nation. I look forward to hearing from you and to reviewing your answers to my questions during your confirmation hearing.

Sincerely,



Elizabeth Warren  
United States Senator