

January 12, 2017

The Honorable Lamar Alexander
Chairman
Senate Committee on Health, Education,
Labor & Pensions
428 Senate Dirksen Office Building
Washington, D.C. 20510

The Honorable Patty Murray
Ranking Member
Senate Committee on Health, Education,
Labor & Pensions
154 Russell Senate Office Building
Washington, D.C. 20510

Dear Senators Alexander and Murray:

The National Women's Law Center (the Center), an organization that has advocated on behalf of women and girls for forty-five years, writes to express its strong opposition to the confirmation of Andrew Puzder as Secretary of Labor. The Secretary of Labor is the nation's most senior official tasked with ensuring the well-being and rights of working people and advancing their employment opportunities, and is therefore of great importance to women and their families. The Secretary of Labor directs the Department of Labor's interpretation and enforcement of a number of laws vital to women's economic security and right to be free from workplace discrimination, such as the Fair Labor Standards Act, the Occupational Safety and Health Act, the Family and Medical Leave Act, the Affordable Care Act, and executive orders prohibiting employment discrimination by federal contractors and setting labor standards for federal contractors' employees, including protection of the right to earn paid sick days. These policies are essential to closing the gender wage gap: they remove barriers to women's employment opportunity, including sex discrimination; raise women's wages; allow women to meet caregiving responsibilities without sacrificing their employment; and ensure women's health and safety so they can continue to support their families. Mr. Puzder's record demonstrates that he should not be confirmed to this important position.

Mr. Puzder has a long record of hostility to crucial sex discrimination protections enforced by the Office of Federal Contract Compliance Programs, including pay discrimination, sexual harassment, and pregnancy discrimination.

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces sex discrimination protections for employees of federal contractors, including protection against pay discrimination, sexual harassment, and pregnancy discrimination. Mr. Puzder, the CEO of CKE Restaurant Holdings (CKE), which owns fast-food chains including Hardee's and Carl's Jr., has mused that machines are preferable to human workers, in part because machines do not bring sex discrimination cases.¹ Mr. Puzder serves on the Board of Directors of the International Franchise Association, which has opposed a bill that would strengthen women's ability to uncover and challenge pay discrimination.² During Mr. Puzder's tenure as CEO, his companies and franchisees have been the subject of numerous sexual harassment and sex discrimination lawsuits, the facts of which evince a pattern of management failure to investigate or address employees' reports of harassment and physical assault.³ Consistent with these lawsuits, under Mr. Puzder's leadership Hardee's and Carl's Jr.'s ads have featured highly sexualized images of "beautiful women eating burgers in

bikinis,” in his words.⁴ The corporate culture created by the ads has put his employees at risk: in a recent survey of employees of CKE companies, over half of the women workers reported being sexually harassed by customers, and the survey quoted a worker who reported customers asked her “why I don’t dress like the women in the commercials.”⁵ Nevertheless, Mr. Puzder has expressed pride in these notorious ad campaigns, stating that the ads reflect his personality.⁶

Mr. Puzder’s personal history includes allegations of violence against women. He has acknowledged that police were twice summoned to his home as a result of disputes with his ex-wife,⁷ and his ex-wife appeared anonymously on a national television program, where she identified herself as a victim of domestic violence and described her experiences (without naming Mr. Puzder).⁸

Prior to his assuming leadership of CKE in 2000, Mr. Puzder supported extreme positions in opposition to women’s reproductive rights, which also threaten protections against workplace sex discrimination. Mr. Puzder defended protestors arrested at abortion clinics, arguing that they should be exempted from criminal trespass laws because of their moral and religious beliefs,⁹ and authored a Missouri fetal personhood law defining life as beginning at conception -- a law designed to undermine *Roe v. Wade*.¹⁰ Such positions have been advanced in order to exclude pregnant women from the workplace in the name of fetal safety, or to allow an employer to discriminate against women who use contraception or terminate a pregnancy.

Mr. Puzder is an opponent of policies enforced by the Wage and Hour Division, such as minimum wage and overtime protections, family and medical leave, and paid sick leave.

The overrepresentation of women in low-wage jobs, including minimum wage and sub-minimum wage positions, is an important driver of the gender wage gap. Because women are overrepresented in low-wage jobs, they have a particular stake in raising the minimum wage and in robust overtime protections, are especially vulnerable to wage theft, and are less likely to have access to important supports like paid family and medical leave and paid sick leave.

Mr. Puzder is a critic of wage and hour protections vital to working women. Mr. Puzder has been a consistent and vocal opponent of raising the minimum wage,¹¹ ensuring that millions of women and families depending on income from minimum wage jobs will remain in poverty.¹² Mr. Puzder also opposes the Department of Labor’s updated rule extending overtime protections, which would benefit an estimated 12.5 million modestly paid U.S. workers.¹³ Mr. Puzder has dismissed the importance of rest and meal break requirements for workers.¹⁴ Mr. Puzder also has attacked leave policies¹⁵ like those enforced by the Wage and Hour Division, including the Family and Medical Leave Act, and the current Department of Labor rule ensuring that employees of federal contractors can earn paid sick days that can be used to address their own illness or a family member’s illness, or to address domestic violence and sexual assault.

Mr. Puzder has not only opposed key wage and hour laws as a matter of policy; his companies routinely have been charged with violating them. A recent Department of Labor investigation found that 60 percent of Carl’s Jr. and Hardee’s restaurants had at least one wage and hour

violation.¹⁶ Under Mr. Puzder's leadership, CKE has paid millions of dollars to settle lawsuits alleging violations of California's wage and hour laws, including wage theft.¹⁷

Mr. Puzder's businesses have violated basic workplace health and safety protections enforced by the Occupational Safety and Health Administration.

Mr. Puzder's restaurants have a track record of being dangerous for workers, often forcing women to jeopardize their safety in order to keep working to pay the bills.¹⁸ Since he assumed leadership of CKE, his companies have been cited by the Occupational Safety and Health Administration (OSHA) for over 98 safety violations, a third of which were deemed "serious" -- violations that could result in death or serious harm to employees.¹⁹ As Secretary of Labor, Mr. Puzder would oversee OSHA's enforcement activities.

Mr. Puzder has attacked workers' access to health insurance under the Affordable Care Act, a requirement implemented by the Employee Benefits Security Administration.

The Department of Labor's Employee Benefits Security Administration plays a significant role in implementation of the Affordable Care Act's (ACA) requirements in employer-based health plans. Mr. Puzder has been a vocal critic of the ACA, particularly the requirement that employers make available health insurance to employees who work at least 30 hours a week.²⁰ This requirement is crucial for women, who are the largest consumers of health care, and often the primary decision maker and caregiver when a family member becomes ill.

Mr. Puzder has failed to make the necessary disclosures to allow the Committee to consider his nomination.

Although the public record amply demonstrates why Mr. Puzder's nomination should be rejected, we note the absence of a complete record before the Committee. To date, Mr. Puzder has not submitted the required documentation, including his financial disclosure statement, ethics agreement, or the Committee questionnaire. It is essential that the Committee – and the public – have before them a full and complete record upon which to evaluate Mr. Puzder's nomination.

* * *

In conclusion, Mr. Puzder's record is entirely inconsistent with the Secretary of Labor's duty to protect the rights of working people. He would undermine protections that are critical to the economic security of women and their families. Accordingly, the Center strongly opposes the confirmation of Mr. Puzder as Secretary of Labor and urges the Committee to reject his nomination.

Sincerely,



Marcia D. Greenberger
Co-President

¹ Kate Taylor, “Fast-food CEO says he's investing in machines because the government is making it difficult to afford employees,” *Business Insider*, Mar. 16, 2016, <http://www.businessinsider.com/carls-jr-wants-open-automated-location-2016-3>.

²International Franchise Association, Board of Directors, <http://franchise.org/board-of-directors> (last visited Dec. 19, 2016); Letter to Senators Reid and McConnell in Opposition to S.3777, Paycheck Fairness Act (Sept. 21, 2010), available at <http://www.nam.org/Issues/Labor/Letter-to-Senate-on-Paycheck-Fairness-2010/>.

³See, e.g., Equal Employment Opportunity Comm’n v. Hardee’s Food Sys., Inc., d/b/a/ Hardee’s Rest., Case No. 2:08-cv-00062 (M.D. Tenn., consent decree entered Aug. 31, 2009) (class of female Hardee’s employees alleged sexual harassment, including unwanted sexual contact and physical assault, and retaliation, and that employer failed to take prompt, effective action in response to plaintiffs’ complaints); Kloth v. Doro, Inc., Case No. 2007-cv-695, consolidated with Singisime v. Doro, Inc., Case No. 07-cv-00696 (E.D. Wis., settled 2007) (two female Hardee’s employees alleged managers repeatedly subjected them to offensive sexual comments and unwanted sexual contact, and that store manager and district manager failed to take prompt, appropriate action when they complained).

⁴Kate Taylor, “The CEO of Carl's Jr. Doesn't Care If You're Offended by the Chain's Sexy Ads,” *Entrepreneur*, May 20, 2015, <https://www.entrepreneur.com/article/246487>.

⁵RESTAURANT OPPORTUNITIES CENTERS UNITED, SECRETARY OF LABOR VIOLATIONS? THE LOW ROAD BUSINESS MODEL OF CKE RESTAURANT INC.’S ANDREW PUZDER 11 (Jan. 2017), available at http://rocunited.org/wp-content/uploads/2017/01/PuzdersLaborProblem_Report_0117.pdf [SECRETARY OF LABOR VIOLATIONS].

⁶Taylor, *supra* note 4.

⁷Sarah Fenske, “Andrew Puzder, Trump's Pick for Labor Department, Was Accused of Abusing Wife,” *Riverfront Times*, Dec. 8, 2016, <http://www.riverfronttimes.com/newsblog/2016/12/08/andrew-puzder-trump-pick-for-labor-department-was-accused-of-abusing-wife>; Gianna Jacobson & J.A. Lobbia, “Puzder v. Puzder: Prominent Anti-Abortion Warrior Has Had a Family Battle of His Own,” *Riverfront Times*, July 26, 1989, <http://www.riverfronttimes.com/newsblog/2016/12/08/andrew-puzder-trump-pick-for-labor-department-was-accused-of-abusing-wife?page=2>.

⁸Marianne Levine, “Ex-wife of Labor nominee leveled abuse claims on ‘Oprah,’” *Politico*, Jan. 10, 2017, <http://www.politico.com/story/2017/01/womens-groups-fret-puzder-nomination-233449>.

⁹Michael Tackett, “Long Battle Returned Abortion to High Court,” *Chicago Tribune*, Jan. 15, 1989, http://articles.chicagotribune.com/1989-01-15/news/8902250670_1-abortion-view-reproductive-health-services-missouri-citizens.

¹⁰*Id.*

¹¹Andy Puzder, “Wages With Minimal Wiggle Room,” *Wall St. J.*, Dec. 28, 2015, <http://www.wsj.com/articles/wages-with-minimal-wiggle-room-1451259371?emailToken=JRrzdV6Zx+ehtwwb8wj3VllidewXCvOJA1bWKnHPM0yJq33aruasgr8ygN7y+D/yHBwntotbtg==>; Michael Hiltzik, “Does Andy Puzder really want to replace his Carl's Jr. workers with robots? No, but...,” *Los Angeles Times*, Mar. 30, 2016, <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-puzder-20160322-snap-htlmlstory.html>.

¹²Full-time earnings of \$14,500 at the federal minimum wage of \$7.25 leave a family of three thousands of dollars below the poverty line. NAT’L WOMEN’S LAW CTR., WOMEN AND THE MINIMUM WAGE: STATE BY STATE (Aug. 2016), available at <http://nwlc.org/resources/women-and-minimum-wage-state-state/>.

¹³Eisenbrey, R. & Kimball, W., *The new overtime rule will directly benefit 12.5 million working people*, ECONOMIC POLICY INSTITUTE (May 17, 2016), available at <http://www.epi.org/publication/who-benefits-from-new-overtime-threshold/>.

¹⁴Jonathan Winslow, “Carl’s Jr. CEO says California tough on business,” *OC Register*, Nov. 11, 2014, <http://www.ocregister.com/articles/puzder-641468-california-carl.html>; SECRETARY OF LABOR VIOLATIONS, *supra* note 5, at 4.

¹⁵Andy Puzder, “Government Can’t Do It,” *RealClear Politics*, Sept. 28, 2016, http://www.realclearpolitics.com/articles/2016/09/28/government_cant_do_it_131914.html; Andy Puzder, “Why Restaurant Automation is on the Menu,” *Wall St. J.*, Mar. 24, 2016, http://www.wsj.com/article_email/why-restaurant-automation-is-on-the-menu-1458857730-1MyQjAxMTE2NDI4NTgyMDUyWj.

¹⁶Ben Penn, “Is Franchise Model a Recipe for Fast-Food Wage Violations?,” *BNA Daily Labor Report*, Sept. 13, 2016, <https://www.bna.com/franchise-model-recipe-n57982076930/>.

¹⁷Winslow, *supra* note 14; Jordan Buie, “Trump’s Labor pick’s companies have faced multiple class-action lawsuits,” *USA Today*, Dec. 8, 2016, <http://www.usatoday.com/story/news/politics/elections/2016/12/08/andrew-puzder-labor-secretary-nominee/95172276/>.

¹⁸SECRETARY OF LABOR VIOLATIONS, *supra* note 5, at 8.

¹⁹Dave Jamieson, “Donald Trump’s Labor Pick Should Know Worker Safety Laws. His Company’s Been Fined For Breaking Them,” *Huffington Post*, Dec. 12, 2016, http://www.huffingtonpost.com/entry/andrew-puzder-workplace-safety_us_584f1709e4b04c8e2bb14947.

²⁰Andy Puzder, “Shunning ObamaCare,” *Wall St. J.*, Jan. 13, 2015, <http://www.wsj.com/articles/andy-puzder-shunning-obamacare-1421192654>.