ADDING TO UNCERTAINTY: THE IMPACT OF DOL/ NLRB DECISIONS AND PROPOSED RULES ON SMALL BUSINESS

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ADDING TO UNCERTAINTY: THE IMPACT OF DOL/NLRB DECISIONS AND PROPOSED RULES ON SMALL BUSINESSES

WEDNESDAY, OCTOBER 5, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 1:01 p.m., in room 2360, Rayburn House Office Building, Hon. Sam Graves (Chairman of the Committee) presiding.

Present: Representatives Graves, Chabot, Mulvaney, West, Barletta, Hanna, Schilling, Velázquez, Clarke, Chu, Cicilline, Owens, Keating and Hahn.

Chairman GRAVES. We will go ahead and call this hearing to order. And I want to thank all of our witnesses for appearing here today. Some of you have come a long ways, and we appreciate that very much.

The purpose of today's hearing is to examine the proposed rules and case decisions by the National Labor Relations Board and the Department of Labor related to employer and employee rights in union-organizing drives. This committee has kept a particular focus on Federal regulations and policies that are adding to the array of uncertainties confronting small businesses, particularly when those uncertainties add to the Nation's stubbornly high unemployment rate.

Republicans and Democrats agree on the principle that businesses need certainty if they are going to grow their businesses and add jobs. President Obama has widely touted an executive order directing government agencies to identify and cut the red tape that is out there. He has also ordered agencies to do more than the bare minimum required to ensure that stakeholders have an opportunity to communicate their views on agency regulatory actions. If this is the intent of the President's executive order, it hasn't been put into practice. Rather the NLRB and the Department of Labor proposed the imposition of new regulations despite the lack of any demonstrated need for changes to existing law and practice.

The current NLRB board has been particularly activist in its agenda. It was the infamous NLRB decision to prohibit Boeing from opening a plant in the State of South Carolina. While this decision does not directly impact small businesses, many of those in the small business community are claiming such decisions are indicative of NLRB's overall bias against employers and level of favoritism that is granted to unions.

Today's hearing is going to focus on four examples of this administration's union favoritism, the NLRB's decision and the Lamons Gasket Company and Specialty Hospital of Mobile; the NLRB's proposed changes to the union election process; and the proposed rule from the Department of Labor regarding the advice exemption to the Labor Management Reporting and Disclosure Act.

I would also be remiss if I didn't mention the NLRB's final rule requiring employers to post notices in their businesses informing employees of their right to unionize. I understand this has been particularly irksome to small businesses who object to what they view as an unwarranted Federal intrusion into their business, as well as their objection to the biassed nature of the notices themselves.

Again, I want to thank all for being here.

And I will turn to Ranking Member Velázquez for her opening statement.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. For America's small businesses, employees are their most important asset.

While this has always been the case, it has never been truer than it is today. In a globally competitive economy, small companies often succeed and fail based on the talent of the staff who can help invent a new product, develop an innovative service or just discover a better, more efficient way of serving a client.

For America's entrepreneurs, their employees are central to their strategy and critical for a firm's long-term growth. For these reasons, the vast majority of small businesses enjoy strong relationships with their employees. Indeed, I would submit that for 99 percent of small firms, relationships between management and employees are cordial and not adversarial, regardless of whether the businesses' workers are organized or not.

This record is particularly remarkable given just how many Americans work for small enterprises. Half of the U.S. private sector workforce is employed by small businesses; 44 percent of our country's nonfarm payroll can be attributed to small businesses. Most of us get our first job at a small enterprise.

Considering the enormous contributions small companies make to U.S. employment, the positive history of employee-employer relationships at small firms is especially noteworthy.

In those instances where there are disputes, the National Labor Relations Board exists to help mediate. This structure provides a proven channel for resolving labor disagreements. The board works to protect the rights of both employees and employers. With so many Americans, entrepreneurs and employees, counting on NLRB to serve as a fair conduit for resolving labor problems, it is critical that the board operate as efficiently and as effectively as possible.

Several recent steps outlined by the NLRB to improve its election process will further that goal. Allowing filings with the board to be submitted in electronic form is common sense. In today's Internet age, it only makes sense that this option be available to those seeking redress, be they employees or employers.

In addition, putting in place standardized timeframes for the resolution of disputes will add certainty to the process for all participants. Streamlining the appeals process will also cut down on unnecessary red tape.

On their face, these seem like logical efforts to make the NLRB work better for everyone. This committee often hears about the need to streamline government institutions. If we were discussing environmental regulations, tax compliance or workplace safety issues, reducing paperwork and setting deadlines for agency action would be universally applauded as efforts to lessen the burden on entrepreneurs.

However, when those steps might facilitate hardworking Americans organizing a union, there seems to be a huge cry from the other side of the aisle. This position strikes me as inconsistent at best.

Mr. Chairman, the vast majority of small businesses in our country enjoy warm relationships with their employees. And, in fact, most of them will likely never need to make use of the NLRB. However, when problems arise, it is important that fair, workable processes be in place. It is my hope that the NLRB steps can improve the system for all participants, employers and employees.

And I thank the witnesses for being here today and sharing with us your insight on this issue.

Thank you. And I yield back.

Chairman GRAVES. Thank you.

Ms. VELÁZQUEZ. Mr. Chairman, if I may. I just would like to introduce for the committee our newest member, Janice Hahn. And I would like to welcome her. And she represents California's 36th Congressional District. While new to Congress, Ms. Hahn has a long history of public service, having served on the Los Angeles Charter Reform Commission and the Los Angeles City Council. I am sure her experience, working with California entrepreneurs, will prove useful as she serves on this committee. And I welcome her.

Thank you.

Chairman GRAVES. It is good to have you on the committee. Thanks for choosing us.

STATEMENTS OF ELIZABETH MILITO, SENIOR EXECUTIVE COUNSEL, NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, WASHINGTON, D.C.; MIKE MITTLER, PRESIDENT, MITTLER BROTHERS MACHINE AND TOOL, WRIGHT CITY, MO; BEVERLY McCAULEY, PRESIDENT, HUNT COUNTRY MASONRY, LEESBURG, VA, TESTIFYING ON BEHALF OF THE MASONRY CONTRACTORS ASSOCIATION; AND ALLEN WILLIAM WEST, JR., PRESIDENT, WEST SHEET METAL COMPANY, STERLING, VA

Chairman GRAVES. Our first witness is going to be Elizabeth Milito. She serves as the senior executive counsel for the National Federation of Independent Business Small Business Legal Center. In her capacity as senior executive counsel, Ms. Milito frequently counsels businesses in areas of human resource law.

Ms. Milito, welcome. And I might explain, too, real quick before you get started that the lights are set up for 5 minutes of testimony. And when you get down to 1 minute left, it turns yellow, and then when it is over, it turns red. We are not going to break anybody's arm if you go over time, but try to keep it, if you can, keep it within—again, thank you all for being here.

And, Ms. Milito.

STATEMENT OF ELIZABETH MILITO

Ms. MILITO. Thank you, Chairman Graves, Ranking Member Velázquez, and distinguished committee members. Thank you so much for inviting me to be here with you today.

My name is Elizabeth Milito and I serve as senior executive counsel with the National Federation of Independent Business Small Business Legal Center. NFIB's mission is to promote and protect the right of its members to own, operate and grow their businesses. And it represents 350,000 businesses nationwide. The typical NFIB member employs 10 people and reports gross sales of $500,000 a year. The NFIB membership is a reflection of American small business, and I am here today on their behalf to share a small business perspective with the committee.

Currently small businesses in this country employ just over half of all private sector employees. Small businesses pay 44 percent of total U.S. private payroll, and small businesses generated 64 percent of net new jobs over the past 15 years. Small businesses are America's largest private employer. And for that reason, we applaud the committee for holding this hearing and highlighting the exceptional problems that labor rules can place on small businesses.

Suffice it to say that labor law is difficult to understand. Even experienced labor lawyers struggle to keep up with the ever changing legal landscape. Imagine then the challenges facing America's small businesses. These are businesses that are run by men and women who struggle day to day simply to make ends meet. They typically have no administrative staff, little human resource expertise and certainly no regular access to legal counsel.

Today's small business owners contend with anti-discrimination laws, family, medical and other protective leave laws, wage-hour laws, privacy laws, workplace safety laws, tax laws, environmental laws and, of course, labor laws, too. They struggle to decipher these overlapping and sometimes even conflicting Federal, State and local laws.

And again, the problem is compounded by the fact that small businesses rarely employ a dedicated HR labor professional or other compliance staff. Today I will discuss how DOL's persuader rule and NLRB's poster rule will impact small business. In my written testimony, I have explained in greater detail how these rules and other changes by DOL and NLRB will affect small business.

Imagine for a moment a man named Randy. He is a plumber in Illinois who worked for himself for years before deciding to hire a few assistants to cover growing demand. Randy served as CEO, president, treasurer, HRVP, CFO, frontline supervisor of his company, all while working as a plumber on a daily basis. One day Randy gets approached by someone identifying himself as a representative from the local plumbers union. He tells Randy that three of Randy's four plumbers want to be represented by a union. Randy doesn't know much about unions, but he knows he doesn't want a union representing the four plumbers he employs and works with hand in hand on a daily basis. Should he talk with the

employees? What can he ask them? What can he tell them? What does Randy do?

Well, today Randy might call NFIB, where I direct him to call an experienced labor attorney ASAP. The attorney then becomes a business partner, helping Randy's business through the maze that is today's field of labor law. It is this partnership that is at grave risk due to DOL's proposed persuader rule.

Under the new persuader rule, all actions, comments or communications that could have a direct or indirect object to persuade employees would be reportable to DOL. This includes virtually everything that a labor attorney would do for his clients, whether or not there is union-organizing activity going on. The net result of the new proposed rule will be that lawyers and law firms may no longer be willing to offer advice to employers about labor matters. We fear that this proposal will limit small employers' access to counsel on most aspects of labor law, an area where legal advice is sorely needed.

NLRB's recent actions will also greatly impact small businesses. In August, NLRB ordered small businesses to display a poster instructing workers on how to form unions. It did so despite the fact that the law creating the NLRB gives it no such authority. The notice-posting rule, which will become effective on November 14th, imposes an unfair labor practice on any employer that fails to post the notice.

On September 30th, NFIB filed a lawsuit challenging NLRB's intrusion in the workplace. We have asked the court to overturn the rule and declare that NLRB lacks statutory authority to require such a posting by 6 million private sector employers.

NFIB's members are honorable and fair employers, and I do believe they have warm relationships with their employees, but they are troubled, confused and scared by the avalanche of labor regulations and rules coming out of DOL and NLRB.

Why should anyone care how these government entities treat small businesses? This question can be answered in one word. Jobs. Jobs are what Americans want and need. And most jobs in America are created by small businesses. This tidal wave of new rules will do nothing but crush small businesses and further prolong America's economic woes. Thank you very much.

[The statement of Ms. Milito follows on page 36.]

Chairman GRAVES. Thanks, Ms. Milito.

Next we are going to have Mike Mittler, who is the co-owner of Mittler Brothers Machine and Tool located in Wright City, Missouri. The company manufactures tools commonly used in auto racing and the aviation industry. Mr. Mittler started his business 30 years ago with his brother Paul, and it remains a family-run business.

Mr. Mittler, thanks for being here. I appreciate you coming in.

STATEMENT OF MIKE MITTLER

Mr. MITTLER. Thank you, Chairman Graves and Ranking Member Velázquez, members of the committee. Thank you for the opportunity to testify today.

My name is, as you said, Mike Mittler, president and cofounder of Mittler Brothers Machine and Tool. We are located in Wright

City, Missouri. My brother and I found the company in 1980 in a 2,500 square foot wreck of a rented building with just Paul and I as the only employees to start with. We started with an idea and a commitment to hard work, and now 30 years later, we have 60 employees and a diversified business, including a product line of metal fabricating tools serving the auto racing, hot rodding and aviation market.

Our job shop customers are leading companies in their industry, including building products, energy, automotive and industrial lasers. We have a mix of both senior and junior employees, including my brother Paul's daughter, our second generation working in our plant. Our average tenure is over 10 years, including nine employees with over 20 years of service. We have two other sets of brothers and one husband-and-wife team working for us, making us very much a family operation.

There are only three very simple rules at Mittler Brothers: Safety, quality, productivity—no exceptions. We are proud to have over a 5-year record of no lost-time accident in our plant, which exemplifies our commitment to safety. In 30 years of business, we continue to meet and exceed Federal workplace standards.

We do this, not because we are forced by Federal regulators, but because as a small business, our employees are our family, and it is just the right thing to do. Just like the millions of small business owners like us, we know that a safe and happy work environment leads to a productive and profitable company.

In the past 31 years, OSHA has come into our shop twice on campaigns aimed at our industry. Both times, when minor infractions were found, we immediately took steps to correct those and work with the agency inspector to ensure full compliance.

Historically, manufacturing businesses in our industries maintain a good working relationship with inspectors and regulators with OSHA, the NLRB, the EPA and others. Our trade industry group, such as the National Tooling and Machining Association, which I chaired in 2006, worked for years with various agencies to help set and monitor the industry safety standards.

However, over the past few years, we have noticed a significant shift in the way Federal regulators approach their relationship with manufacturers. It feels like we have moved from an environment of cooperation to one where agencies have a gotcha attitude. In the past an inspector would visit your shop and work with us to correct any unintended violations. Today, they fine you first and take no questions later.

In the past several months, the NLRB issued a string of decisions and complaints with broad implications for employer-employee relationship. For example, the decision against Boeing company, as the chairman noted, has the Federal Government targeting a private business to choose for increasing manufacturing employment and production at one of their facilities. How does that look when we are trying to strengthen manufacturing in America so we, small suppliers, can still have customers?

Recently, the NLRB expanded a requirement mandating that all private employers must place a poster in their businesses notifying employees of their rights under the NLRA to join a union. It continues to astound me when the government takes the approach

that the only way to a better, safer and happier work environment is to join a union. For small business, it is quite the opposite. Employees have the freedom and flexibility to be partners with the owners and to get the job done right and get it done fast.

Add the poster rule to the new quick election process the NLRB is imposing and you begin to create a more hostile work environment, where employees and employers no longer feel they can openly communicate.

In addition to the direct impact the NLRB has on my company, it is a greater impact to my customers. If those larger manufacturers for whom my employees make parts close their doors due to a hostile environment for manufacturing companies, all of the families at Mittler Brothers will suffer.

We were hopeful that the administration was taking a new approach to regulations when the President, in January of 2011, issued an executive order requiring all agencies to conduct a full review of the impact and effectiveness of new regulations. Since then, the administration has withdrawn new regulations from OSHA requiring businesses to implement new noise-cancelling equipment, yet they were feasible of capable of being done regardless of their effectiveness. They put on hold new EPA regulations.

There may yet be some signs that Washington might revert to a culture of cooperation with employers.

Unfortunately, it seems the NLRB missed the President's memo. I came to Washington today because I want to fight for my employees and my company. I came here today because I thought it was important that policymakers in Washington understand how small businesses work and the excellent relationship we have with our employees. We are local small businesses who seek local solutions in a community where we often have multiple generations working at the same manufacturing plant.

At a time when manufacturing is leading the way for our economic recovery, we need Washington to make us more globally competitive, to promote a positive workplace and to strengthen manufacturing in America. The latest actions by the NLRB do the opposite and will create animosity in the workplace without helping those we seek to support, our employees.

Thank you for the opportunity to present testimony today. I look forward to continuing to work with this committee as I have in the past on issues from supporting automotive suppliers and workforce training to the regulatory burden on small business. Thank you.

[The statement of Mr. Mittler follows on page 50.]

Chairman GRAVES. Thank you, Mr. Mittler.

Our next witness is going to be Beverly McCauley.

Ms. McCauley is president of Hunt Country Masonry located in Leesburg, Virginia. She started her business with her husband in 2006 as a side business to support a growing family. But due to the economy, it has now become her full-time profession. So welcome.

STATEMENT OF BEVERLY McCAULEY

Ms. McCAULEY. Thank you all for inviting us here today. It is important that you hear from all sides. So, again, my name is Beverly McCauley. And I am a co-chair also of the Legislative Com-

mittee of the Mason Contractors Association of America. I come before you with 22 years of experience in small business.

As a small business, we already have enough uncertainty with taxes and laws. And the changes that are being proposed and enacted by the NLRB and the DOL, I feel compelled to share from a small business standpoint what caveats these cause.

These changes are first being instituted at a point in history when unemployment is rampant. Case in point: In 1935, the Wagner Act was passed. And in 1937, the Supreme Court upheld the decision. The result, a depression within a depression. When efficiency and profitability are removed from the equation and when everyone is rewarded equally regardless of productivity and skill, then productivity and skill diminish and the result is decreased profitability and increased unemployment.

This act influenced the culture into the 1950s, until the Right to Work prohibiting forced union membership arose. With the Right to Work, a not-so-surprising result: Profitability increased and so did jobs. For you see, when you make everyone stand on their own merit and make everyone responsible for their own destiny, an amazing thing happens; people begin to take ownership for their destiny.

The hardest workers were paid based on their productivity, and the less productive workers earned less based on their performance. But they still had a job. So the end result, you pay less if someone works less, therefore reducing unemployment and increasing profitability and increasing the jobs available.

Congress knew where this was headed and refused to pass the Employee Free Choice Act. Congress realized that sweeping changes had the potential to transform what could be a recovery into the next great depression and exponential unemployment. At this point, it is not a far stretch to picture us headed in that direction.

The Employee Free Choice Act is being touted as the best scenario for all involved. It eliminates secret ballots. We get the same right when we vote for any of you located in this room, the right to vote in private. If we change the system to open voting with no secret ballots, the meek may be influenced out of fear. It seems imperative to me that we continue to have the right to vote in private. We fight for this right every day in the name of democracy, the right to vote in private. Yet in our own country, we are going to deny someone that same right?

At the same time, the employer, prior to all of this, does not have the right to express the down sides or even set the record straight without fear of retribution. I am sorry I don't feel like jobs should be sacrificed for political paybacks to ensure future political support.

That brings me to the next point. Unions don't let you know that you have the right to say no to union dues associated with a political agenda. It seems like the reason behind the Employee Free Choice Act is to elicit a fear of the unknown in already uncertain times. The NLRB would have you believe they are the big brother looking out for the younger sibling, when in fact it is big government attempting to collect dues to pay off and support more like-minded people to fund the agenda that employees need someone to

take their money and redirect it in the right ways and call it union dues. That makes me really want to work harder, or does it make everyone want to work to the level of the employee that is skating by and earns the same amount of money?

They want to exacerbate the problem by allowing micro unions and gerrymandering with the same company. So one group in the company can be unionized into one group, another into another group and so on. You could have one machinist working side by side each in a separate union.

Furthermore, the NLRB and Department of Labor have a proposal that will require all employers to release to unions any and all contact information they have on each employee, post on sites detailed notices outlining how to organize, giving contacts for the NLRB, but no where is it posted whom to call if you are harassed, lied to or coerced. So we have an organization that wants the rights to all of our information, but you have no recourse to stop them from calling and no way to vote privately, essentially making it impossible to stand up for most people.

I am not most people. My husband and I are raising five children. I am co-chair of a legislative committee. I am also president of a small business. I am not afraid. But what does frighten me is that they have the right to destroy our great Nation. This will cause double-digit unemployment.

How does that all affect us? Less money for the Federal Government because no taxes are being paid, which exacerbates the deficit, which causes us to have further arguments over budget cuts, less taxes paid, more programs are cut, more people lose their homes. As you can see, we are faced with a slippery slope that only gets slicker the more power they elicit.

Congress was right when they refused to pass the Employee Free Choice Act. However, the NLRB and DOL are essentially leaving Congress and the American people out of the loop and taking employees' ability to make informed decisions out of their hands as well.

Without every able-bodied American working that is able to work, we cannot recover from our debt. In order for everyone to have a job, we must have a community that believes that everyone should be paid based on their merit. That is why we are a free society.

Unions had their place decades ago to make for better working environments for employees. Times have changed, and unyielding power is not the answer. So if we want to get this country rolling and out of our trillions and trillions of dollars of deficit, everyone needs to work and be paid for the work they do at the level they perform.

Thank you. And I really appreciate your time to let America's voices be heard for this is truly a great Nation. Let us get the ball rolling and get on the right track. Thank you.

[The statement of Ms. McCauley follows on page 55.]

Ms. VELÁZQUEZ. Now it is my pleasure to introduce our next witness, Mr. Allen William West, Jr., founder, president of the West Sheet Metal Company located in Sterling, Virginia.

After serving in the United States Army and learning his trade in a certified apprenticeship program, Mr. West went on to found

his company in 1983. The West Metal Company installs and fabricates heating, ventilation and air conditioning units for high-profile clients, such as Lockheed Martin.

Mr. West's small business currently employs 46 workers.

Welcome, sir.

STATEMENT OF ALLEN WILLIAM WEST, JR.

Mr. WEST. Thank you.

Chairman Graves, Ranking Member Velázquez and members of the committee, thank you for your invitation to appear before you today. My name is Allen West, but I am known as Willy to my family, friends and business associates.

I am the owner and founder of West Sheet Metal Company located in Sterling, Virginia. My company currently employs 45 sheet metal workers and office staff combined, but I have employed as many as 70 sheet metal workers. My company installs, fabricates heating, ventilation and air conditioning duct systems, and we do work for high-profile clients, such as Lockheed Martin and Howard Hughes Medical Institute.

I started the company in 1983, but I learned my trade in a certified apprentice program operated by the Sheet Metal Workers International Association, Local 102. It is now Local 100, which represents the sheet metal workers in Virginia, Maryland, and the District of Columbia. I started the apprentice program for the Sheet Metal Workers International Local Union 102 in 1968. Then I left to serve in the United States Army. Following my discharge as a Specialist Fourth class and being awarded the Army Commendation Medal, I resumed my apprentice training. After I completed my 4-year program, I became a journeyman and started work for Wilco Sheet Metal in Rockville, Maryland, from 1973 to 1983. I left Wilco to start my own business in 1983.

From the beginning, I wanted to provide good-paying jobs, solid jobs for sheet metal workers, and I wanted to employ well-trained and well-skilled sheet metal workers. So I entered into a signed agreement with Sheet Metal Workers International Local Union 100, which of course was formally Local 102. I view my workers as an integral part of my business and an important asset in its success. I wanted to partner with them through their union, and a collective bargaining agreement helps me do that. The theme of the contractor and union partnership is, together we do it better. And I know that to be the truth.

As a signatory to the agreement, I use the local union's hiring hall. When I need workers, I call the hiring hall and describe my needs. They refer skilled, trained workers. I know that these workers have undergone a rigorous and thorough training program through the apprentice school that the local union operates. And I have confidence in their abilities.

In addition to the Local Union Joint Apprentice Committee, there is a national organization, the International Training Institute, that sets all the training standards for sheet metal workers and also establishes curricula and programs for apprentices and journeymen to upgrade their skills. This training is free and is offered on evenings and Saturdays. This training program ensures that

training is consistent all across the country so that whenever I have a project, I have access to skilled and trained workers.

I also want to make sure the jobs I am creating and providing are good jobs that can support a family and help workers be successful. Through the union contract, my workers participate in a health care plan and a pension plan. And making contributions to these plans and by combining with other union contractors, we are able to achieve a high level of benefits with cost savings.

In addition, I do not have to hire people to administer the plans, deal with such issues as health insurance or retirement programs. The International Union also sponsors the National Energy Management Institute, that sets standards for energy efficiency and air quality and looks at new markets and the training required for sheet metal workers to develop the skills needed for these new markets.

For example, I know that welding has remained in demand during this time of high unemployment, and sheet metal workers are able to access training to be ready for these jobs.

The Sheet Metal Workers Occupational Health Institute sets standards for OSHA compliance and provides worker training. This in turn lowers my insurance costs, and my workers learn to work safer and enjoy better working conditions.

These institutes and training facilities, health and retirement plans are all administrated by joint committees of union and company representatives. They help both contractors and workers. All the funds used to provide this training and these benefits and other assistance come from contributions by the parties to the contract and no government money is used at all. All of these programs are the result of private agreements.

What I have described in my testimony is all accomplished within the framework of the National Labor Relations Act. I do not have a lot of personal experience with the National Labor Relations Board, but I know that it governs the relationship between my workers, my company and their union and allows us to accomplish these important goals so that I can concentrate on my business and create and provide good jobs in the community.

I have reviewed some of the recent decisions and proposed rules by the National Labor Relations Board and Department of Labor, and I do not see how they disadvantage small businesses. They do not affect the framework in which I operate my business and will not affect my business or my relationship with my workers or the companies I do business with.

These seemingly minor changes certainly do not create any uncertainty for me, and they will not affect my ability to create jobs. In fact, if the NLRB streamlines its election process, it seems to me that this will reduce turmoil in the workplace and be helpful to businesses, especially small businesses.

What I need for my company to survive is more work, and that means more consumers and more buyers. These recent changes by the NLRB and Department of Labor do not affect that in any detrimental way.

In closing, I wish to emphasize that I view my workers and their union as a significant driver in my success as a small business owner. We are all working together to be successful. Thank you for

this opportunity to talk to you about my business and my relationship with my workers and their union.

[The statement of Mr. Allen William West follows on page 57.]

Chairman GRAVES. Thank you, Mr. West.

We are now turning to—I am going to open up with Congressman West from Florida.

Mr. WEST of Florida. Thank you, Mr. Chairman and Ms. Ranking Member, for scouring the earth and finding another Allen West to be up here in Capitol Hill with me. We have to talk about whether or not your daddy was ever down in Georgia.

Mr. WEST. I am a native Virginian. So we are probably——

Mr. WEST of Florida. Okay. We probably are. Which side did your father fight for?

Thank you so much for the panel for being here. And this is very appropriate. Because last week when I was back in the district, I talked to our small business advisory committee and also the Broward County Small Business Advisory Council. And this thing about labor law was something that they brought up. And two points that I want to bring up. One was about project labor agreements and the effect that they are having as far as small businesses who want to come in as subcontractors and then also some issues about labor law with some of the rights of employees who have been terminated or for whatever reason quit and they are bringing lawsuits back against some of these businesses.

So I think it is very important we talk about labor laws and the Department of Labor and their impacts on small businesses, who cannot afford to spend a lot of their time and resources with some of these frivolous lawsuits.

But I think the real question here is not really about the benefit of unions. But the question really has to be about, is there an agenda out there that is being promoted that would seek to take away the choice and the option that an employer has as far as whether they want to have the unions to come in. And also I think it is about that influence being expanded.

So what I always like to do is look at trends. And so my question to the members of the panel here is, have you seen trends here within the last year, 2 years, 3 to 5 years or whatever, of an NLRB and the Department of Labor that has become maybe less of a nonpartisan or a non-arbiter but is more so now promoting an agenda that you feel may be contrary to your advancement of your small businesses and maybe you can talk about some other relationships with other small business owners that you have talked to this about?

Ms. MILITO. I will go first if that is okay. I mean, I would certainly say from the members I hear from, that they would agree that—that they would say that there has certainly been—they have seen a trend with the NLRB and DOL not being impartial. Certainly, the NLRB, the intent for over 50 years, it was seen as an impartial arbiter between employers and employees when it came to labor disputes. In the last few years, it certainly has not been that, or the cases that we have seen and the proposed rules and now the final rule for the posting rule, too, have, I would say, definitely been pro-union.

And if you go to the National Labor Relations Act, I mean, the intent is to arbitrate disputes between employees and employers. Unions are not in there. It is the employers and the employees that we want to arbitrate the disputes between. Our members for the most part do see their employees as an extension of their family. And they want to maintain the direct and open communication with the employees. And they really feel that to be the best business they can, to stay competitive, it is best for them to have the direct and open communication with their employees without a third party present. Thank you.

Mr. MITTLER. Yes. When you look at the poster as we have been instructed to post in about 6 weeks, it is 11 by 17 in size. And there is only one line on there that says—it has all the things that you can do for union representation and all that, and it only has one line that says, or you may elect to do nothing. So it seems if you look at that amount of square inches that we are going to post in our legal posting area, that we only have a very—one line that says— it still has not been determined then what communication we can post that says to our employees, hey, we want to continue like we have for almost 32 years; we want to continue that open dialogue; we want to treat you as family; we want to be able to resolve issues that have come up, whether they be pay, whether they be benefits, whether they be anything that comes up. So it appears that with the failure of the card check bill, that this was another way to then impose a stronger union workforce in small businesses.

Ms. MCCAULEY. I am going to have to agree. Sorry to not break rank or anything like that.

I find that when dealing with the NLRB, it seems like every aspect of it is all pro-union. They aren't looking at the larger picture. It is all about their rights. They have the right to get all of your information on all of your employees. Your employees don't have that right to opt out.

Some people have posted and unlisted numbers for a reason. They are hiding from someone they don't want to find them, ex-spouses, and for any other number of legitimate reasons. And if the NLRB has the right to each and every person's contact and they want Internet contact as well as home phone numbers and home addresses, where is our privacy at? Why do we have to release that without consulting our employees first?

And I think once that gets out and once you have all of your employees, it is free game for harassment. There is enough people that call my house on any given night asking for something anyway. I don't need it to be that as well.

In addition, I don't think small businesses get a very good rap. The last company I was with, I was there for 20 years. I instituted, co-wrote—well, I solely wrote the apprenticeship standards and had laborers trained in bricklayer positions. No one required me to do that, but it was good business sense for the employees and good business sense for profitability. If I train people the way I want them trained, they are going to work to my standards.

I don't think the union does that any better than anybody else can. I think everybody takes an initiative for profitability. And I think when you take that right and that dignity out of an employ-

er's hands, then you are drastically influencing unemployment. Thank you.

Mr. WEST. First, I would like to say I think of my employees as a family, too, and most of them have been with me for 20-some years.

I do not think that these NLRB rules are anything exceptional. What I have read, most of it is reinstating rules that have been in place previously.

I also do not think that the issue of posting their name and address—that was always—has been a rule. You have always had to give out employees' names and addresses. The only addition to that is the email and the phone number, if I am correct on that. And I will tell you, if you have a person's name and address, you can get all the rest of it. So I don't think that is a privacy issue.

As far as the poster, posting workers' rights, in my lunchroom right now, there is a big bulletin board, and on it we have OSHA posters, we have the posters from our insurance company for work safety, we have the unemployment rules and regulations. This is just another poster. So I don't really see a big issue with that. I mean, posting what people's legal rights are does not seem to be anything terrible to me. So that is my feeling on it.

Mr. WEST of Florida. Thank you, Mr. Chairman, Ranking Member.

I yield back.

Chairman GRAVES. Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Mr. West, are you concerned that recent NLRB decisions and the proposed rule will impede in any way your business activities if your employees opted to enter into a new collective bargaining agreement?

Mr. WEST. I don't really think so because I have been a signatory with the union for several years. And every 3 years to 5 years, we have a contract agreement, and we have to go through negotiations for that. And I would assume the process would be very similar. And I don't see where it would be disruptive.

Ms. VELÁZQUEZ. A statement that we hear constantly in the Capitol and at Budget Committee hearings regarding the Federal Government agencies is that they need to do more with less and that we all have to do more with less given the budgetary constraints that we are facing. So the board's new rules would allow elections to go forward and leave parties to mitigate afterwards. Don't rules that streamline the agency's processes and avoid duplicative litigation serve employers, employees and government interests?

Mr. WEST. I would certainly think so. Anything we do in business, if we are implementing a move or buying new equipment, we try to do as fast as we can, keep things not—not disrupt our operation. So I would think that streamlining the process certainly would be an advantage, not a disadvantage.

Ms. VELÁZQUEZ. Thank you.

Ms. Milito, the NLRB has recently issued decisions to have been unanimous, split on party lines and sometimes split not on party lines. Further, several recent cases have gone against union interests. For example, in Mezonos Maven Bakery, the board found that it lacks the authority to award backpay to undocumented immi-

grant workers whose rights have been violated. Hasn't the board issued decisions that go against both unions and against employers, and doesn't this indicate the independence of the board?

Ms. MILITO. There certainly have been decisions that have been in favor—they have found in favor of the employer. But I would point to three big decisions that came out in August because they were really monumental and just really trampled on employers' rights. And I think they overshadow, truthfully, other decisions that have been issued by the board this year. In the course of one afternoon, the board restricted workers' rights to the secret ballot election, they undermined the employer's ability to maintain unity in the workplace, and they created new barriers for those who wish to challenge union representation. In essence, they were doing what some of the panelists talked about today; they were bringing in what is almost the Employee Free Choice Act by reversing board precedent.

So I would say that these three decisions alone really overshadow any other decisions issued by the board this past year that may have been seen as pro employer.

Ms. VELÁZQUEZ. But the fact that they issued three decisions, based on the fact that they have taken other decisions that benefit workers and benefit employers, it shows that the board is going to make the decisions based on the facts and the rules and the regulations, based on the law. So that doesn't mean that it is supporting one against the other. It is based on the facts that they have at hand.

I would like to ask you. You state in your testimony that the NLRB Lamons Gasket decision overturning Dana Corporation took away your right to a secret ballot election. However, a small business will still have the right to file a decertification petition. Isn't that the case?

Ms. MILITO. That certainly is the case, Ranking Member Velázquez. But they must wait 6 months now at a minimum.

Ms. VELÁZQUEZ. Well, you stated that it takes away your right to a secret ballot election, and that is misleading. It is not based on the fact.

Ms. MILITO. I would say it is an unprecedented setback.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Chairman GRAVES. Mr. Hanna.

Mr. HANNA. Thank you, Mr. Chairman.

Mr. West and the panel in general, I don't think there is anyone here who is saying unions are bad. I don't think there is anybody who would argue—I ran a union shop for almost 30 years. I have been a union member for 25. It is not about whether unions are good or bad or what they provide for employees or don't. Certainly they played a huge role in the advancement of workers throughout our history. Everyone here knows that.

You are already a union shop. I would suggest that most of the testimony that you gave today is relatively moot because you are not affected by any of the rules since you already are a union shop.

This affects people who—and employees too who do not—who take fundamental exception to what the Geneva Convention guarantees prisoners of war to have, and that is a secret ballot, unless I am mistaken. It is about intimidation. It is about unions trying

to do somehow through rules and regulations what they have not been as successful through Congress to do, and that is the Employee Free Choice Act.

It is not a matter at all whether unions are good or bad. My personal opinion is they are both good and bad. I had wonderful, wonderful employees. My union employees were the best in the world. None of that is the point. The point is, does the NLRB have the right to set up rules and regulations which fundamentally change the nature and the negotiating capacity of the businesses at question? And I would suggest to you that that is what they are doing and that this is the—the preponderance of evidence is that this is an overreach on their part to try to reenforce people's ability to be unionized, even if they don't want to be. Because when someone can look over your shoulder and tell you or see how you vote or know how you vote in an open ballot, that can cause intimidation. And I for one think if people want to be unionized, they should absolutely be able to do that. And I wanted to ask just people in general if they feel that is a fair description, first of all.

Secondly, in a world market where we are competing globally, the nature of products that we have to produce, like you do, Mr. Mittler, world class products, the value-added nature of those should allow people to maintain a higher standard of living, I would imagine. And more skilled employees can demand more money. But the world is changing, and these are difficult times. And I understand people's deep desire to raise their wages and benefits, and I applaud them for that and would love to be a part of that. I just don't see how something like card check advances union causes or how telling Boeing where they can locate a company when they haven't laid anybody off in their own State, how that advances the country at large or promotes jobs. So I apologize for this diatribe.

But, Ms. Milito, what do you think?

Ms. MILITO. I mean, I do generally agree with you. I mean, I think the NLRB in particular—I mean, it has been a gross, gross overreach of power. And, in fact, I would argue that some of their actions of late are—go so far as to be unconstitutional. They are trampling on employers First Amendment—or free speech rights, rather, which I believe certainly the poster rule does. I mean, and even DOL's rule that is now going to require the reporting of really any legal advice received related to labor relations is just going to curtail employers' First Amendment rights of free speech, which are set forth explicitly in the National Labor Relations Act. And I think that is very problematic that employers' rights under Section 8(c) are going to be trampled on and diminished by these rules. And it is very problematic.

Mr. MITTLER. I was raised in a very simple manner. And I was taught by my father that an honest day's pay for an honest day's work. And I clearly believe in the productivity of the employee. And my employees that are more productive receive more pay. And I think that is the way it should be. Those that can help produce more in our three simple rules, safety, quality, productivity, our most productive employees are going to receive the highest pay. So I agree with it.

I am not saying that unions are bad. I am not suggesting that. I certainly think the right to a secret ballot is absolutely something that has made this country great for well over 200 years. And I don't think there is any disagreement that we want to keep and maintain the secret ballot as was already stated. Each of you was elected with a secret ballot. And if any of us ever chose to run for elected office, we would want to be elected by a secret ballot.

So I agree with you completely, Mr. Hanna.

Mr. HANNA. I think, too, people should have the choice not to join a union. And that should be just as free and easy as those people who chose to join a union.

Mr. MITTLER. That is exactly what I am suggesting in my testimony.

Mr. HANNA. My time is up.

Thank you, Mr. Chairman.

Chairman GRAVES. Ms. Chu.

Ms. CHU. Thank you, Mr. Chair.

Mr. West, as a small business owner, you are being asked to comply with these posting requirements. In fact, I would like to focus on that aspect of these rules. The posting, of course, requires that these be available to be seen by all the workers. And I have noticed that these can be downloaded for free, and it is available from the National Labor Relations Board for free. How costly is this for your business to be able to post these kinds of signs?

Mr. WEST. Well, I wouldn't think you would have to post too many. You have a free download. Even if you didn't have a big copier, you could go to Kinkos or FedEx, and they probably make them for about 2 bucks a piece. So I don't think it is a monetary issue at all to post the poster.

I guess you may not want to post the poster if you didn't want everyone to know their rights, but I don't think it is a monetary issue at all.

Ms. CHU. How intrusive is it to your business to post it?

Mr. WEST. I already post posters from the unemployment agency, for the State of Virginia, several other State acts. I post OSHA safety posters. I also post injury-reporting posters. So I already have a big bulletin board in my lunchroom, and it would just be adding another poster. So it wouldn't be any impact at all.

Ms. CHU. Ms. Milito, I see that you, of course, object to the poster with regard to the union-organizing rights, but you also object to the posters on minimum wage and the posters on OSHA. And I do have the poster on OSHA. And it has such information to the employees, like you have the right to notify your employer or OSHA about workplace hazards, or you have the right to request an OSHA inspection if you believe these are unsafe and unhealthful conditions in your workplace. Do you object to that?

Ms. MILITO. I don't think I said anywhere in my testimony that I objected to minimum wage or OSHA posters. I was talking about the complexity of complying with the laws.

As far as the NLRB poster, our argument has been NFIB's, and this is made in our lawsuit too, the NLRB does not have authority under the National Labor Relations Act to require employers to make such a posting. OSHA is given such authority. The Department of Labor wage and hour is given such authority. EEOC has

statutory authority to require such poster. The NLRB has not been given such statutory authority. It is a violation of the Administrative Procedure Act.

Ms. CHU. That is very interesting. In 1949, actually, the Department of Labor issued a rule requiring a notice posting of employee rights under the Fair Labor Standards Act and this authority in the rulemaking authority that the NLRB has granted allows for the posting of notices required under many Federal labor laws and have done so since 1949. So there actually is a precedent.

Actually, I would like to keep on going because I actually read also in your testimony that you also target wage-hour posters. So we do have this on the record as well because I read your testimony very carefully. And it basically implied that it is burdensome and costly for workers to be informed by this poster. This is the minimum wage poster. And it says that the Federal minimum wage is $7.25 an hour and that youth 14 or 15 years old may not work more than 3 hours a day on a school day. Do you object to that?

Ms. MILITO. Yes, I do. And I have my written testimony in front of me today, and I talk nothing about posters. I state today small business centers contend with anti-discrimination laws, family, medical and other protective leave laws, wage/hour laws, privacy laws, workplace safety laws and labor laws. I say nothing in that sentence about posters. I think you have mischaracterized my written testimony. And I apologize if you have it and it wasn't clear. But I am not objecting to the posters from wage and hour or OSHA.

Ms. CHU. In fact, I am curious how much you think it costs to make these posters for employers.

Ms. MILITO. In our lawsuit, we are focusing on the Administrative Procedure Act violation and the potential First Amendment violation of the forced speech on behalf of employers.

Ms. CHU. Well, I would like to make it clear that these posters are downloadable and that they are free from the NLRB.

And I guess my main question is how will workers know about these rights if these posters aren't available?

Ms. MILITO. Well, our argument has been that the NLRA—the law needs to provide the NLRB with authority to post the posters. And right now the board does not have authority. It would be impendent on Congress to provide the board with authority to require such posters. And certainly that absent such posters, there is nothing that prohibits unions from informing other employees and talking amongst themselves about union rights and the rights to organize and engage in concerted activity.

Ms. CHU. In other words, they wouldn't know about their rights?

Ms. MILITO. I wouldn't say they wouldn't know.

Ms. CHU. Thank you. I yield back.

Chairman GRAVES. Mr. Barletta.

Mr. BARLETTA. Thank you, Mr. Chairman.

Ms. McCauley, the NLRB has tried to downplay these proposed rule changes by saying that very few small entities would be impacted by them. Do you agree with that statement?

Ms. MCCAULEY. No, sir, I do not. I think that each and every one of us—when you yield and you give way to one thing, it becomes

a very slippery slope where everything can follow quickly thereafter. It is just a foot in the door to get the ball rolling. And then, after that, then you have to deal with the circumstances.

Mr. BARLETTA. As you stated a little earlier, that the NLRB recently finalized a new rule that will require all employers covered by the National Labor Relations Act to post a notice in their workplace notifying their employees of their rights to unionize, does the board have the authority to require that these notices be posted?

Ms. MCCAULEY. Not in my opinion do they. I think they have—just like Ms. Milito has said, they haven't been given that authority to post those things. And you don't have both sides adhered to at that point. You are giving one side full reign and the other side no ability whatsoever to react or have a compensation talk with your employees. Because the minute you send something or you say something, then it is always judged and then you have issues. I have spent many classes on how to make sure your employees are happy, make sure they are productive. And I think the union—you are always going to have people that work harder because it is their destiny to work harder. They were raised in a certain way that it is important and imperative to them to be a profitable person in the economy. And you have other people that are just going to get by. I have four boys. I cannot tell you the difference between each and every one of them, but I know which ones are my slackers and which ones are just going to do it right. So there is that same thing in the economy and in every step we take. And I think if we put everybody in a category that says, you do this job, you are going to earn this wage; you do this job, you are going to earn that wage, I think it takes out the incentive to be the better person, to really strive to be as good as you can be.

Mr. BARLETTA. And could you explain for those that may not understand how this poster rule requirement could impact our country's small businesses?

Ms. MCCAULEY. From my personal standpoint, you are giving them all of the information that says you can unionize, here is all the people you can call if you are not happy, here is all the things you can do if you would like to be a union. But it never lets your employer say, hey, listen, let us step back and look at all the things I am doing for you, maybe I haven't touted that I have been paying 50 or 75 percent of your total health care bill all along, maybe I haven't told you that the unions really—pensions aren't really as strong as they would like you to believe. But your employer doesn't get that same right. The NLRB would have you believe that they have a firm hold on it, they have the ability to tell you how it is going to be and if you have any recourse whatsoever, they are going to put their thumb to you.

And the fact that we are exponentially increasing the time in which it goes to vote and that there is going to be no secret ballot, you are always going to have weak people in this economy and you are always going to have the stronger and the more pervasive. The stronger and the more pervasive are going to hold down the weak. And if you don't have a private secret ballot—like when I elect any of my Congressmen, I don't want someone standing over my shoulder and judging me for the choices I have made. That is my democratic right here in this Nation.

Mr. BARLETTA. Thank you.

Ms. Milito, as you know, the proposed rule changes coming out of the NLRB seem to be anti-employer. Why do you think this board is particularly activist?

Ms. MILITO. If I could go back to your earlier question, too, I just want to add one thing to Ms. McCauley's response, too, and point out too that the impact on small businesses are that they are now, as of November 14th, could in fact be in jeopardy of having an unfair labor practice filed against them. And I think it is very likely the board itself said that in its final rule, that we fully expect that many businesses will not be in compliance because they won't know about the rule and, therefore, technically they have committed a ULP. So I just wanted to point that out. Why the board has taken this activist approach and really made the businesses out to be the bad guys, I do think somewhat—it is payback. Unions are declining. And right now the private sector is 7 percent or less than that. And it is a way I guess to try to up the roles, if you will. But I think it is unfortunate because it is coming at the expense of America's largest employer, small businesses.

Mr. BARLETTA. Thank you, Mr. Chairman.

Chairman GRAVES. Ms. Hahn. Sorry about that. Again, welcome to the committee.

Ms. HAHN. Thank you, Chairman Graves, Ranking Member Velázquez. Thank you for welcoming me to this committee. I am actually very interested and really excited to be on the Small Business Committee because I think this is really becoming such a key focus for this Congress, and certainly it is a key focus for the American people.

The statistics are out there. You all know them better than I do. Small businesses account for a huge part of our economy. They account for a huge part of hiring employees. We really believe—I know I do—that if small businesses, even the really small ones, would hire even one person, we know that we could really reduce the unemployment rate in this country. And we know that is the way to get our economy back up and running, is to get people back to work and to really support small businesses. And I hope what we do on this committee—and I know there has been some hard work already done—is really look at how we can support small businesses, how we can help them grow and help them hire.

I will tell you, I feel it is a little frustrating to sit here—I feel like we are spending a lot of time on this poster. And I guess I would ask Ms. Milito, it sounds like you don't necessarily object to people knowing their rights, do you? I mean, what is wrong with employees knowing what their rights are?

Ms. MILITO. It is not a matter of knowing your rights. I mean, certainly there is a right to free speech. Unions have a right to talk with employees and engage—have employees engage in concerted activity. As I mentioned before, employers have an explicit right under the National Labor Relations Act to certainly express their opinion, too, about unions and factually how it will potentially impact their business.

The poster—again, I cannot emphasize enough how far off the ranch the NLRB went with issuing this rule. It does not have stat-

utory authority to issue such a rule. And in my mind, that is not a small thing.

The poster itself is, yes, I agree troublesome. Mr. Mittler quoted from it very nicely there. I do think it is biased and certainly one-sided if you will.

Ms. HAHN. But is it saying anything that is not an employee's right?

Ms. MILITO. No, it is not. But again, it is the way the board went about issuing a rule that it does not have authority to issue.

Ms. HAHN. Is there anything in that poster that in any way is telling an employee something that is not their inherent right?

Ms. MILITO. No. But the board issuing the rule does not have authority to do and certainly the punitive measures that will go into place for not posting the poster are dramatic and very, very problematic. You have the tall end of the statute of limitations for the 6-month statute of limitations, which is indefinite, and you have an independent unfair labor practice. That is no small matter in my book.

Again, these are businesses that do not have a human resource representative that is getting an alert from some human resource association out there. They are not going to know November 14th that they have to put this up in the break room with all the other posters up there, which, yes, the employees may or may not read. It is the fact that if they don't have the poster up on November 14th, they have now technically committed an unfair labor practice, and they weren't even aware about this law. So where do the employers' rights come into it? That is what is very problematic.

Ms. HAHN. Well, you know, and I appreciate you saying that. And I think what we have heard today is a lot of what you believe is the employer's right. And there are certainly many of us that also believe the employees have rights. Hopefully it will not be something that—once small businesses learn about the need to place this, hopefully there will not be objections to posting this poster. It seems to me a very small—as Mr. West said, you have a number of posters already that just allow employees to know what their rights are.

And I think small businesses and the employers have plenty of time to talk to their employees about what their relationship is and what they can and cannot do for each other.

And I will tell you, I spent last week in my district. I met with over 50 small businesses. And I had given them questionnaires, and I asked them to tell me, what regulations do you feel are burdensome? What can the Federal Government do or not do to help you? And what I heard was most of my small businesses never once mentioned any of these regulations that you are bringing up, never once mentioned why having to post a poster or not—you know what they told me?

They told me if they could have more access to capital. That was their issue. And one of their issues was small business loans. And they felt like there was a small mountain of paperwork that had to be accomplished to get their loans and that sometimes the criteria for a small business loan was simpler or less restrictive than what the banks actually were requiring small businesses to prove before they could access capital.

So I am going to work on figuring out how we can remove bureaucratic red tape to get more capital out to my small businesses because that is what they told me overwhelmingly was the issue with the Federal Government.

I will tell you not one of them brought up what you are talking about to me today. So either those 50 businesses were not feeling that burden, or they just felt like the real priority they wanted Congress to work on was getting more access to capital.

I yield my time back.

Chairman GRAVES. Mr. Schilling.

Mr. SCHILLING. Thank you, Chairman.

What I would like to just—just kind of tell a story. A year ago—or actually it was last year, I went to a Labor Day parade. And as we were getting ready to march, there was a group of folks that were marching with the previous Congressman. They had T-shirts on that said, big and small, check them all. I thought, what does that mean? Well, I realized what it meant. And for me, as a small business owner—I have 15 years of union background, and currently, I am a small business owner. And previously using the secret ballot, I truly believe that the secret ballot is our birthright and that it should not be bypassed through card check or whatever ways or means that are already cited.

And I guess I have a question for—I have a lot of friends in labor. I am not anti-union. I am pro-business, and I am pro-labor, but it has to be an even mesh to where we don't put one side or the other out. And one of the things I wanted to ask Mr. West, with a small business like mine, for example, do you believe—because a few weeks after this Labor Day parade, the Congressman said to me that I should unionize my pizzeria in Moline, Illinois.

Sir, do you believe that all businesses across the United States should be unionized or just some or——

Mr. WEST. I truly feel that there are some businesses out there that probably unionization would not benefit. But as far as the poster goes, I do believe that is a fairness issue. You are posting for the employees what their rights are.

Me as an employer, I have 45 people. I know every one of them by name. I know their families. I have contact with them on a daily basis. So I can put forth my issues as a business owner to them at any time I want, or their supervisor can.

I think this poster is just a fairness issue. We are putting up a poster and these employees can look and see the rights that they are entitled to. Whether they want to implement those or act on those, that is an entirely different issue. But I do think they should know their rights.

But I also believe that there are certain businesses that have no need to be unionized or that unionization would not be helpful.

Mr. SCHILLING. Right. And I don't believe that anybody on the panel believes that employees should not know their rights. I just, I don't see it. One of the things I think some of the folks here would be shocked, being a small business owner is that a lot of our small businesses have no idea that you can go online to pull this $85 poster up because that is when they mail out—they mail out and you get all these special deals in the mail. But you can blind out any business in your district and ask them, hey, do you know

that you can get this poster for free, and I guarantee you half of them will tell you, no, I did not know that. As a matter of fact, I am one that just found out today, and I have been in business for 15 years. So I think that it is about getting information out to people and doing it properly.

One of the things I do have a question on this poster is now—because it is about getting information out to people. I think that is what we are looking at doing. It shows how to unionize. I haven't seen the poster, per se. But it just shows what you need to do to become unionized. Is that what it basically is? Ms. Milito.

Ms. MILITO. It provides information. I wouldn't say it provides information on how to become unionized, but certainly it indicates that you have the right to join a union; you know, you have the right to strike. It goes on. I don't have it all in front of me. But the litany of things you certainly can do, your rights under the National Labor Relations Act.

And you are right, this is not about withholding information from employees. But it is about making sure that there is a balanced approached to labor law, which is the intent of the National Labors Relation Act, and ensuring that employers' rights are preserved.

I would go back to Ms. Hahn's point there. She talked with 50 small businesses. Did she provide them with a copy of this poster? It would be nice if she had because that is what I am doing a lot of now. I am getting this information out to my members. I am not a registered lobbyist at NFIB. Most of my job is to provide education and compliance assistance to our members. I am working the dickens right now to get this information out to my members to make sure they get this poster up. You need to get this up. You need to be in compliance. Yes, we have this lawsuit going on, and I do hope the court is going to strike down the law. But at the same time, I want to make sure that our employers know that this does need to be posted.

Our members want to be in compliance with the law. And if that requires them to post this poster, so be it. But they want to be in compliance. They want to do what is required under the law. They don't want to violate the National Labor Relations Act, the OSHA law, the wage and hour law, or any of the other laws. They just want to be told what to do. So it is trying to get the information out to both the employers and the employees. Thank you.

Mr. SCHILLING. Very good.

I just want to thank the panel for being here.

And I yield back my time.

Chairman GRAVES. Mr. Owens.

Mr. OWENS. Thank you, Mr. Chairman.

Mr. Mittler, in your testimony, you indicate that in 31 years, OSHA has come to your shop twice.

Mr. MITTLER. That is correct.

Mr. OWENS. When was the last time?

Mr. MITTLER. It was sometime between 2004 and now. I don't recall exactly when it was. But I know we moved into the present facility we have in 2004, and they visited that building once.

Mr. OWENS. You also indicate in your testimony that—you say in the past, an inspector or auditor would visit our shop and work with us to correct any unintended violations. Today they fine you

first and take no questions later. Were you fined on that second visit?

Mr. MITTLER. Yes. On both visits, we were fined. Yes, we were.

Mr. OWENS. How many years ago did the first one occur?

Mr. MITTLER. I did not look up the history of that, previous to that, but it was a number of years prior.

Mr. OWENS. So, basically, the procedure didn't change then?

Mr. MITTLER. The procedure has changed in recent years.

Mr. OWENS. Well, if you got fined both times.

Mr. MITTLER. From 2004 to now, the fines have increased dramatically and the ability—in both cases, if we agreed to correct the violations and we corrected them in a timely manner, which I believe was 90 days, and then we submitted proof of correction, which we did all of those things, then the fine would be half of what it was originally proposed. So we did not fight the violations. They were relatively minor. We corrected them. Some of them we corrected within 24 hours. Some of them we had to order some parts and pieces from the manufacturer of machines and get them in. And then we installed that, sent the documentation to the inspector. And he said, yes, you have met it, and we will reduce the fine in half.

I am told now by fellow shop owners that there is no reduction of the fine. The fines are double what they were. So what was a $1,000 fine before is a $2,000 fine today. So there is where the change is. The changes happened in 2004 until now.

Mr. OWENS. And that is based upon what you have been told as opposed to your experience?

Mr. MITTLER. That is correct. However, I have many—as the chairman of MTMA, I have many friends and associates in the business who have related these stories to me in a factual manner. But——

Mr. OWENS. I can tell you that having represented many small businesses before I came to Congress, as a regular course of my practice, I was successful in getting reductions in fines. And I am having a little bit of difficulty believing that that is a consistent trend that exists throughout the United States.

I am just curious also, there seems to be a general objection, if you will, to OSHA regulations. Is that true or not true?

Mr. MITTLER. I think some OSHA regulations are far overreaching for us as small business because we don't have sufficient staff and all that to really be able to help us interpret the law and know what all the laws are. I think knowledge of the law is a difficult thing. If I was not active in our trade association, I would not be knowledgeable that I would have to post this poster. I don't know that it has been published in the paper or in any other place that I have to do it. So I think knowledge and some of the laws and rules are overbearing.

Mr. OWENS. Now, you say some. How do you distinguish between the gradations? And which rules would you strike down? Which rules would you keep? Which do you see as reasonable?

Mr. MITTLER. I don't have any case in point there that I can speak to. I just mean in general what impacts a company the size of Boeing and what impacts a company of our size with 60 employees, you would certainly think would have to be different. I have

60 employees in my facility. They have thousands of employees. So naturally more protection is needed there just in general. I cannot cite any specific case.

Mr. OWENS. Do you think Boeing would agree with that?

Mr. MITTLER. I think for the most part they would be concerned about the safety of their employees. I think they are, yes. I think they are very concerned about the safety of their employees.

Mr. OWENS. No. I am not suggesting they are not concerned about it. I just meant that you feel that they should be more regulated than you. That is where——

Mr. MITTLER. They probably don't agree. You are right.

Mr. OWENS. They probably wouldn't agree with that. I didn't think so.

Ms. Milito, you made a statement in the course of a response to Congresswoman Hahn's question that your business, your members do not have HR directors, as they are too small to have that level of service. Is that true for every business that is a member of your organization?

Ms. MILITO. Certainly not all of—no, certainly not all of our members. The vast majority do not have a human resources director.

Mr. OWENS. What is the general size of the businesses that are in your——

Ms. MILITO. Ten employees or less.

Mr. OWENS. Ten employees or less. But there are some that have HR directors?

Ms. MILITO. Some of the larger ones, yes.

Mr. OWENS. And do some of them also participate—do you know in groups—what I would call buying groups where they purchase HR services out of a buying group?

Ms. MILITO. I don't know the answer to that.

Mr. OWENS. Is that a service that you offer?

Ms. MILITO. We do not offer that service.

Mr. OWENS. Do you provide general information to your memberships, for instance, about the issue regarding the poster?

Ms. MILITO. Yes, we certainly do provide—we try to provide some educational and compliance assistance to our members on general employment law matters.

Mr. OWENS. Now, would you provide them with a copy of this poster and the information relating to its implementation?

Ms. MILITO. We have the information available on our Web site, and it most definitely includes the link to download the poster. And we certainly indicate on there that it is free. We have made all that information available to our members.

Mr. OWENS. And do you send out a general, if you will, blast email with regard to this type of activity, not just related to this poster?

Ms. MILITO. We do try to alert our members to new rules and regulations certainly. And this has been sent out in our e-newsletter to our members.

Mr. OWENS. Thank you.

I have no further questions, and I yield back.

Chairman GRAVES. Mr. Mulvaney.

Mr. MULVANEY. Thank you, Mr. Chairman.

And for those folks who are here wondering why we are talking so much about the poster—I have run a couple of small businesses, and I can tell you that, quite legitimately, small business people fear these things. We do. I did, because quite simply I was always afraid that I didn't have the right ones on the wall, or I didn't have the one that was up to date or that I was—to this point before us—missing one, that somehow the government had come out and required me to put up a new poster and forgot to tell me or I didn't find out, I didn't join NFIB to find out whether or not I needed posters or not. I was too busy running my business to try to follow the regulatory actions of the Federal Government.

And of course, if you don't have the right ones, you are in a lot of trouble. You could be fined. You could be penalized. You could be in a lot of trouble. In several states, I think it is negligence per se not to have these things up on the wall. So it is a serious issue to small businesses.

And for that reason, I will continue on this topic that some folks might find to be trivial.

Mr. West, you mentioned before that you think employees should have the right—that they should have the right to know what their rights are, right? I think that was your testimony.

Mr. WEST. That is correct.

Mr. MULVANEY. You liked the poster. You had no difficulty with it. It is free. How did you find out it was free by the way? I always paid for these things. How did you find out it was free?

Mr. WEST. It was posted through the Sheet Metal Workers International when we—in one of their little blurbs that this was a poster required, and it was a free download.

Mr. MULVANEY. Did you pay for the other ones by the way?

Mr. WEST. No. Yes, I did. The OSHA ones you do pay for.

Mr. MULVANEY. And the minimum wage ones you do pay for?

Mr. WEST. Yes, you do pay for those.

Mr. MULVANEY. They have also got the right to quit their union. That is mentioned in very small print in the document. Do you think it would be a good idea to talk more about that on the poster?

Mr. WEST. Well——

Mr. MULVANEY. It is their right, isn't it? I mean, we go into a long list of how you join a union. Don't you think there should be some balance there and show how you get out of your union if you don't like it?

Mr. WEST. Well, I think that is taken care of at the union level. They go through their procedures. So it is pretty easy to get out of a union. You just stop paying your dues.

Mr. MULVANEY. Yeah. But the whole idea behind this is to let employees know what their rights are as employees. They have a right to join a union. And if you want to join a union, here it is, this is how you do it. So why not have the same thing on there about how to get out of a union?

Mr. WEST. I would think if you were that concerned that about it as an employer, you would put your own piece of literature together and state your facts and put it up beside it.

Mr. MULVANEY. What if you were concerned about it as an employee? What if you were an employee who just didn't want to be

in the union? Where would you go? Where else would you go to find out how to get out of your union?

Mr. WEST. I would assume that once you start the negotiations, you vote not to join the union.

Mr. MULVANEY. Wouldn't this poster be a great place to put it there? It is there in your lunchroom with——

Mr. WEST. I wouldn't have a problem with it. I didn't design the poster. But I do think the employers have the upper hand as far as the negotiations.

Mr. MULVANEY. These employees have got other rights, too. They have rights to free speech. They have rights to—Second Amendment rights. Can we put those on the poster, too?

Mr. WEST. No, sir.

Mr. MULVANEY. And why not?

Mr. WEST. We should already know about those. We have a Constitution.

Mr. MULVANEY. Exactly. So why is it that we have this document that shows them rights that they should probably know anyway?

Mr. WEST. My feeling of this whole issue is it is just a poster. And if the idea of this is that the NLRB has been so successful and is so biased toward unionization and organized labor, how come for the last three decades, all we have done is lost membership?

Mr. MULVANEY. Because this poster hasn't been around for the last three decades.

Mr. WEST. I don't think the poster is going to make a whole lot of difference. I think we are wasting a whole lot of time on it.

Mr. MULVANEY. Now, there are other things that are listed here. It says, under the NLRA, there is a long list of things that it is illegal for your employer to do, which I guess is fine. Don't you think maybe then, in order to have some balance, we should have a list of things that it is illegal for the employee to do? It is illegal for you to do drugs. It is illegal for you to harass other people. Or do you think they should know that anyway?

Mr. WEST. I have a poster similar to that. Out of the Sheet Metal Contractors Association——

Mr. MULVANEY. Is that required to be put up by the NLRB?

Mr. WEST. It is not.

Mr. MULVANEY. Do you get fined if you don't put that poster up?

Mr. WEST. No, sir, I do not.

Mr. MULVANEY. Do you think the NLRB should be balanced between employer and employee, or do you think the NLRB exists to defend the rights of the employee against the employer?

Mr. WEST. I am certainly not an expert on what the NLRB does, but I would assume that it is there to generate fair and equitable labor practices. And if they are doing that, then I am assuming they are doing what they were designed to do.

Mr. MULVANEY. If you are an employee and you are dissatisfied with the way you have been treated, if you think your rights have been violated, you get free legal representation from the NLRB. Do you think if you are an employee—excuse me, an employer who has been wronged by the employee or even by the union, that you should get free legal representation from the NLRB?

Mr. WEST. I don't think you would.

Mr. MULVANEY. You don't under the law. I am just wondering if you think that you should. You are an employer. If you thought that your unions had wronged you, that they had struck illegally, do you think that the NLRB should represent you, give you free legal representation in that claim against your union or against your employees?

Mr. WEST. I don't think they give free legal——

Mr. MULVANEY. I can assure you they don't.

Mr. WEST. They don't give free legal advice to the unions either. The unions hire their own legal attorneys. So, as a signatory, if you are wrong, you should hire your own attorney. Employees are a little different level I would think. Maybe an employee doesn't have the financial wherewithal to hire an attorney. So I could not have a problem with them giving an attorney to an employee.

Mr. MULVANEY. All right. And finally, do you think I should have to join—don't get me wrong. I love the NFIB. I love small business associations. Do you think I should have to join the NFIB in order to know what my legal obligations are as an employer?

Mr. WEST. I do not.

Mr. MULVANEY. Are you a member of the NFIB?

Mr. WEST. I am not.

Mr. MULVANEY. Thank you, Mr. West. I appreciate it.

I yield back the balance of my time.

Chairman GRAVES. Ms. Clarke.

Ms. CLARKE. Thank you very much, Mr. Chairman.

I would like to thank our ranking member in absentia.

I would like to thank our panel for their testimony today.

And I got here at a point where there was a lot of discussion about this poster, and I wanted to direct my comments to Mr. West. There has been much talk today about the detrimental effects of unions on small businesses. I am going to assume that you weren't awarded contracts with Lockheed or Howard Hughes Medical Institute while being plagued with workers content with having a job that pays a living wage and provides health care, who are giving you the bare minimum with regards to craftsmanship, effort and professional pride. However, could you tell us what would happen to your business if this were to be the case?

Mr. WEST. Well, basically I have built my reputation here in this town as a contractor. We do the very difficult and the specialty-type jobs. So maybe I am a little unique. But I have some very special workers that are highly skilled, and I get called for some very high-profile projects. So I would be out of business if I were to lose that highly skilled workforce.

Now, we do compete every day on some of the lesser-skilled jobs and—against contractors that are open shop, that do not provide health care, pension plans for their workers. So we are at a little disadvantage when we compete against those folks. But there have been several occasions where we do get hired after a project has been done to come in and clean it up and bring it up to standard.

Ms. CLARKE. Very well. Thank you, Mr. West.

My question to the rest of the witnesses is this: We have a small business on the panel who has survived these trying economic times and is still operational with high-profile clients and who successfully exists within the same small business environment that

you all operate in who insists that these new rules will not affect him adversely. If it is simply a situation where you do not want unions in your businesses, I can at least understand that. However, I am going to need to have a couple more dots connected for me to understand how this adversely affects small business. And if time allows, would you just sort of give me a sense of what Mr. West is doing that perhaps you could not use as a part of your business practice?

Mr. MITTLER. Well, I think that it would be a detriment. I would prefer not to have a union in my company. We haven't had one for 32 years, and we have, like Mr. West's company, been very successful over the years. During the downturn, it was very difficult. It was very difficult. My brother and I took personal wage cuts to keep our highly skilled employees employed. We didn't send them back. We don't have a union hall. So we have to maintain our employees in good times and in bad.

Yes, did we have some reduction in force? Absolutely we did. But we did everything we could to keep our highly skilled employees because we have a vested interest in them; they have a vested interest in our company. So I am not suggesting that unions are a bad thing. I just think for our company, it is not the preferred way to do business.

And I am certainly not against my employees knowing what their rights are, exercising their rights in any way, shape or form. What I want to be able to do is keep that open communication with my employees. I want to be able to hire the employees that I see fit. I want to be able to man the jobs in my plant as I see fit with the employees that I need in the different skill levels.

The other thing that is important for our company, since we do a lot of different types of work—we have precision machinists, welders, electricians, general assembly people. During those tough times, we moved people, we cross trained our people, and we moved them into different jobs as the ebb and flow of the work changed. And so typically we see in union shops, you are classified as a machinist; therefore, their attitude is, I won't do other type of work, I won't do assembly, I won't do machine maintenance, I am classified as a machinist. So we need that flexibility in our business to be able to keep our people employed——

Ms. CLARKE. And that is your particular business model, Mr. Mittler?

Mr. MITTLER. Yes, it is.

Ms. CLARKE. You, of course, compensate your workforce accordingly?

Mr. MITTLER. Absolutely. My highest skilled people have the highest compensation. Absolutely they do.

Ms. CLARKE. Fabulous. I am going to wrap up.

Ms. McCauley, did you want to add anything?

Ms. MCCAULEY. The only thing that I would add is that I find it is imperative, just like Mr. Mittler said, that you have employees that you can cross train. That is where we make profitability in a small business. I might have an employee that can lay brick, but I also might—that same employee might be able to pour some concrete. He might be able to throw rebar in the wall. He might also be able to strike that wall, too. If I were a union shop, my brick

layer wouldn't be able to strike the wall. He would be able to lay it in place. He couldn't lay the block. He couldn't pour the concrete. And he couldn't pour the rebar. So I would have to have five different employees to do that same function of the one employee. It is imperative that we have the ability to cross train our employees. When you have a limited staff, 4 to 10 employees—and a lot of us—just like Ms. Milito said, a lot of her clients are 10 or less. A lot of mine are the same. But I have cross trained enough of my employees that one guy can do the same job as five union workers. And I wouldn't have that same ability in a small business.

Ms. CLARKE. I am sure that helps with our unemployment.

Mr. West, don't you have a similar——

Mr. WEST. Well, I just think that is a little misconception there about how they departmentalize union work. I run a production shop. We do field installation. We do welding. We do testing and balancing. Every aspect of my job, the same person can do that. They are trained in the aspects of the trade and the industry, not one specific job.

So I don't think that—I think that is a misconception, that if you have a union brick layer—if you are going to run a small shop, he is not going to lay block, he is not going to mix the mortar, he is not going to put the rebar in. That will not happen in a small shop. They are partnered with the business. It is in their interest to keep their job, just like it is in an open shop.

Ms. CLARKE. Thank you.

And I appreciate all of your responses. I am over time.

Thank you, Mr. Chairman.

Chairman GRAVES. Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

Ms. McCauley, you were talking before about the various kinds of employees there are. You mentioned that there are some slackers; there are some nonslackers. You mentioned you have four boys, and some are slackers, and some aren't. I am just wondering, which of your boys are slackers?

Ms. MCCAULEY. The 3-year-old. He can't pull his own weight yet. We will get there.

Mr. CHABOT. Sounds good. Now my serious question.

It seems what you are talking about here is kind of a basic fairness. They are requiring certain things to be done for which there could be significant penalties, if you don't put the proper poster up in the right place, the right size at the right time, et cetera. And it seems like most of the burdens tend to be on the employer. I would ask any of the panel members if you could maybe go into that in a little more detail about what kind of burdens are there on the one side but not on the other side. Where is it unfair? We can start with you. But anybody who wants to take it on is fine.

Ms. MCCAULEY. The last company I worked for, I worked there 20 years. We had 300 employees. I was an HR director for that company. There is not a site you can go to that gives you all of the government postings. There is not a site that says, okay, if you are a small business, you need to post this, this, this and this. There are no blast emails, for a better word, that go out and say, hey, I realize you are a small business, I realize you are registered in your district or you have your Class A license or whatever, you

need to be aware of the sweeping changes that are right before you. There is nothing like that that goes out. Even as an HR director, even though I have my license and all that, there is nothing that goes out to let you know.

If there was a Web site that everyone was aware of that listed new postings that you needed to have up, hey, this one expired, we have got a new minimum wage, we have got some new OSHA law, we have got—I think a lot of people would be very happy to post those because they would be aware of those. I think the biggest fear of small businesses is unaccounted for expenses, unaccounted for expenses that don't lead to any profitable measure that are just fines and penalties. I think it would be very helpful and it would lead to more cohesiveness if everyone had the ability to look to the same place, to know what the laws and regulations were.

Mr. CHABOT. Thank you.

Anybody else have any comment?

Mr. WEST. Yes, sir. I would just like to say I agree that there should be a Web site where all that information is made available.

But I am also a little confused here as, who enforces this poster law? Who comes to your business to find out whether you put the poster up or not? I am a little confused on that.

Mr. CHABOT. Mr. Mittler.

Mr. MITTLER. I certainly don't know the legal answer to that, and we discussed that today, where is the hammer for any of us. And I think where it would come from would be a disgruntled employee or employees that would say, hey, that union poster isn't up there, and then they would possibly go to the NLRB or something like that. Ms. Milito, obviously, is better prepared.

Ms. MILITO. Yeah, that is exactly how—you have got it right, exactly. Yeah, it would be an employee, probably a disgruntled employee who would learn about the poster and then file an unfair labor practice charge with the NLRB. That is how it would start.

Mr. CHABOT. That is what I wanted to follow up with at this point because I have only got a little over a minute of time left. If you don't post the signs—and I know you had mentioned that many, many small businesses obviously don't have an HR department. They are just too small, and some do, but lots of small businesses don't. So for somebody like that who didn't even know about this and didn't have it posted and an employee or somebody comes up and files an unfair practice against them or whatever they do, what are the potential penalties for that? And what are the potential ramifications to that business if they do have to deal with one of these matters?

Ms. MILITO. Well, certainly as an initial matter, the board would demand that the employer post the poster, too, but it would also open the employer up to additional scrutiny, too, and the potential for other unfair labor practice charges, if there were other things going on in the business that would—the employee could argue were infringing on their right to concerted activity. The employee could then file other complaints, too. So it could open up a whole can of worms. And I think upon receipt of a ULP, it is very likely the small business owner would quickly call an attorney. So you are looking at potential legal expenses, too, in defending the claim.

Mr. CHABOT. Thank you.

And in the last 10 seconds I have got on me, I just commend the chair on holding this hearing because these tough economic times, when 70 percent of the jobs created are created by small businesses, we need to find ways to relieve some of these burdensome regulations and requirements.

My compliments to Mr. Chairman.

Chairman GRAVES. Mr. Keating.

Mr. KEATING. Thank you, Mr. Chairman.

I would like to thank all of the witnesses for being here today.

As we sit here and we are attacking the National Labor Relations Board rules, we are missing one more time that we can really deal with some of the critical opportunities that are actually creating jobs, that can create jobs and create small business opportunities.

Just last week, the House passed H.R. 2587, which inevitably will result in making it more difficult for workers to have a means to protect themselves from illegal—illegal—practices in the workplace.

Now, as someone that considers themselves a strong outspoken proponent of small businesses, it is worth I think remembering that unions weren't formed to be obstructionist, and the facts I think prove that any fear along these lines is unfounded.

According to the Bureau of Labor Statistics, only 7.2 percent of private sector employees identified themselves as members of a union in 2009. That compares with 9 percent in 2000 and really healthy digits, double digits back 40 or 50 years ago, so as we sit here today and we are talking about things that as a committee will create new jobs, I think we should keep in mind that most small business owners in the United States today won't even have to interact with a union.

But while I am on the subject, I just want to state, too, that the NLRB rules are commonsense proposals, and they are designed to ensure fair process for the workers by cleaning up and modernizing a system paralyzed by delays, bureaucracy, wasteful litigation. And the proposed changes aim to provide greater stability, greater certainty, and a leveller playing field.

I think we have seen countless examples where high cost litigation and intimidation have been used to stop workers from effectively organizing, but I think we can all agree that our country was built on democratic principles. And so what is against democratic processes being used to utilize, resolving issues in the workplace?

Now, I spent last week, a great period of the week, talking to owners of more than one dozen small businesses about a myriad of issues, and not once in the course of those discussions did this issue come up. Maybe it is just—maybe it is my district. Maybe it is the people, but not once did this come up. A lot of other issues came up, issues that they said were the important issues that they faced, issues like loan guarantees, tax credits, grants. SBIR funding, for instance, came up. Now, how would you rate these?

And I think it is really a question of perspective, and I think that is what I am trying to gain by this, by my question. With all the things you have as issues, does this rate? I don't understand how it rates so high to draw this kind of attention. Aren't there other important issues, and if you want to take the opportunity, can you

tell me what those other important issues that we can be doing in Congress to help might be? I will throw it open to anyone.

Ms. MCCAULEY. I will start. Like I said before, I do believe it is a slippery slope. I think, like I said before, not very many of the small businesses that I spoke with had any clue that there had been a change. I know a whole bunch of people, landscapers, all kinds of different people in my area, and I asked the question, do you know this is going on? Do you know you need to post that? I have never even heard of it. Why haven't you heard about it? It is the first time I have heard about it.

So I think it is hard for people to have an issue with it if they don't know it exists, and I think—I agree that funding is very important. I don't discredit that it is very important to be able to find loans and help to garner the ability to just increase the workforce we have and grant more people jobs. I think until we can get the ball rolling and get more people employed, we are just really just scrambling. That is what it is going to take to get us out of our deficit, just like anything else. The more people that work, the more taxes are paid, the better we all are.

So if it is small businesses that are really garnering the most new jobs, then I think we really need to take out a lot of the bureaucracy, and I think a lot of it stems from unfair fines and penalties for things you don't even know about. I realize, I am not dumb, that ignorance of the law is not a defense, but it also shouldn't be the reason things get through. It also shouldn't be the substance behind how we raise capital.

Mr. KEATING. Anyone else want to jump in?

Ranking what is really important right now to get new jobs and to help our economy go forward, do you really think this ranks right up there? Not one person—if those people were—and I went through a lot of people in a lot of sectors, not just last week but the weeks before. I make a point every time we have a week off to go visit business, and I have been across the board, manufacturers, large business, medium business, a lot of small businesses; not once did this come up. I am just curious.

Mr. MITTLER. Pardon me. I am certainly not suggesting that it is the top issue in small business today. It is an issue, and I think, as Ms. McCauley said earlier, the slippery slope is what we are concerned about. What we give away today, what is taken away by rule that, as Ms. Milito said, in her opinion, it is not even legal for them to impose this on us, what is taken away today, then what will be taken away tomorrow, next week, next year, and so on and so forth. Certainly the unknowns of the future is a big concern.

I am fortunate that our business is growing. We have hired people this year. And certainly what the tax rate will be and the impact of the deficit is a huge issue and burden for us, and certainly given the opportunity to come back and speak to this committee or any other committee on that, I think you would hear a lot of other testimony.

Mr. KEATING. Well, thank you, Mr. Chairman.

My time is up, and I do thank Ms. McCauley, because you hit it right on the head, though: The best way to deal with the deficit is to get some more jobs going. Thank you.

Ms. McCAULEY. Absolutely true, but I thank you for taking the time to go to your district and really listen to your constituents because unless that happens, we go nowhere.

Chairman GRAVES. I want to thank all of our witnesses for being here, and I personally think I want to, I definitely want to agree with Mr. Mulvaney. I think this is heavily weighted toward demonstrating the rights to be able to unionize, but it doesn't do a very good job of putting the rights out there for the employees, the other rights that are available to them when it comes to being able to get out of the union.

I also want to agree with Mr. Keating, too. I think being able to solve some of our relations between employers and employees should be a democratic process, and one of the very basic principles of a democratic process is secret ballot. And being able to determine whether or not you want to unionize or not unionize by secret ballot is a very important basic principle to that.

So, with that, I would ask unanimous consent that all members have 5 legislative days to submit statements.

Seeing no objections, so ordered.

With that, this hearing is adjourned, and I thank you all for being here.

[Whereupon, at 2:46 p.m., the committee was adjourned.]

Employee Rights

Under the National Labor Relations Act

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.
- Question you about your union support or activities in a manner that discourages you from engaging in that activity.
- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.
- Threaten to close your workplace if workers choose a union to represent them.
- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.
- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.
- Spy on or videotape peaceful union activities and gatherings or pretend to do so.

Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

- Threaten or coerce you in order to gain your support for the union.
- Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.
- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.
- Cause or attempt to cause an employer to discriminate against you because of your union-related activity.
- Take adverse action against you because you have not joined or do not support the union.

If you and your co-workers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.

Illegal conduct will not be permitted. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: **http://www.nlrb.gov.**

You can also contact the NLRB by calling toll-free: **1-866-667-NLRB (6572)** or **(TTY) 1-866-315-NLRB (1-866-315-6572)** for hearing impaired.

If you do not speak or understand English well, you may obtain a translation of this notice from the NLRB's Web site or by calling the toll-free numbers listed above.

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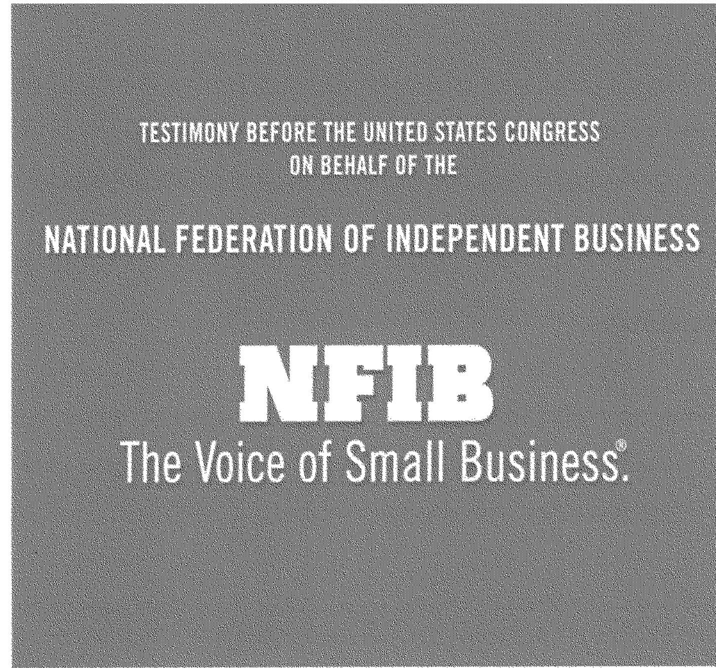
*The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

This is an official Government Notice and must not be defaced by anyone.

SEPTEMBER 2011



Testimony by Elizabeth Milito
Senior Executive Counsel, NFIB Small Business Legal Center

House Committee on Small Business

on the date of October 5, 2011

on the subject of

Adding to Uncertainty: The Impact of DOL/NLRB Decisions and Proposed Rules on Small Businesses

Dear Chairman Graves and Members of the Committee:

On behalf of the National Federation of Independent Business (NFIB), I appreciate the opportunity to submit for the record this testimony to the House Committee on Small Business on the hearing *Adding to Uncertainty: The Impact of DOL/NLRB Decisions and Proposed Rules on Small Businesses.*

Introduction

Thank you for inviting me to testify today regarding the impact of the recent Department of Labor (DOL) and the National Labor Relations Board (NLRB) decisions and rules on small business. My name is Elizabeth Milito and I serve as Senior Executive Counsel for the National Federation of Independent Business (NFIB) Small Business Legal Center.

NFIB is the nation's leading small business advocacy association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents 350,000 independent business owners who are located throughout the United States and in virtually all of the industries potentially affected by these rules and decisions.

The NFIB Small Business Legal Center is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses.

NFIB's national membership spans the spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees. While there is no

standard definition of a "small business," the typical NFIB member employs 10 people and reports gross sales of about $500,000 a year. Roughly 15 percent of NFIB members employ 10-20 people and approximately 28 percent have 10 or more employees.[1] The NFIB membership is a reflection of American small business, and I am here today on their behalf to share a small business perspective with the Committee.

Currently, small businesses in this country employ just over half of all private-sector employees.[2] Small businesses pay 44 percent of total U.S. private payroll.[3] And small businesses generated 64 percent of net new jobs over the past 15 years.[4] Small businesses are America's largest private employer. For this reason it is critical that DOL and the NLRB understand small firms' unique business structure and the exceptional problems that the decisions and labor rules of DOL and the NLRB would place on small businesses.

Suffice it to say that labor law is difficult to understand. The current NLRB is changing the law by reversing precedential decisions, promulgating new rules, and expanding enforcement through increased penalties. And this is not new or unique to the current NLRB; with each new administration comes new direction at the NLRB. Even experienced labor lawyers struggle to keep up with ever-changing legal landscape. It is doubly difficult for small business owners to understand the quirks and nuances of labor law, which sometimes can seem illogical and counterintuitive.

Imagine, then, the challenge facing America's small businesses – the backbone of our economy – when it comes to understanding and complying with labor law. These businesses are run by men and women who are struggling day-to-day simply to make

[1] http://www.nfib.com/about-nfib/what-is-nfib-/who-nfib-represents (last visited October 3, 2011).
[2] http://www.sba.gov/advocacy/7495/8420 (last visited October 3, 2011).
[3] *Id.*
[4] *Id.*

ends meet. They typically have no administrative staff, little human resource expertise, and certainly no regular access to legal counsel.

Today, small business owners contend with antidiscrimination laws, family, medical and other protected leave laws, wage-hour laws, privacy laws, workplace safety laws and labor laws. They often struggle to decipher the mysteries of overlapping, sometimes even conflicting, federal, state and local laws. These laws and regulations also are expensive; according to the Small Business Administration, workplace compliance costs small business nearly 36 percent more per employee than it costs large businesses.[5] The problem is compounded by the fact that small businesses often times can't afford human resources or legal departments to give them advice on the laws. The vast majority of small business owners treat their employees and customers like their extended family. They work hard to do what is right, but their informal and unstructured nature and more limited financial resources means that they sometimes require greater flexibility in creating policies and solutions.

Today I will discuss how recent DOL and NLRB labor rules and decisions will impact small businesses. Specifically, I will address the "persuader rule", the "ambush election rule", and the "poster rule". Additionally, I will briefly touch on a few other recent NLRB decisions. I will also provide some insights into how small businesses handle labor matters, and highlight some of the differences between how small business owners and large corporations operate.

The Persuader Rule

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[5] Impact of Regulatory Costs on Small Firms, www.archive.sba.gov/advo/research/rs371tot.pdf (last visited October 3, 2011).

Imagine for a moment a man named Randy, a plumber in Illinois who worked by himself for years before deciding to hire a few assistants to cover growing demand for his services. Randy serves as CEO, President, Treasurer, HR VP, CFO and front-line supervisor of his company, all while working on the front line as a plumber on a daily basis. One day Randy gets approached by someone identifying himself as a representative from the local Plumbers Union. He tells Randy that three of Randy's four plumbers want to be represented by a union.

Randy does not know much about unions, but he knows he does not want a union representing the four plumbers he employs and works with hand-in-hand on a daily basis. Should he talk with the employees? What can he ask them? What can he tell them? When can he talk with them? What does Randy do?

Imagine for a moment a painter in Ohio named Mark. He borrowed money and bought a friend's failing painting company. He tries to provide steady employment to the six employees who worked for his friend. He hustles business day and night, trying to get indoor work during the rainy season and outdoor work during the summer months. One day a Teamster business agent tells Mark that he has to sign on to a Teamster contract to work on a government project Mark has landed. The contract has higher wage rates than Mark pays, and requires signatories to pay into the Teamster health & welfare, pension, and charitable funds. Mark wants no part of signing the agreement, but he really needs the work. What does Mark do?

Imagine for a moment a woman named Betsy, who borrowed money to buy a small clothing store in California. The little boutique employed three people, mostly on a part-time basis. Somehow the three were covered by a UNITE HERE contract from a relationship that began long before anyone at the store worked there. Betsy decides that she does not need a union – and the part-time employees do not really want the union, either. So when Betsy

opens the doors of her shop for the first time, she tells her part-time employees that they do not have the union anymore. Within days Betsy gets a nasty letter from the UNITE HERE local, advising her that she cannot unilaterally walk away from the union. The local demands information from Betsy, and wants to set up a date to begin negotiations. What does Betsy do?

Imagine for a moment a woman named Val, who owns a 12-employee hair salon. She heard from some friends that she should have a handbook for her employees. She thinks that is a good idea. She also has heard that it is a good idea to include a grievance procedure of some sort in the handbook so that employees have a "voice" in their careers. She has heard about peer review committees for certain types of discipline, and she wants to look into building into her handbook some sort of similar grievance-processing mechanism. Val does not know where to start.

Today Randy, Mark, Betsy and Val would call NFIB. After an initial brief consultation with an NFIB employee, each small business owner would then be directed to find a local attorney to help them. Typically the local attorney then becomes a business partner for these small businesses – helping the businesses through the maze that is today's field of labor law. It is this partnership that is at grave risk due to DOL's proposed persuader rule.[6]

Under the new persuader rule, all actions, comments or communications that could have a "direct or indirect" "object" to "persuade" employees would be reportable. This includes drafting documents, training, drafting policies – virtually *everything* that labor counsel does for clients – and whether or not there is union organizing activity or other protected, concerted activity going on at all. The widened scope of "persuader" activities is

[6] Labor-Management Reporting and Disclosure Act; Interpretation of the "Advice" Exemption RIN 1215-AB79; RIN 1245-AA03 (June 21, 2011 Notice of Proposed Rulemaking).

so broad as to include virtually every form of legal advice and counsel in the labor relations field.

The danger the new DOL rule poses is not simply revealing the law firm or consultant's identity – which was the congressional objective of the Labor-Management and Reporting Disclosure Act (LMRDA). The real danger is the requirement that lawyers, if they report as a "persuader" for one client, will be required to disclose all fees and arrangements from all clients for all labor relations services, even those services not considered "persuader activity." Further, lawyers who report have to report the portions of their salary derived from such activities.

The net result of the new proposed rule will be that lawyers and law firms with normal attorney-client relationships where such information is treated as privileged and confidential may no longer be willing or available to advise employers because to do so will force them to breach their ethical obligations. This is an enormous concern for the Randys, Marks, Betsys, and Vals of our economy. If this happens, they will have two choices – either "go it alone" and not seek any advice (hoping they guess correctly) or find a lawyer who is willing to overlook the ethical obligations and other issues involved with filing as a persuader.

DOL's proposed regulation is much more than simply a "reinterpretation" of the LMRDA's "Advice" Exemption. In fact, it eviscerates that exemption and makes virtually any "advice" from law firms and other organizations reportable "persuader activity." We fear that this proposal will limit small employers' access to counsel on most aspects of labor law. Such limited access will rob employers of their right to speak freely and lawfully on many employment issues, and employees of their right to receive lawful and complete information on employment matters that affect them on a daily basis. This is not good for small employers, their employees, or the U.S. economy.

The Ambush Election Rule

Our nation's labor law was conceived for the purpose of protecting the free flow of commerce by encouraging collective bargaining to avoid disruptions. Under the 76-year-old National Labor Relations Act (NLRA), bargaining about employees' terms and conditions of employment can only occur between employers and labor organizations chosen by employees to be their representatives.

The starting point for representation is employee choice. Choice is the act of selecting freely following consideration of options. Section 8(c) of the NLRA encourages "free debate on issues dividing labor and management." For an employer to engage, it must first become aware. As Canadian experience proves, covert union campaigning results in significantly higher rates of union representation over an open exchange of views by both the union and the employer to inform employees and respond to issues raised.[7]

The Board's new ambush election rule[8] will significantly undermine an employer's opportunity to learn of and respond to union organization by reducing the so-called "critical period" from petition filing to election from the current median of 38 days to as few as 10-21 days.[9]

To ensure due process in representation case matters, Congress amended Section 9 of the NLRA requiring the Board to investigate each petition, provide an appropriate hearing upon due notice, and decide the unit appropriate. The Board's new rule will restrict the presentation of evidence enabling fair deliberation of unit appropriateness issues by creating a 20 percent voter eligibility/unit placement review threshold, imposing a "claim it or

[7] Chris Riddell, "Union Certification Success Under Voting Versus Card-Check Procedures: Evidence from British Columbia, 1978-1998" 57 ILR Rev. No. 4. (2004), p. 498.
[8] Proposed Rulemaking Regarding Representation Case Proceedings, RIN 3142-AA08 (June 21, 2011 Notice of Proposed Rulemaking).
[9] Member Hayes dissent.

waive it" rule regarding unit scope and related evidentiary issues, and requiring production of detailed employee lists including personal telephone numbers and email addresses.

With the Board's new election rule, NFIB believes that employee informed choice and due process notice and hearing required by Section 9 will be compromised, particularly for small employers lacking labor relations expertise and in-house legal departments. Why rush the ballots? Because the more employees think about joining a union, the less likely they are to unionize.

Dissenting Board member, Brian Hayes, protested the rule as a "radical manipulation of our election process."[10] He said the main purpose of this unprecedented move by the NLRB was to prevent employers from expressing their views about collective bargaining. The NLRB majority, he suggested, is launching a campaign to sneak pro-labor measures past Congress and undermine legal precedent in order to assist unions.

The Poster Rule

Board member Hayes' assumption was proven correct when in August the President's appointees on the NLRB ordered small businesses to display a poster instructing workers on how to form unions.[11] It did so despite the fact that the law creating the NLRB gives it no such authority over free speech. The "Notice Posting Rule," which becomes effective November 14, 2011, imposes an unfair labor practice by threatening private businesses with increased scrutiny, investigations and an indefinite expansion of the statute of limitations for filing unfair labor practice charges.

Last week, NFIB filed a lawsuit on behalf of small businesses challenging the NLRB's intrusion into the workplace. We've asked the court to overturn the rule and declare

[10] 76 Fed. Reg. 36831.
[11] Notification of Employee Rights Under the National Labor Relations Act, RIN 3142-AA07 (August 30, 2011 Final Rule).

that the NLRB lacks statutory authority to require such a posting by six million private-sector employers and to expand the penalty provisions – the latter of which will disproportionately burden small businesses.

The posting rule will affect millions of private sector employers that are not under suspicion of committing an unfair labor practice to display the posting. Section 6 of the NLRA – which the Board cites as its authority for this rule – only grants the NLRB the ability to administer the act when a representation petition or unfair labor practice charge is filed.

According to the Board's own statistics, only 23,381 unfair labor charges and 3,402 representation petitions were filed with the board in 2010.[12] Together, these situations account for less than a fraction of 1 percent of private sector employers. The Board is clearly beyond the scope of its authority to regulate the more than 99 percent of employers not implicated in these filings or charges.

In addition, the Board admits that the NLRA is "almost unique among federal labor laws in not including an express statutory provision requiring employers routinely to post notices at their workplaces informing employees of their statutory rights."[13] Unlike in other major acts, Congress specifically avoided granting the Board the authority to require a notice posting when it passed the NLRA. In the absence of an election petition or a finding of an unfair labor practice, the Board lacks the authority to require employers to post any notice, and certainly not a notice that is far more detailed and pointed than the notices required when the Board's jurisdiction is properly invoked.

Finally, the posting rule will impose significant penalties on employers who fail to post this notice, including a finding that a failure to post the notice will constitute an independent unfair labor practice and result in an indefinite expansion of the statute of

[12] http://www.nlrb.gov/shared_files/GC%20Memo/2011/GC%2011-03%20Summary%20of%20Operations%20FY%2010.pdf .
[13] 75 Fed. Reg. 80415.

limitations for filing any other unfair labor practice charge. The Board does not have authority to impose these obligations and penalties against an employer when there has been no finding – or even an allegation – of an unfair labor practice. Small businesses are particularly vulnerable to accidental violations because the regulatory compliance burden most often falls on the small business owner who operates without a human resources professional or compliance staff.

More than 7,000 comments from employers, employees, unions and others were received by the NLRB and, as admitted by the Board, most objected to all or parts of the new rule. The Board's decision to proceed with the rule in the face of such adversity and against legal authority demonstrates the audacity of the Board and its indebtedness to unions, which comes at the expense of small business.

NLRB Decisions Impact Small Business

Along with the recent regulations proposed and promulgated by DOL and the NLRB, the Board issued a number of decisions that will only serve to bolster union rolls at the expense of small business. In our members' opinions, these unabashedly pro-union decisions put politics above the best interests of this country by creating more uncertainty for small business owners at a time when they are trying to create jobs and get our economy back on track.

On August 26 of this year, the NLRB decided three such cases, *Specialty Heathcare*, *Lamons Gasket Co.*, and *UGL-Unicco Service Co.* Additionally, the Board is currently in the middle of a lawsuit against Boeing – the ramifications of which will have a lasting impact on this country's business climate.

For starters, in *Specialty Healthcare*,[14] the Board ruled to allow so-called "micro-unions," which will allow unions to organize mini-bargaining units throughout a business. *Specialty Healthcare* involved a non-acute care nursing home in which a union sought to organize a group that consisted only of nursing assistants, to the exclusion of other nonprofessional employees of the facility. The Board decided that such sub-unit organizing was permissible. This means that small business owners could face numerous union organizing campaigns from different unions even if they have only a few employees. Ultimately, the decision creates additional expense and administrative burdens for small business.

Lamons Gasket Co.[15] involved "card check" elections in which employees sign cards to show their interest in joining unions. The Board ended protections that allowed employees to immediately petition for a real, private ballot union election if their employer was forced by a union into a "card check" agreement. Employees deserve a voice and also deserve the protection of a private ballot election; this decision effectively blocks such free choice.

Finally, in *UGL-Unicco Service Co.*,[16] a majority of the Board considered whether to restore the "successor bar" doctrine which was discarded in *MV Transportation*. That doctrine provided that when a successor employer met its legal obligation to recognize an incumbent employee representative, that previously chosen representative was entitled to represent the employees in collective bargaining with the new employer for a reasonable period of time. In *UGL-Unicco* the Board chose to restore the "successor bar" doctrine,

[14] 357 NLRB No. 83 (2011)
[15] 357 NLRB No. 72 (2011).
[16] 357 NLRB No. 76 (2011).

providing that neither the new owner, nor employees, nor rival unions can stage an immediate challenge to the union and must instead give a "reasonable period" and a "fair chance" for the union to prove its merits after a merger or acquisition. Ultimately, the decision strengthens a union's ability to retain representation after a business is sold – a stranglehold that comes at the mercy of employees and business owners.

Any doubt as to whether the NLRB strayed from its role as an impartial arbiter to instead become just an extension of labor unions was resolved when it filed a complaint against Boeing.[17] The charge filed against Boeing highlights the ongoing battle between free enterprise and unions. In this high profile case, the NLRB accused Boeing of setting up a non-union plant in South Carolina, a "right to work" state, to retaliate against unionized workers in Washington for striking. The NLRB now wants to force the company to produce all of its new line of Dreamliner jets in Washington instead of allowing the company to diversify and make a portion of the jets in South Carolina. Neither the Board nor any court has ever imposed a remedy so drastic as to force a company to essentially abandon a multi-million dollar facility and to move production across the country. The outcome of the Boeing case will have lasting effects for all businesses and will only serve to discourage business expansion and investment in the United States.

[17] http://www.nlrb.gov/news/national-labor-relations-board-issues-complaint-against-boeing-company-unlawfully-transferring- (last visited October 3, 2011).

Conclusion

NFIB has 350,000 members across the country. They are honorable and fair employers, and they are troubled, confused, and scared by the avalanche of labor regulations and rules coming out of DOL and the NLRB.

Why should anyone care about how these government entities treat small business? This question can be answered with one word — jobs. Jobs are what Americans want and need, and most jobs in America are created by small businesses. According to the Small Business Administration, "small firms accounted for 65 percent (or 9.8 million) of the 15 million net new jobs created between 1993 and 2009."[18] Small businesses in America represent 99.7 percent of all employer firms and employ half of all private sector employees.[19]

Unemployment in this country is at an alarming level right now, with 14 million Americans looking for work and a 9.1 percent unemployment rate.[20] As the largest group of private employers, small businesses will be integral in creating jobs and getting America back to work. At a time like this, it would be foolish to impose oppressive and confusing new legal restrictions and regulations on small businesses. These will only dissuade small business owners from hiring new workers and expanding their businesses. If we hope to ever turn our economy around, we must start by halting this tidal wave of new regulations that will do nothing but crush small businesses and further prolong America's economic woes. Thank you.

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[18] http://web.sba.gov/faqs/faqIndexAll.cfm?areaid=24 (last visited October 3, 2011).
[19] http://www.sba.gov/advocacy/7495/8420 (last visited October 3, 2011).
[20] http://www.bls.gov/news.release/empsit.nr0.htm (last visited October 3, 2011).

Written Testimony before the
House Committee on Small Business
Delivered by
Mr. Mike Mittler, President
Mittler Brothers Machine & Tool
On behalf of the
National Tooling and Machining Association and Precision Metalforming Association

October 5, 2011

Chairman Graves, Ranking Member Velázquez, members of the Committee, thank you for the opportunity to testify today. My name is Mike Mittler, President of Mittler Brothers Machine and Tool based in Wright City, Missouri. We are members of the National Tooling and Machining Association, which has over 1,500 member companies like ours throughout the country representing the $40 billion precision machining and tooling industries.

My brother and I founded the company in 1980 in a 2,500 square foot rented facility with just Paul and I as the first and only employees for the first few months. We started with an idea and commitment to hard work and now thirty years later we have 60 employees and a diversified business including a product line of metalworking and fabrication tools serving the auto racing, hot rodding and aviation market. The other side of our business is engineering, design and building of special machines to automate industry. Our customers are leading companies in their industry including building products, energy, automotive and industrial lasers.

We are proud to have over a 5 year record of no loss time accident in our plant which exemplifies our commitment to safety. We have a mix of both senior and junior employees, including Paul's daughter, working in the plant. Our average tenure is over ten years including nine employees with over twenty years of service. We have two other sets of brothers and one husband and wife team working for us making us very much a family operation. We have received many awards and letters of recognition from customers; however we are most proud of the hand written notes from winners of awards we sponsor for local 4H competitions helping ensure a future for our young people.

There are only three very simple rules at Mittler Brothers: safety, quality, and productivity – no exceptions! In thirty years of business, we continue to meet and exceed federal workplace standards. We do this, not because we are forced to by federal regulators, but because as a small business, our employees are part of our family and it is the right thing to do. Just like the millions of small business owners like us, we know that a safe and happy work environment leads to a productive and profitable company.

In the past 31 years, OSHA has come into our shop twice on campaigns aimed at our industry. Both times, when minor infractions were found, we immediately took steps to correct those and worked with the Agency inspector to ensure full compliance.

Historically, manufacturing businesses in our industries maintained good working relationships with inspectors and regulators with the Occupational Safety and Health Administration, National Labor Relations Board, Environmental Protection Agency and others. Our industry trade groups, such as the National Tooling and Machining Association (NTMA) for which I served as Chairman in 2006, for years have worked with various agencies to help set and monitor industry safety standards.

However, over the past few years, we have noticed a significant shift in the way federal regulators approach their relationship with manufacturers. It feels like we have moved from an environment of cooperation and prevention, to one of punitive punishment by agencies with a "gotcha" attitude. We have seen OSHA alliances with trade associations ended and a new line of regulations on small businesses and their employees from the NLRB. In the past, an inspector or auditor would visit our shop and work with us to correct any unintended violations. Today, they fine you first, and take no questions later.

In the last several months, the NLRB issued a string of decisions and complaints with broad implications for the employer-employee relationship. The decision against Boeing Company, where the federal government is targeting a private business for choosing to increase manufacturing employment and production at one of their facilities, is very troubling to employers everywhere. Recently the NLRB expanded a requirement mandating that all private employers must place a poster in their businesses notifying employees of their rights under the NLRA to join a union and conduct organizing activities. It is not clear to me why this poster is necessary to explain a law that has been in effect for decades. Add the poster rule to the new quick election process the NLRB is imposing and you begin to create a more hostile work environment where employers and employees no longer feel they can openly communicate.

In my over thirty years in manufacturing, it continues to astound me when the government seemingly takes the approach that the only way to a better, safer, and happier work environment is to join a union. For small businesses, it is quite the opposite. Employees have the freedom and flexibility to be partners with the owners and get the job done right and get it done fast. In fact, in polling conducted in January 2009, voters and even union households rejected the Employee Free Choice Act, which sought to impose a card check process on employees and institute the quick or "ambush" elections the NLRB is trying to impose, by 74%.

Small manufacturers such as Mittler don't have the resources to keep up with every new rule and regulation coming out of Washington. Larger companies have full teams to help them navigate the red tape. We feel like we should spend more time manufacturing and creating jobs than deciding whether or not a poster is being clearly displayed. In addition to the direct impact the NLRB has on my company, it has a greater impact on my customers. If those larger manufacturers, for whom my employees manufacturer parts, close their doors due to a hostile environment for manufacturing companies, all the families at Mittler Machine and Tool will suffer.

Regulations and decisions like these coming from Washington do not make for a happy workplace or improve quality of life for manufacturing employees. They are divisive, creating tension within our manufacturing family and driving a wedge between employers and

employees. We are local small businesses who seek local solutions in a tight community where we often have multiple generations working at the same manufacturing plant.

We were hopeful the Administration was taking a new approach to regulations when President Obama in January 2011 issued an Executive Order requiring all agencies to conduct a full review of the impact and effectiveness of new and existing regulations. The President's directives to agencies throughout the government included:

- An agency should only propose or adopt a regulation if its benefits justify its costs;
- Change an agency's enforcement approach to achieving policy objectives, rather than specifying what actions a company must adopt to reach the goal; and
- Agencies must identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior.

Since then, we have seen the Administration withdraw new regulations from OSHA requiring businesses to implement new noise canceling equipment if they were "feasible" or "capable of being done" regardless of their effectiveness. They put on hold new EPA regulations. There may yet be some signs that Washington might revert to a culture of cooperation and prevention with employers. Unfortunately, it seems the NLRB missed the President's memo.

I came to Washington today because I want to fight for my employees and my company. I came here today because I thought it was important that policymakers in Washington understand how small businesses work and the excellent relationship the workforce and owners have maintained for generations. Of course, there are always a few bad apples in every walk of life, and in business, that is no different. When there are violations, regardless of who they are, there is a clear role for government. But it appears Washington is taking extreme steps to address an issue that is not as prevalent as some may claim.

At a time when manufacturing is leading the way in our economic recovery, we need the support of Washington to make us more globally competitive, to promote a positive workplace, and to strengthen manufacturing in America. The latest actions by the NLRB do the opposite and will create animosity in the workplace without helping those who they seek to support – the employees.

Thank you for the opportunity to present testimony today. I look forward to continuing to work with this Committee as I have in the past on issues from supporting automotive suppliers and workforce training to the regulatory burden on small businesses. Thank you.

Michael C. Mittler

President, Mittler Bros. Machine & Tool

Mike Mittler is the co-founder and president of Mittler Bros. Machine & Tool, one of the premier organizations in the industry, located outside of St. Louis in Wright City, Mo. He is a graduate of Webster Groves High School, and after attending one and a half years at St. Louis Community College, started his working career at Fran's Chassis Engineering in St. Louis doing race car fabrication.

In 1975, he began work for Astro Engineering, a small job machine shop progressing from trainee to shop manager. Using this experience, Mike, with his brother, Paul, co-founded Mittler Bros. Machine & Tool in 1980. The company employs 60 skilled technicians, owns numerous CNC machines, and offers precision machining, including complete in-house design with CAD/CAM technology. In addition to designing and building special equipment, Mittler Bros. manufactures a proprietary line of products targeted toward the auto racing industry. In January 2004, Mike completed the acquisition of Tanner Racing Products, and relocated the company from Auburn, Washington to Missouri. Mittler Bros. serves customers locally, nationally, and internationally.

An integral part of Mike's life has been auto racing. In the '70s and '80s, his love of the sport lead him to work on the teams propelling both Rusty Wallace and Kenny Wallace to become winners at the American Speed Association (ASA) and NASCAR levels. Racing has been a major catalyst in his career as well, prompting ideas for a number of specialty tools and providing the foundation for his current product line at Mittler Bros. Today, Mike continues his involvement through ownership of MB Motorsports, a race team competing in the NASCAR Craftsman Truck Series. Mike has been instrumental in launching the careers of some of NASCAR's brightest new drivers, such as Jamie McMurray and Carl Edwards.

Mittler credits his racing experience for providing the ability to focus on long-term goals, establish and follow priorities, and endure tough times. According to Mike, "The emotional highs and lows of the racing industry are an excellent training ground for the peaks and valleys that are inevitable from time to time in business."

Mike joined the National Machining & Tooling Association (NTMA) in 1986, is a past president of the St. Louis Chapter and a past chairman of the National Business Management Committee. He has served on the Insurance Committee and served as Team Leader for the Education Team. He was nominated to the Executive Team in October 2002 and served as National Chairman in 2006.

Mike is often featured in trade magazines discussing machining concepts and techniques as they relate to the racing industry. Most recently, quoted in an issue of Performance Racing Industry, he commented on improvements in tool design and manufacturing processes.

Mike is a strong supporter of technical training, and each year, awards the Stephen J. Mittler Memorial Scholarship to a local student pursuing secondary education in a technical field. He has actively recruited new students for Ranken Technical College, a nationally-renowned technical college located in St. Louis, through television advertisements. Mittler also supports his local community, being a member and past president of the Foristell, Missouri Chamber of Commerce and a member of the Wright City Chamber of Commerce.

When asked about his personal philosophies, Mike is quick to mention his belief that, "anything is possible with a positive attitude." He attributes his success to a combination of hard work, determination, a positive approach to problem solving, and being surrounded by a Winning Team.

Mike lives in St. Peters, Missouri, with his wife, Beverly, and his pets: Kory and Kasey their dogs, and their cats: Jessie, Jamie and Jasper.

Contact Information:

Mittler Bros. Machine & Tool
10 Cooperative Way P.O. Box 110
Wright City, MO 63390 Foristell, MO 63348
Office: (636) 745-7757
Fax: (636) 745-2874
E-mail: mcmittler@mittlerbros.com

Hi,

My name is Beverley A. McCauley and I am President of Hunt Country Masonry Inc. as well as the Legislative Committee co-chair for the Mason Contractors Association of America (MCAA). On behalf of Hunt Country Masonry I come before you today to share my 22 years of experience in small business. During my tenure with my last firm it was my responsibility to maintain employee benefits, encourage team building and open dialogue, and feed an overall attitude of involvement and competition. The purpose of each of those strategies was to discourage unionism and or the need for feeling trapped into feeling like there was no other choice. In life it's the choices we make not the choices we feel forced to make or deceived into. However, with the changes that are being proposed and in-acted by the NLRB and the DOL I feel compelled to share from the small business standpoint what the caveats of these changes are.

These changes are being instituted at a point in history when unemployment is rampant...case in point...1935 the Wagner Act was passed and in 1937 the Supreme Court upheld the decision ...the result a "depression within a depression" when efficiency and profitability are removed from the equation and when everyone is equally rewarded regardless of productivity and skill then productivity and skill diminish and the result is decreased profitability and increased unemployment.... this Act influenced the culture until the 1950's when the Right to Work prohibiting forced union membership arose. With the Right to Work a not so surprising result.... profitability increased and so did jobs. For you see when you make everyone stand on their own merit and make everyone responsible for their own destiny an amazing thing happened people began to take ownership for their destiny. The hardest workers were paid based on their productivity and the less productive workers earned less based on their performance. So the end result...you pay less if someone works less therefore reducing unemployment and increasing profitability and increasing the jobs available. Here we are Congress knew where this was headed and refused to pass the "Employee Free Choice Act" Congress realized the sweeping changes had the potential to transform what could be a recovery into the next Great Depression and exponential unemployment.... at this point it is not a far stretch to picture us headed in that direction. The "Employee Free Choice Act" is being touted as the best scenario for all involved: it eliminates secret ballots, we get that same right when we vote for anyone of you in this room who runs for office, we have the right to vote in private. However, the unions in a secret ballot felt they cannot intimidate anyone so they might lose out. So have we resorted to a Communist regime for what we fight for everyday in the name of democracy the right to vote in private, yet in our own country we are going to deny someone that right.... really! After the Communist vote where we have the right to intimidate people that don't have the same beliefs those same people have the ability to be our only bargaining agents...talk about duress! At the same time the employer prior to all this does not have the right to express the downsides or even set the record straight with out fear of retribution.

I am sorry I don't feel like jobs should be sacrificed for political paybacks to ensure future political support...that brings me to the next point- unions don't let you know that you have the RIGHT to say no to union dues associated with political addenda. Nor do they tell you don't have to join a union in a right to work state or pay union dues in such

a state. It seems like the reason behind the Employee Free Choice Act is to elicit a fear of the unknown in already uncertain times. The NLRB would have you believe they are the big brother looking out for his younger sibling when in fact it is big government attempting to collect dues to pay off and support more like minded people to fund the agenda that employees need someone to take their money and redirected in the right ways and call it union dues. They further more want to make everyone the same...paid the same no matter what the work ethic or persons drive. That makes me really want to work harder or does it make everyone want to work to the level of the employee that's just skating by and earns the same as the person working toward a profitable goal. They want to exacerbate the problem by allowing micro-unions and gerrymandering within the same company. So one group in the company can be unionized into one group another into another group and so one. You could have machinist working side by side each in a separate union. Further more the NLRB and DOL have a proposal that will require all employers to release to the unions any and all contact information they have on each employee, post on sites detailed notices out ling how to organize, giving contacts for the NLRP but no where is it posted whom to call if your harassed, lied to, or co horsed So we have a organization that wants the rights to all your information but you have no recourse to stop them from calling and no way to vote privately.... essentially making it impossible to stand up to for most people. I am not most people I am raising 5 children, I am co-chair of a national organization on their legislative board and I am president of a small business ...I am not afraid but what frightens me is that they have the right to destroy our great nation. They don't want to stop or eliminate the intimidation they just want to be the only ones in the room with that ability. This will cause double didget unemployment...how does that affect us all? Well less people working means more people drawing from the system, which means less resources or higher taxes but the end result is less money for the federal government because no taxes are being paid. Which exacerbates the deficit which causes us to have further arguments over budget cuts, less taxes paid, more programs are cut, more people lose their homes.... as you can see we are faced with a slippery slope that only gets slicker the more power they illicit. Congress was right when they refused to pass the "Employee Fair Choice Act" however, the NLRB and DOL are essentially leaving Congress and the American People out of the loop and taking employees ability to make informed decisions out of their hands as well. So essentially everything you have worked so diligently for all the sacrifices that you have been making are for not. Without every able-bodied American working that is able to work we cannot recover from our debt. In order for everyone to have a job we must have a community that believes that not everyone should earn the same amount for the same job. Some people strive to succeed; some strive to get by...should they all be rewarded equally. No! That is why we are a free society...unions had their place decades ago to make for better working environments for employees...however over the past decades employers have realized that the better you treat your employees the better they perform and the better the productivity and profitability! So if we want to get this country rolling and out of this trillion and trillion dollar deficit everyone needs to work and be paid for the work they do at the level they perform at.

TESTIMONY
BEFORE THE HOUSE COMMITTEE ON SMALL BUSINESS

OCTOBER 5, 2011

HEARING ON

Adding to Uncertainty: The Impact of DOL/NLRB Decisions and Proposed Rules on Small Businesses

Allen William West, Jr.
West Sheet Metal Company
HVAC – Sheet Metal Work
Sterling, VA

Chairman Graves, Ranking Member Velazquez, and members of the Committee, thank you for your invitation to appear before you today. My name is Allen West, known as Willie to my family, friends and business associates. I am the owner and founder of West Sheet Metal Company, located in Sterling, Virginia. My company currently employs about 45 sheet metal workers and one office staff combined, but I have employed as many as seventy-some sheet metal workers. My company installs and fabricates heating, ventilation, and air conditioning systems and sheet metal duct work for high-profile clients like Lockheed-Martin and the Howard Hughes Medical Institute. I started the company in 1983, but I learned my trade in a certified apprenticeship program operated by Sheet Metal Workers International Association, Local Union 102, (now Local Union 100), which represents sheet metal workers in Virginia, Maryland and the District of Columbia.

I started in the apprenticeship program of Sheet Metal Workers International Union Local Union 102, in 1968. Then I left to serve in the United States Army. Following my discharge, as a Specialist 4th Class and after being awarded the Army Commendation Metal, I resumed my apprenticeship training. After I'd completed this four year program, I became a journeyman and

worked for Wilco Sheet Metal in Rockville, Maryland from 1973 until 1983. I left Wilco to start my own business in 1983.

From the beginning, I wanted to provide good-paying, solid jobs for sheet metal workers and I wanted to employ well-trained and skilled sheet metal workers. So I entered into a signed agreement with the Sheet Metal Workers International Association, Local Union 100, formerly Local Union 102. I view my workers as an integral part of my business and an important asset in its success. I wanted to partner with them through their union and the collective bargaining agreement helps me to do that. The theme of the contractor and union partnership is "Together We Do It Better." I know this to be true.

As a signatory to the agreement, I use the local union's hiring hall. When I need workers, I call the hiring hall and describe my needs. They refer skilled, trained, workers. I know that these workers have undergone a rigorous and thorough training program through the apprenticeship school that the Local Union operates and I have confidence in their abilities. In addition to the Local Union Joint Apprenticeship committee, there is a national organization, the International Training Institute, that sets all the training standards for sheet metal workers and also establishes curricula and programs for apprentices and journeymen to upgrade their skills. This upgrading training is free and is offered in the evenings and on Saturdays. These training programs ensure that training is consistent all across the country so that wherever I have a project, I have access to skilled and trained workers.

I also want to make sure the jobs I am creating and providing are good jobs that can support a family and help workers be successful. Through the union contract, my workers participate in a health care plan and a pension plan. In making contributions to these plans and by combining with other union contractors, we are able to achieve a high level of benefits with

cost savings. In addition, I do not have to hire people to administer the plans or deal with such issues as health insurance plans and retirement programs.

The international union also sponsors the National Energy Management Institute that sets standards for energy efficiency and air quality and looks at new markets and the training required for sheet metal workers to develop the skills needed for these new markets. For example, I know that welding has remained in demand during this time of high unemployment and sheet metal workers are able to access training to be ready for these jobs, such as CADCAM computer skills.

The Sheet Metal Workers Occupational Health Institute sets standards for OSHA compliance and provides worker training. This, in turn, lowers my insurance costs and my workers learn to work safer and enjoy better working conditions.

These institutes and training facilities and health and retirement plans are all administered by joint committees of union and company representatives. They help both contractors and workers. All the funds used to provide this training, and these benefits and other assistance come from contributions by the parties to the contract and no government money is used at all. All of these programs are the result of private agreements.

What I have described in my testimony is all accomplished within the framework of the National Labor Relations Act. I do not have a lot of personal experience with the National Labor Relations Board, but I know that it governs the relationships between my workers and my company and their union and allows us to accomplish these important goals so that I can concentrate on my business and create and provide good jobs in my community.

I have reviewed some of the recent decisions and proposed rules by the National Labor Relations Board and Department of Labor and I do not see how they disadvantage small businesses. They do not affect the framework within which I operate my business and will not

affect my business or my relationship with my workers or the companies I do business with. These seemingly minor changes certainly do not create any uncertainty for me and they will not affect my ability to create jobs. In fact, if the NLRB streamlines its election process, it seems to me that this will reduce turmoil in the workplace and be helpful to business, especially small businesses. What I need for my company to survive is more work and that means more consumers and more buyers. These recent changes by the NLRB and the Department of Labor do not affect that in any detrimental way.

In closing, I wish to emphasize that I view my workers and their union as a significant driver of my success as a small business owner. We are all working together to be successful. Thank you for this opportunity to talk about my business and my relationship with my workers and their union.

House Small Business Committee

Adding to the Uncertainty: The Impact of DOL/NLRB Decisions and Proposed Rules on Small Business

Statement for Hearing Record: Rep. Gary C. Peters

October 5, 2011

In recent months, the Majority in the House has called four hearings examining various NRLB actions. Additionally, the Majority has put forward countless amendments to legislation that would water down Davis-Bacon prevailing wage determinations or ban project labor agreements. Just last month the Majority forced through H.R. 2587, the Protecting Jobs From Government Interference Act, which amounts to a Job Outsourcers' Bill of Rights that would not create jobs or protect the middle class, but would just protect corporations who want to outsource jobs.

These ongoing efforts by the Majority, continued here today, are part of a nationwide campaign to weaken and even disband unions. These efforts are not just an attack on collective bargaining, they are an attack on the middle class and the right to earn a living wage. For decades, the American labor movement has fought for fair wages, good benefits, safe working conditions, and the very creation of the American middle class – and the fight continues here today.

Poverty is at its highest level since 1993 and middle class household incomes are at their lowest since 1997. This is simply unacceptable. We need good, middle class jobs now more than ever, and instead of pursuing legislation to create these jobs, the Majority is holding another

hearing to attack commonsense proposals designed to ensure a fair process for workers who want to vote on whether to form a union.

On average, union workers are more likely to have health insurance, pensions, and disability benefits than their non-union counterparts. Jobs with these benefits give families stability, and lift workers into the middle class.

The recently proposed National Labor Relations Board (NLRB) rule is a step in the right direction towards giving more workers the ability to earn a livable wage with good benefits. These changes will clean up and modernize a system currently paralyzed by delays, bureaucracy, and wasteful litigation, and will provide increased stability for workers and employers alike, as well as a level playing field. The proposed rule will make commonsense changes like letting parties file election petitions and documents electronically and standardize timeframes for parties to resolve or litigate issues before and after elections. Currently, there is no timeframe for when a pre or post-hearing election will be scheduled and there is significant variance by region of the country, increasing uncertainty for workers and employers alike.

These and other simple changes will reduce opportunities for unnecessary delays and wasteful litigation and eliminate barriers so workers who want to vote can do so. We have seen union members come to the bargaining table and collectively agree to compensation rollbacks that have put our Detroit automakers back in the black, and have them producing some of the most exciting, desirable vehicles our country has ever seen. Unions are not the problem, and cooperative, collectively-bargained labor-management relations facilitated by efficient, modernized rules are part of the solution towards creating quality jobs for America's middle class.

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

RANDEL K. JOHNSON
SENIOR VICE PRESIDENT
LABOR, IMMIGRATION, &
EMPLOYEE BENEFITS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
202/463-5448 · 202/463-5901 FAX

October 13, 2011

The Honorable Sam Graves
Chairman, House Committee on Small Business
United States House of Representatives
Washington, DC 20515

The Honorable Nydia M. Velazquez
Ranking Member, House Committee on Small Business
United States House of Representatives
Washington, DC 20515

Dear Chairman Graves and Ranking Member Velazquez:

I am writing on behalf of the U.S. Chamber of Commerce, the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region, with respect to the aggressive agenda being pursued by the National Labor Relations Board (NLRB or Board) and the Department of Labor (DOL) and ask that you include the attached comments in the record for the hearing that the Committee held on October 5, 2011, entitled *Adding to Uncertainty: The Impact of DOL/NLRB Decisions and Proposed Rules on Small Business.*

This past spring, the Board's acting General Counsel sent shock waves through the employer community with his complaint seeking to force The Boeing Company to relocate production of 787 Dreamliners from South Carolina to Washington State. Unfortunately, the Boeing situation is simply the most famous example of both the Board's and DOL's administrative and regulatory overreach. Indeed, over the last year and a half, the Board and the DOL have engaged in numerous activities which have incrementally made organizing easier for unions, made it easier for unions to attack employers, infringed on employer free speech and made it more difficult for employers to manage their businesses. The collective impact of these decisions is to assist organized labor at the expense of employees and employers.

While such unbalanced decisions would be inappropriate at any time, they are particularly troublesome in this time of economic uncertainty. There can be no question that among our top national priorities is the creation of an environment that will lead to economic growth and job creation. Yet, the collective controversial actions of the NLRB and DOL suggest that the agencies are not mindful of these priorities. Accordingly, it is up to Congress, pursuant to its oversight authority, to examine the

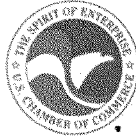
rules, cases and proposals coming out of both the NLRB and DOL in order to ensure a level playing field with regard to labor-management issues.

Thank you for your consideration of this request. The Chamber urges you to consider these important concerns and looks forward to working with you on this important issue. Please do not hesitate to contact me if the Chamber may be of further assistance.

The Chamber thanks you for your leadership on this issue.

Sincerely,

Randel K. Johnson



LABOR, IMMIGRATION &
EMPLOYEE BENEFITS DIVISION
U.S. CHAMBER OF COMMERCE

Un-Leveling the Playing Field

The National Labor Relations Board and the Department of Labor in the Obama Administration

October 13, 2011

When organized labor failed to enact the Employee Free Choice Act (EFCA), many speculated that it was only a matter of time before the Administration used the regulatory and adjudicative process to achieve the same goals. That process is now well underway, and it is time for Congress to rein-in the NLRB and DOL in order to ensure evenhanded administration of the law.

Overview

As explained below, both the Department of Labor's (DOL) and the National Labor Relations Board's (NLRB or Board) decisions, proposed rules and policy initiatives are often technical and unknown outside a small community of labor lawyers, yet they have a real impact on the ability of employers to run their businesses. Taken together, these many decisions have made it harder for businesses to justify investing in the United States. For these reasons, the time has come for Congress to exercise its oversight authority and take a hard look at these many decisions and proposed rules and consider the use of appropriate tools, including legislative tools, to restore balance to the enforcement of our nation's labor laws.

Highest Profile Actions

Ambush-Elections. On June 22, 2011, the Board proposed significant revisions to its rules for conducting representation elections.[1] Instead of focusing on identifying why a small minority of elections take too long, the Board is revising the process in all

[1] 76 Fed. Reg. 36,812 (Jun. 22, 2011).

cases with the expected impact of decreasing the average election time from the current average of 38 days down to as few as 10 to 15 days. Unions support "ambush" elections because they significantly limit the ability of employers to exercise their free speech rights to communicate with employees, which is often a necessity if misleading union rhetoric is to be countered at all. The proposal also places unrealistic requirements on employers to hire counsel and make important strategic decisions in as little as 5 business days or forever waive the right to challenge the union's positions. As summarized by dissenting Member Brian Hayes, "Make no mistake, the principal purpose for this radical manipulation of our election process is to minimize, or rather, to effectively eviscerate an employer's legitimate opportunity to express its views about collective bargaining."

Limiting Employers' Ability to Retain Counsel. On June 21, 2011, the DOL issued its anticipated proposed rule regarding changes to employer reporting obligations under the Labor-Management Reporting and Disclosure Act (LMRDA). Currently, employers must disclose arrangements with consultants where the object thereof is to persuade employees regarding their rights whether to choose to bargain collectively. However, employers do not have to disclose when the arrangement is limited to simply giving "advice." DOL's proposed rule narrows the scope of this "advice" exemption so that virtually all interaction with labor lawyers and consultants during a union campaign will be subject to the disclosure requirements. By limiting access to counsel and making disclosure more complicated and detailed, employers will be less likely to exercise their federally protected free speech rights. These proposed changes are clearly designed to work hand-in-glove with the Board's "ambush" election proposal by limiting employers' ability to communicate with their employees regarding the pros and cons of unionization.

Additionally, the economic analysis in the Department's proposed rule is deeply flawed. For example, the Department assumed that the only employers that would be burdened by the rule are those undergoing an NLRB-supervised secret ballot election. The Department failed to consider the fact that *every* business will need to be informed about the content of the new rule in order to assess whether or not it imposes requirements that would require on-going compliance review and monitoring. Similarly, businesses will incur significant costs simply because they will have to devote additional time and resources to the task of determining each year whether or not they have any obligation to disclose. Finally, the Department ignores the fact that any employer who retains consultants to assist in effectuating pro-employee and positive workplace policies will trigger the requirement that the employer report and disclose such service agreements. In comments submitted to the Department, the Chamber estimated that the cost of initial familiarization and annual monitoring costs could be as much as almost $2.2 billion.

Micro-Unions. Determining the potential bargaining unit is one of the most important decisions leading up to an election, as organized labor often seeks to gerrymander the unit to ensure victory. The Board, in *Specialty Healthcare and Rehabilitation Center of Mobile*[2] announced a new standard for determining composition of bargaining units

[2] *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (Aug. 26, 2011).

which will assist organized labor in achieving this goal. In *Specialty Healthcare*, the Board created a presumption in favor of a union's proposed bargaining unit, making it easier to establish very small micro-units that unions can use to force their way in to an employer's business. The case directly involves nursing homes, but applies to almost every industry within the Board's jurisdiction. It should be noted that a petition has long been pending at the Board for it to engage in rulemaking to require employers to bargain with "mini-unions" that only represent a minority of employees.[3] This ruling addresses this issue while foregoing the rulemaking process.

Biased Notice of Employee Rights. On December 22, 2010, the NLRB published a Notice of Proposed Rulemaking that, among other things, would require employers to post notices informing their employees of certain rights, including their right to form a union pursuant to the NLRA. The NLRB received more than 7,000 comments on the proposed rule, most of them in opposition to the promulgation of a final rule. Notwithstanding this opposition, on August 30, 2011, the NLRB promulgated the Notification Rule.[4]

The required notice is biased because it provides a detailed explanation of rights to join a union or collectively bargain, but does not sufficiently inform employees of other equally important rights under the NLRA. For example, the notice does not include information on employees' rights to decertify unwanted bargaining representatives, nor does it include information about employees' rights to refuse to pay union dues or fees used for political purposes consistent with the U.S. Supreme Court's holding in *Communication Workers v. Beck*.[5] More importantly, the Chamber's position is that the Board simply has no statutory authority to require such a posting or to create a new unfair labor practice for failure to post the notice. The Chamber and others have filed several lawsuits challenging the Board's posting rule for these and other reasons.

Card Check. In *Lamons Gasket Company*,[6] the Board overturned precedent which gave employees a right to petition for a secret ballot election where their employer had agreed to recognize a union based on card check. With the decision in *Lamons Gasket*, employees will simply have no way to demand a secret ballot election. The case will also create more incentives for unions to wage corporate campaigns to pressure companies to agree to card check.

Union Access. In *New York New York Hotel & Casino*,[7] the Board ruled that an employer had to grant access to employees of its contractors for the purposes of distributing leaflets. While this case involved employees of restaurants operating inside a large hotel, its logic could be applied to any employer that contracts with firms for security, janitorial, or other services and could force employers to allow contractors' employees onto company property to distribute literature to the

[3] *See* Petition by the United Steel Workers and other unions, filed August 14, 2007.
[4] *See* 76 Fed. Reg. 54,006, codified at 29 C.F.R. Part 104.
[5] 487 U.S. 735 (1988).
[6] 357 NLRB No. 72 (Aug. 26, 2011).
[7] 356 NLRB No. 119 (Mar. 25, 2011).

employer's customers and clients. The Board has also announced, in *Roundy 's Inc.*,[8] that it is considering increasing the ability of non-employee union agents to access employer property, even if they are calling for boycotts or other harm to the employer.

Boeing. While not a Board decision, the NLRB's acting General Counsel has filed a controversial complaint against The Boeing Company alleging that the company unlawfully discriminated by building its new manufacturing facility in South Carolina in part based on a history of strike activity in Washington state facilities. The General Counsel is seeking to force Boeing to abandon plans to build 787 Dreamliners in South Carolina, even though it has spent more than $1 billion in construction costs and hired thousands of new employees.

Additional Controversial Board Actions

The Board has issued dozens of important, but lower-profile, decisions. These cases are largely technical and incremental, and they are largely unknown. But taken together they represent an important pro-union shift in labor policy and a chipping away of employer rights. As importantly, they contribute to an environment that hampers job creation and economic growth. This section discusses Board decisions in the following categories: (1) easing union organizing, (2) facilitating anti-employer attacks, (3) restricting employer free speech, (4) restricting management's ability to enforce policies, (5) expanding the NLRB's jurisdiction, and (6) increased use of extraordinary remedies.

Easing Union Organizing

By far the greatest focus of the Board's actions to date has been on easing union organizing, sometimes in subtle ways. In addition to high profile initiatives discussed above, such as the Board's notice posting regulation, these actions include numerous adjudications and other policy initiatives.

For example, the Board's request for information relating to electronic and remote voting technology is expected to lead to a proposal to make it easier to organize.[9] Remote voting significantly raises concern of union coercion and intimidation. This is compounded by the fact that remote voting would decrease turnout in an election, making it more likely that the union will prevail.

With respect to adjudicated cases, among the most significant is a case that largely overturns more than 50 years of precedent and makes it significantly easier for unions to enter into pre- recognition agreements with employers.[10] The practical impact of this decision is that unions will now be more likely to pressure companies to reach an agreement on broad terms before soliciting authorization cards from employees,

[8] 356 NLRB No. 27 (Nov. 12, 2010).

[9] RFI of June 9, 2010

[10] *Dana Corp.*, 356 NLRB No. 40 (Dec. 6, 2010) (While properly styled *Dana Corp.*, this case is typically referred to as *Dana / UAW* to distinguish it from *Dana /Metaldyne*).

making it easier for the union to persuade employees, perhaps by showing there will be a no-strike clause.

In another major victory for organized labor, an association of electrical contractors that ran its own referral service was found in violation of the Act because the Board believed the referral service interfered with the rights of union salts to be hired, even though the service accepted union and non-union workers alike.[11] The decision calls into question the legality of other such referral services or hiring halls, potentially giving union hiring halls a monopoly, and will make it easier for unions to engage in salting campaigns.

In a number of other cases, the Board has reviewed union election losses and applied hyper-strict interpretation of the law to the facts in order to re-run the elections. For example, in one case, the Board found unlawful surveillance when the employer's security guards were called to investigate nonemployee union organizers on or near its property even though the guards only remained on the scene as long as police were there investigating the activity.[12]

Meanwhile, in another case, the Board ordered a new election after finding that the management election observer was "too closely aligned with management" even though the Board permits union observers who are closely aligned with the union.[13] In yet another case, the Board found unlawful surveillance and ordered a new election due to supervisors standing 150 feet away from the building where voting occurred, even though there was no representation that the supervisors stood in a no-electioneering zone, that they had direct views of the polling area, or that they could ascertain whether individuals entering the facility did so to vote or for another business- related purpose.[14]

The cases applying hyper-strict interpretations of the law in cases of union election losses stand in contrast to a very different standard applied in the case of union election wins. For example, in *Mastec Direct TV* the Board upheld an election that the union won by two votes notwithstanding the serious threats of physical violence made to employees by pro-union co-workers.[15]

Finally, in *UGL-UNICCO Service Company*,[16] the Board has re-imposed a version of the successor bar doctrine. This doctrine will prevent challenge to a union's majority status in a successorship situation; current rules give the union a rebuttable presumption of majority status, which is subject to challenge. In other words, under this new ruling, unions in a successorship situation will not need to worry about challenges to their status as exclusive representative of the employees.

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[11] *KenMor Electric Company, Inc*., 355 NLRB No. 173 (Aug. 27, 2010).
[12] *DHL Express, Inc*., 355 NLRB No. 144 (Aug. 27, 2010).
[13] *First Student, Inc*., 355 NLRB No. 78 (Aug. 9, 2010).
[14] *Transcare New York*, 355 NLRB No. 56 (Jul. 29, 2010).
[15] 356 NLRB No. 110 (Mar. 11, 2011).
[16] 357 NLRB No. 76 (Aug. 26, 2011).

Facilitating Anti-Employer Attacks

The Board has issued several decisions that make it easier for labor organizations and others to wage corporate campaigns, engage in boycott and other secondary activity, and attack employers. Perhaps most significantly, the Board has ruled that large stationary banners are less like picketing, which is more highly regulated, and more like handbilling, which is protected.[17] The use of such banners has been on the increase, especially at the site of neutral employers where a union objects to the neutral's use of a non-union contractor. The Board has followed this decision with related decisions, including one finding that the use of a large inflatable rat is more like handbilling than picketing. In reaching this decision, which also involved the union's staging of a mock funeral outside of a hospital, the Board concluded the union's actions were not confrontational, as are pickets.[18]

As noted above, in *New York New York Hotel & Casino* the Board ruled that an employer had to grant access to employees of its contractors for the purposes of distributing leaflets.[19] Similarly, the Board has solicited briefs on the issue of nonemployee union agents soliciting in areas open to the public, such as parking lots.[20] The Board has maintained that prohibiting union solicitation and distribution of literature is unlawful anti-union discrimination if the employer permits charitable groups like the Girl Scouts or Salvation Army to solicit.[21] However, some Circuit Courts have rejected this view holding that discrimination must be along lines protected by the NLRA and between like groups. The Board is likely looking to reframe and bolster its position, which would make it easier for unions to trespass onto employer property not only for organizing purposes, but also for boycott or similar purposes that seek to harm the employer's business.

In another case, the Board refused to review a union election victory where politicians had written letters critical of the employer's position on the union campaign, supporting the union, and implying that, as members of committees with jurisdiction over the employer's business, that they could be influential in matters vital to the employer and its employees.[22] In the wake of this decision, unions can be expected to be more brazen in their requests of elected officials to intervene on the union's behalf and attack employers.

Finally, the Board's decision in *Lamons Gasket*, discussed above, will likely result in reverting to a situation where employees are unable to challenge "voluntary" recognition of the union by the employer based on card check.[23] Consequently, unions will be more likely to engage in corporate campaigns for card check knowing that such a decision is final and not subject to challenge by employees.

[17] *United Brotherhood of Carpenters and Joiners of America, Local 1506 (Eliason & Knuth of Arizona, Inc.)*, 355 NLRB No. 159 (Aug. 27, 2010).
[18] *Sheet Metal Workers Local #15 (Brandon Regional Hospital)*, 356 NLRB No. 162 (May 26, 2011).
[19] 356 NLRB No. 119 (Mar. 25, 2011).
[20] *Roundy's Inc.*, 356 NLRB No. 27 (Nov. 12, 2010).
[21] *See Sandusky Mall Co.*, 329 NLRB 618 (1999).
[22] *Affiliated Computer Services, Inc.*, 355 NLRB No. 163 (Aug. 27, 2010).
[23] 357 NLRB No. 72 (Aug. 26, 2011).

Restricting Employer Free Speech

Perhaps the single most despised provision of the NLRA, from organized labor's perspective, is section 8(c) that explicitly recognizes employer free speech rights. Among organized labor and their allies, many would prefer it if employers were silent about organizing so that the only voice heard during a union campaign would be that of the unions. The Board's proposed rules to implement ambush elections, discussed above, are the principle example of the Board's drive to limit the ability of employers to talk to their employers about unionization. Likewise, the DOL's proposed reinterpretation of employer and consulting reporting obligations is designed to limit employers' abilities to communicate with their employees.

The Boeing Complaint is also a stark example of the attempt to squelch employer free speech. At the heart of the acting General Counsel's case alleging that the company discriminated against union workers are comments made by company executives regarding the cost of past strikes. What signals does it send to prohibit company executives from openly and honestly discussing the costs of collective bargaining and strikes, which are often substantial and legitimate business considerations?

In one additional case, a New York state law (that was presumed to be unlawful) severely restricted the employer's ability to communicate with its employees during a union campaign that the union won.[24] The Board upheld the union election victory, even though the likely preempted state law significantly restricted the employer's speech and practices that it engaged in during the campaign. This result will only encourage state and local governments to enact free speech restrictions, even though they conflict with federal law.

The Board's request, in early 2010, for information regarding electronic and remote voting technology also raises free speech issues.[25] While no policy proposal has been made, there is significant concern that greater use of mail ballots or other remote voting would impair employer free speech. Currently, employers have more restrictions on their free speech rights immediately before an election and during the time that the polls are open. If that time period is expanded, such as to include a longer window of time that employees have to vote, it will further restrict employers' ability to get their message out to employees.

Restricting Management's Ability to Enforce Policies

A number of recent actions by the NLRB call into question the ability of employers to implement employer policies. In one decision, the Board found an employer in violation when it posted a reminder about its anti-harassment policy simply because the timing coincided with the union campaign.[26] Adding insult to injury, the Board made it clear that it would find such a posting in violation unless it also included

[24] *Independent Residences, Inc.*, 355 NLRB No. 153 (Aug. 27, 2010).
[25] RFI of June 9, 2010.
[26] *Boulder City Hospital, Inc.*, 355 NLRB No. 203 (Sept. 30, 2010).

language making clear that persistent union solicitation is lawful, even if it annoys or disturbs employees.

In another case, the Board made it more difficult for employers to enforce dress and appearance codes. While it is the general rule that employers must permit employees to wear union buttons or insignia, there are exceptions for special circumstances. However, the Board has so narrowed this definition that it will be much more difficult for employers to utilize it.[27]

In one shocking case, *AT&T of Connecticut*,[28] employees, who visited customers at the homes or businesses, began to wear t-shirts mimicking prison garb, stating "Inmate" and a number on the front, while on the back stating "Prisoner of AT $ T". The Board ruled that the employer could not stop the employees from wearing the t-shirts to customer homes, even though the community in which they operated had recently experienced a horrific home invasion and murder by convicted felons on parole.

Even unenforced employer policies can be enough to justify re-running an election that a union lost. In *Jurys Boston Hotel*,[29] the Board overturned an election based on the employer having three policies in its employee handbook that were alleged to be too broad. Board precedent had held that unenforced rules are not enough to order a re-run election,[30] but the Board went to great lengths to distinguish this case.

The Board has also announced that it is reconsidering the analysis it uses in discrimination cases,[31] explicitly referencing precedent permitting employer policies that permit some personal use of employer-provided e-mail, but limit other personal use, such as union and other mass solicitation.[32] This means that the Board may reverse precedent and find that if an employer seeks to limit personal use of email, it must actually limit all personal use, a difficult, if not, impossible task.

Finally, the acting General Counsel has been significantly more active in reviewing complaints regarding employee use of social networking, such as posts on Facebook and Twitter. One emerging issue is the extent to which the Board may permit employees to disparage a company, managers, coworkers, of products and services without being subject to discipline. For example, in one case, the acting General Counsel authorized a complaint based on an employee terminated, in part, for calling a supervisor derogatory names on Facebook.[33]

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[27] *Stabilus, Inc.*, 335 NLRB No. 161 (Aug. 27, 2010).
[28] 356 NLRB No. 118 (Mar. 24, 2011).
[29] 356 NLRB No. 114 (Mar. 28, 2011).
[30] *Delta Brands, Inc.*, 344 NLRB 252 (2005).
[31] *Roundy's, Inc.*, 356 NLRB No. 27 (Nov. 12, 2007).
[32] *See Register Guard*, 351 NLRB 1110 (2007).
[33] *American Medical Response of Connecticut*, Case No. 34-CA-12576 (Complaint issued Oct. 27, 2010).

Expanding the NLRB's Jurisdiction
The NLRA does not cover all employers in the United States. Nor are all who perform work or labor for an employer covered by its terms. For example, public sector employers and employers covered by the Railway Labor Act are not within its jurisdiction. Likewise, supervisors and those engaged in agricultural labor are exempt from the Act. The Board has also historically limited its jurisdiction, for example very small businesses with revenues below a certain threshold, horse and dog racing industries, and religious institutions.

The Board has recently issued three decisions that signal the Board will be looking for opportunity to increase its jurisdiction and those covered by the Act. In one case,[34] the Board asserted jurisdiction over a religious institution's child care center. In another, the Board mandated that a hearing be conducted regarding certain graduate teaching assistants seeking to organize,[35] setting the stage to reverse precedent.[36] The Board is also now considering whether to assert jurisdictions over public charter schools.[37]

Increased Use of Extraordinary Remedies
The NLRA is not a punitive statute and the NLRB may not impose penalties upon those found to violate its terms. However, the Board has broad authority to impose equitable relief, including injunctions, backpay, and other remedies. Throughout its history the Board has implemented a wide variety of remedial practices, some that have become common, such as notice posting, award of backpay, and reinstatement. Other remedies have been reserved for extraordinary cases or serious breaches. The Board also has the authority to seek preliminary injunctive relief when necessary.

Actions by the Board and its General Counsel indicate that it is prepared to pursue what were once considered extraordinary remedies in more routine cases. The complaint against The Boeing Company is a chief example. Another example is a memo by the acting General Counsel prioritizing preliminary reinstatement for employees discharged during organizing campaigns.[38] This means that the General Counsel will be more likely to go to court seeking preliminary injunctions in such cases. In another memo, the General Counsel directs regional offices to consider using uncommon remedies with greater frequency, such as giving unions names and addresses of employees even without an election scheduled, requiring a "notice reading" where a company executive must read a notice about company violations to

[34] *Catholic Social Services, Diocese of Beleville*, 355 NLRB No. 167 (Aug. 27, 2010).
[35] *New York University*, 356 NLRB No. 7 (Oct. 25, 2010).
[36] *See Brown University*, 342 NLRB 483 (2004).
[37] *Chicago Mathematics and Science Academy Charter School, Inc*. (Case 13-RM-1768). It is important to note that the issue of Board jurisdiction can cut both ways depending on state law that may apply in the absence of Board jurisdiction. For example, in the charter school case referenced above, it is the employer asserting NLRB jurisdiction as the Illinois law that would otherwise control demands union-recognition based on card check. However, were this charter school based in South Carolina, for example, it would almost certainly prefer state jurisdiction.
[38] General Counsel Memorandum 10-07.

assembled employees, or access to company bulletin boards where the employer may have interfered with union access to employees.[39]

The Board has also proposed increasing remedies in its proposed rulemaking that would require employers to post a notice of labor rights. In this proposal, for employers that did not post an adequate notice, a new unfair labor practice would be created and the six month statute of limitations would be suspended for non-complying employers.[40]

The Board and DOL Are Not Acting In Isolation

The National Labor Relations Board and DOL are but two agencies that have adopted aggressive pro-union approaches during this Administration. Early in his presidency, President Obama signed four pro-union executive orders that apply to federal contractors:

Notice of Employee Rights under Labor Laws for Federal Contractors
Executive Order 13,496 requires federal contractors to post a notice of employee rights under labor laws. While much improved over the original proposal, the implementing regulations, which were finalized by the Labor Department on May 20, 2010, do not describe labor rights in a balanced manner, including failure to inform employees about the consequences of unionizing, how to get rid of an unwanted union, or how to exercise rights to refrain from paying union dues or fees used for political purposes.

Project Labor Agreements
Executive Order 13,502 strongly encourages federal agencies to mandate the use of project labor agreements (PLAs) on large scale federal construction projects. Among other things, PLAs drive down the number of bidders on contracts and increase costs. They also provide a strong disincentive for non-union contractors to bid on such projects. The FAR Councils finalized implementing regulations on April 13, 2010.

Non-displacement of Qualified Workers Under the Service Contract Act
Executive Order 13,495 requires contractors under the Service Contract Act to offer the employees of a contractor that they displace the right of first refusal for employment. The proposed implementing regulations would make it extremely difficult that employers could prove an employee was not qualified for the job. Implementing regulations were sent to OMB for review on December 13, 2010.

Non-Reimbursement of Labor Relations Costs
Executive Order 13,497 prohibits federal contractors from seeking reimbursement for certain labor relations costs, for example, communicating with employees during a union organizing campaign. This proposal is yet another example of the attack on employer free speech. Implementing regulations were sent to OMB for review on May 12, 2011.

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[39] General Counsel Memorandum 11-01.
[40] 75 Fed. Reg. 80,410, 80410-20 (Dec. 22, 2010).

National Mediation Board
And finally, the NLRB is not the only "independent" agency to push a pro-union agenda unrelated to economic recovery and job growth. The National Mediation Board (NMB) has weighed in as well. On May 11, 2010, the National Mediation Board (NMB) published a final rule that will make union organizing significantly easier under the Railway Labor Act (which applies to the railroad and airline industries). At the core of this rule is a change to the requirement that a majority of the workers in the craft or class of workers vote for unionization to simply a majority of those who cast votes. The rule change to make union organizing easier in these industries is especially egregious because it is so difficult for employees to oust an unwanted union as there is no decertification process recognized by the NMB.

The fact is that none of these policy decisions should be considered in isolation. The attack on employer free speech, for example, is being waged through the President's Executive Order on labor relations costs, the Labor Department's proposed reinterpretation of employer and consulting reporting obligations, and the NLRB's proposal to significantly shorten election times. Taken together, these initiatives are evidence of a well coordinated campaign.

Conclusion

It is not surprising that with the defeat of the Employee Free Choice Act that organized labor and their allies would seek to tilt the playing field in their favor through the administrative and regulatory process. However, it does not stop there. It should be apparent that these many pro-labor decisions have been made with no consideration on economic impact—either in terms of impact on individual employers struggling to stay in business or even grow, or in terms of the broader incentives these regulations and adjudications are creating. Together, these decisions are acting as a disincentive for employers to invest in the United States and create new economic opportunities here.

It is time for Congress to take a hard look at these many initiatives and carefully consider the many tools available to it—including oversight, legislation, and funding limitations—to restore balance to interpretations of our nation's labor laws so that employers can focus on creating economic growth and job creation.