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DEFENDING THE RIGHT OF WORKERS TO ORGANIZE UNIONS FREE FROM ILLEGAL CORPORATE UNION-BUSTING

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

ON

EXAMINING DEFENDING THE RIGHT OF WORKERS TO ORGANIZE UNIONS FREE FROM ILLEGAL CORPORATE UNION-BUSTING

MARCH 8, 2023

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C O N T E N T S

STATEMENTS

WEDNESDAY, MARCH 8, 2023

DEFENDING THE RIGHT OF WORKERS TO ORGANIZE UNIONS FREE FROM ILLEGAL CORPORATE UNION-BUSTING

Wednesday, March 8, 2023

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The Committee met, pursuant to notice, at 10:02 a.m., in room 430, Dirksen Senate Office Building, Hon. Bernard Sanders, Chairman of the Committee, presiding.

Present: Senators Sanders [presiding], Murray, Casey, Baldwin, Murphy, Kaine, Hassan, Smith, Hickenlooper, Markey, Cassidy, Paul, Murkowski, Braun, Marshall, Mullin, and Budd.

OPENING STATEMENT OF SENATOR SANDERS

The CHAIR. The Senate Committee on Health, Education, Labor, and Pensions will come to order. As I think my colleagues up here on the dais know that the original purpose of this hearing was twofold.

The first part was to issue a subpoena to Howard Schultz, the CEO of Starbucks, to ask him why he thought his company could violate labor law, Federal labor law, with impunity. The NLRB has issued over 80 complaints against Starbucks, which the company has ignored. But I am happy to say that yesterday, the day before this vote, Mr. Schultz and Starbucks decided that he would appear and we will have a discussion with him on the 29th of March.

But the other half of what this meeting was about is what we are going to have right now, and it is an enormously important meeting. I am very, very delighted that we have five wonderful witnesses, and I want to say a special thanks to Liz Shuler, the head of the AFL–CIO, and Mary Kay Henry, and Sean O'Brien of the Teamsters.

These folks are not only here today, they have spent their lives fighting for working people, and we very much appreciate all that you have done to improve lives for millions of Americans. The issue that we are debating today deals with the reality that everybody in America understands that we are living in a very strange and unfair economy.

On one hand, in the richest country in the history of the world, we have over 60 percent of our people living paycheck to paycheck. That means people who worry that if their car breaks down, if

their kid gets sick, if their landlord raises their rent, they are suddenly going to find themselves in a real financial crisis.

In America today, from coast to coast, we have people by the millions working for starvation wages. Right now, the Federal minimum wage is $7.25 an hour. Obviously, many states have gone beyond that. But despite that, you have got millions of people who are working for totally inadequate wages.

This Committee, by the way, must do everything possible to raise the minimum wage to a living wage. In America today, we are seeing levels of income and wealth inequality that have never been seen in the history of the United States of America. Today, you got three people on top who own more wealth than the bottom half of American society.

You have got the top 1 percent owning more wealth than the bottom 92 percent. You have almost all new income and wealth being created going to the people on top. You are looking at corporate profits in company after company at record breaking levels, guys making billions of dollars a year.

CEO compensation right now, 400 times more than the average American worker. And the American people look around them, what do they see? They see the very rich becoming richer. And in many cases, they are falling further and further behind. They can't afford health care, can't afford childcare. Can't afford to take care of the parents.

A lot of reasons for why that has happened, it is not the fault of the Republican Party, it is not the fault of the Democratic Party, it is a lot of factors that are out there. But today, and if this Committee is going to do its job, we are going to stand with working people and do everything that we can to create an economy that works for all of us and not just a few.

Anyone who knows anything about history understands that one way, one important way that workers—and I come from a working class, proudly, a working-class family. One way that workers have been able to lift themselves up is by joining unions and engaging in collective bargaining for decent wages and decent benefits.

That is one important way that workers have been able to uplift themselves. I want to congratulate our union leaders here today for helping millions of workers do just that. But what we are seeing right now at this moment in history is despite the fact that the billionaire class have never done better, corporate profits are soaring, we are seeing these very same corporations, and it is not just Starbucks, believe me, pour hundreds of millions of dollars in efforts to make it impossible for workers to exercise their Constitutional rights, Constitutional rights to form a union.

You can be pro-union, you could be anti-union, but what we have got to establish today is that workers have the Constitutional right to form a union. And what we are seeing in company, after company, after company, people want to join unions being fired, we are seeing workers being taken into back rooms and being lectured about how terrible unions are. We are seeing people being intimidated.

That is not what is supposed to be happening in America. So, the message for me at least that is going to go out today is that we are a nation of law, and that even if you are a multi-billion-dollar corporation with all kinds of consultants and accountants, you know what, you are going to obey the law.

In this country, workers have the right to form unions, and we are going to do everything we can to make sure that they can exercise that Constitutional right. Senator Cassidy.

OPENING STATEMENT OF SENATOR CASSIDY

Senator CASSIDY. Thank you, Mr. Chairman.

[Technical problems]—obey the law. That is not an issue. And that is also table set. The Chair's opening statement spoke about how 60 million or 60 percent of the population is living paycheck to paycheck.

Prior to this Administration and the Biden inflation that has gone up 14 percent since he took office, people had money in their checking account. People had money in their savings account. But with that Biden inflation, now people, and you can look at the statistics, the savings among the lower quintile have been depleted with this Biden inflation.

Now, I think we need to table set if we are going to say, oh, my gosh, it is the fault of x, y, and z, I think we really need to know exactly where that fault lies. Now, let's talk about the issue of the day. There are 76,000 union workers in Louisiana.

Being a right to work state means that these workers have the right and they choose to be in a union. I am supporting that choice. They choose. And in America, you have a choice. That is what being a right to work state is about.

Now, the majority's title and the framing of today's hearing is that you are defending the right of workers to organize, leaves out the important other side of the coin. Defending the right of a worker also includes defending those who choose that it is not their best interest to join a union.

They may decide that a union limits their work flexibility, eliminates their ability to be rewarded, or based upon—that their advancement is based upon individual talent and merit and not seniority.

Maybe they just don't want a certain amount of their paycheck going to pay union leaders salaries, and maybe they don't want a certain amount to disproportionately go to political candidates for whom they do not vote. I am told that by people who choose not to be in unions.

Now, let's not confuse being pro-union with being pro-worker. Being pro-worker means supporting all workers and all workers' rights and their ability to choose for themselves what is their best path forward for them and for their family. We are seeing a concerning trend that attempts to erode workers' rights.

It might be administrative action by rule, if you will, or it might be the introduction of the PRO Act. These efforts are not about supporting the rights of workers. Their intent is to force workers

into unions that prop up and support big, politically connected unions.

Yesterday, I sent a letter to the National Labor Relations Board concerning the weaponization of its enforcement power and the targeting of high-profile employers on behalf of these same well-connected unions.

The purpose of the NLRB, by law, and this is about obeying the law, the purpose of the NLRB by law, is to provide an unbiased framework to review disputes between employees and employers, and that is not what we are seeing.

Last week, a Michigan court denied an NLRB request for a nationwide cease and desist order in Kerwin v. Starbucks because NLRB did not have sufficient evidence supporting a claim against the employer.

Let's repeat, NLRB claimed the company was employing a nationwide anti-union policy. And by the way, the title of this hearing presumes guilt. It echoes their claim, but their claim lacks sufficient evidence to justify the accusation. What is really concerning about the NLRB hearing is that a hearing officer recently substantiated voting irregularities at a Starbucks in Kansas that could potentially elevate the misconduct on the behalf of the NRLB employees.

This includes NRLB providing duplicate ballots, supplying union organizers with confidential voter information, and providing voter accommodations to employees selected by the union without offering them to all employees. These actions are in direct violation of Federal law and NRLB written guidelines.

By the way, I am not here to represent a particular company. No one is above our Nation's laws and that includes the NLRB. Today we will hear a lot about the PRO Act. To make one thing clear, PRO Act is not pro-worker, it is pro big union. It gets rid of the secret ballot elections for unionization, which is the gold standard to keep somebody from being put into a corner and intimidated until they vote the way that the intimidator wishes them to vote.

It protects them from retaliation if it goes in a different way. The pro-worker—the PRO Act would make workers in my home State of Louisiana and 27 other states vulnerable to force unionization. If they want to unionize, I am for it. Let's do it. It is a Constitutional right and we should give it to them.

But if they choose not to, they shouldn't be coerced, and they should not be coerced into having a portion of their paycheck taken to go to union activities of which they do not approve. By the workers—by the way, if workers don't have a choice of whether to join, then the union no longer has an obligation to respond to the views of those whom they represent.

I do think this might be related to the disconnect between what we have seen between the political positions of union members and the political positions taken by their leadership. I ask my colleagues that we not conflate pro-union with pro-worker.

We must support all workers, those who want to be in a union and those who do not wish to be. I look forward to hearing from our witnesses.

The CHAIR. Thank you very much, Senator Cassidy. Liz Shuler is the President of the AFL–CIO, which represents more than 12 million members in 60 different unions.

President Shuler is the daughter of a union lineman and got her start as an organizer at IBEW Local 125. And she is a strong fighter for workers' rights, and we are proud that she is with us today. Ms. Shuler.

STATEMENT OF LIZ SHULER, PRESIDENT, AFL–CIO, WASHINGTON, DC

Ms. SHULER. Thank you so much, Chairman Sanders, Ranking Member Cassidy, and Members of the HELP Committee. Thank you for holding this hearing today and for inviting me to testify.

As was said, I am the President of the AFL–CIO. We are an umbrella, a federation of 60 unions, 12.5 million working people all across this country, in every industry, in every state, from actors and athletes to bus drivers and electricians, to nurses, scientists, video game developers, and everything in between.

I would like to say as a woman leader, we are the largest organization of working women in the country. Not a lot of people think of us that way. We want all working people in this country that want to, to be able to exercise their legal right to join or form a union. It is that simple, because we have seen throughout America's history unions get results.

If you enjoy the weekend, anyone enjoy the weekend, you can thank the labor movement for the weekend. If you get overtime pay, unions got it done. Unions are the single most powerful tool we have to demand fair, just, and equitable treatment of workers.

Yet at this moment, the very fight to form a union is under attack. It is under attack from corporations that made billions in record profits last year but refused to pay their employees enough to afford rent or groceries.

It is under attack from CEOs who have yachts so big they need bridges in ports to be modified but balk at providing workers in their factories with bathroom breaks. These corporations and executives can buy many things. We cannot let them buy the basic rights of working people.

Today, I am here to bring the voices of workers in this room, and many of whom are in the audience. In 2022, corporations like Starbucks, like Delta Airlines, Alphabet, and Apple posted some of their most profitable years in history. What do workers have to show for it? Well, while pay for corporate CEOs increased over 1,000 percent between 1978 and 2019, worker pay rose 13.7 percent over that 40 plus year timeframe.

It is no coincidence that labor standards have plummeted as the percentage of people in unions has declined in America. Workers face unpredictable schedules, understaffed and unsafe workplaces, and a lack of basic dignity on the job. Unions are the counterweight. We balance the scales.

The data is overwhelming. Workplaces with unions provide more predictable schedules, safer workplaces, better benefits. In a recent study showed, if union density had not declined over the past few

decades, the typical worker today would earn $3,250 more per year, okay.

I just want to ask every working person watching this a simple question, what would your family do with an extra $3,250 per year? You can imagine. A change is in the air. Workers are energized.

They are forming unions in new industries, in places we never thought possible. They are connecting the dots. They are forming unions. And they are seeing that is how progress happens. The response of companies like Starbucks, the same ones that hide behind progressive values, call their workers partners, has been to turn around and throw a litany of dirty tactics at these employees.

I have to say, I am so glad that Mr. Schultz has decided to present himself in front of this Committee. How many hundreds of thousands of baristas showed up every day for Starbucks in the middle of a pandemic? How many of those workers helped him make vast sums of money?

It is the least he can do to show up here and talk about an issue that is so important to their lives. And across this country, employers spend $340 million per year on law firms and consultants to help them intimidate workers. They fire union activists. They hold mandatory anti-union meetings.

Somehow the money that companies like Amazon spend on these consultants is not only legal, but it is a tax write off. It doesn't have to be this way. Some employers like Microsoft—I mean, everyone is familiar with Microsoft. They have said, you know what, if our workers want to join a union, we should let that happen.

We shouldn't stand in the way. So, the company pledged neutrality with the Communications Workers of America. This is the path forward. Moving together, forward in partnership. Everyone wins. But this isn't the norm. We need a level playing field.

We need to pass the Richard Trumka Protecting the Right to Organize Act as soon as possible to protect collective action, to remove the barriers to workers' voice, and hold employers accountable when they violate workers' rights.

We need to provide the NLRB with the funding that it needs to enforce the law and protect workers and hold CEOs accountable for their actions so that every worker has the simple right to choose for themselves. Whether a union makes sense, as the Senator said, these are not radical ideas.

These are simple steps to ensure fairness. And if we fix our broken system, I guarantee you working people will keep coming together in greater and greater numbers, and our movement will continue to grow and fight for the issues, issues that matter not only to union members, but millions of workers across this country. Thank you.

[The prepared statement of Ms. Shuler follows:]

PREPARED STATEMENT OF LIZ SHULER

Chairman Sanders, Ranking Member Cassidy and Members of the HELP Committee, thank you for holding this hearing and inviting me to testify today.

My name is Liz Shuler and I am the president of the AFL–CIO, a federation of 60 unions that represents 12.5 million working people across the country, in every

industry, in every state, from actors and athletes to bus drivers and electricians to nurses, scientists and video game developers and every job in between.

We want all working people in this country, who want to, to be able to exercise their legal right to join or form a union. Because we've seen throughout America's history: Unions get results. If you enjoy the weekend...unions made it happen. If you get overtime pay...unions got it done. Unions are the single most powerful tool we have to demand the fair, just and equitable treatment of workers.

Right now, the labor movement's fight is more critical than ever. We are working across dozens of industries every day to ensure all workers receive not just a "livable" wage, but a wage we can thrive on—along with the better benefits, safer working conditions and fair treatment on the job that come with a collective bargaining agreement.

Yet at this moment, the very right to organize is under attack. It is under attack from corporations that made billions in record profits last year...but refuse to pay their employees enough to afford rent or groceries. It is under attack from CEOs who have yachts so big they need bridges in ports to be modified...but balk at providing workers in their factories with bathroom breaks.

These corporations and executives can buy many things. We cannot let them buy the basic rights of working people. Today I'm here to bring the voices of workers into the room. I meet and talk to workers all across this country who are in the middle of a fight to form a union—and I'm here to talk about why it's important to support our struggle to obtain a real voice on the job.

I have spoken with workers across the country from all kinds of industries and backgrounds, with different experiences, skill sets and responsibilities. And there is one common theme throughout every conversation: "Why am I doing more work for less pay...even as my company's profits skyrocket?"

The numbers back them up. Delta Air Lines, for example, recently boasted an operating revenue of $13.4 billion and a double-digit operating margin (10.9 percent). This is 17 percent higher than 3 years ago (when revenue was $11.44 billion).[1] In a statement to investors, the company says it expects revenue in 2023 to grow by another 15 percent—20 percent.[2] Alphabet, Google's parent company, just last year enjoyed the fastest revenue growth rate the company had seen in 15 years. And Apple's margin has been steadily rising; the company closed 2021 with its biggest quarter ever for sales, at nearly $124 billion.

What do workers have to show for it? While pay for corporate CEOs has increased over 1,000 percent between 1978 and 2019, worker pay has risen only 13.7 percent. Since 1979, the wages of the top 1 percent grew nearly 160.3 percent, but the wages of the bottom 90 percent combined grew just 26.0 percent.[3] That is over the past 44 years. Even as we emerge from a pandemic—one in which workers showed up at our own peril, day after day, to keep the country running—corporations continue to put profit over people.

Issues go beyond wages. It's no coincidence that labor standards have plummeted as union density has declined in America. Workers face unpredictable schedules, understaffed and unsafe workplaces, and a lack of basic dignity on the job. By seeking the lowest costs possible, corporations encourage contractors and subcontractors to cut corners, often at the expense of human life and human dignity. Recent violations show that companies like Hyundai and major meatpacking companies hire contractors in their supply chain who exploit child labor, often placing migrant children in dangerous working conditions.

Unions are the counterweight. Workplaces with unions provide more predictable schedules, safer workplaces and better benefits.[4] Union members not only receive higher wages than workers without a union—but research shows that even nonunion workers benefit from the mere presence of unions in their community. Unions effectively set higher labor standards—including higher wages—that drive nonunion employers in the community to raise their standards, in order to hire and retain workers. According to the Economic Policy Institute (EPI), had union density not declined over the past few decades, the typical worker today would earn $3,250 more

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[1] cnbc.com/2023/01/13/delta-air-lines-dal-earnings-q4–2022.html

[2] prnewswire.com-news-releases-delta-air-lines-announces-december-quarter-and-full-year—2022

[3] epi.org/blog/wages-for-the-top–1-skyrocketed–160-since–1979-while-the-share-of-wages-for-the-bottom–90-shrunk-time-to-remake-wage-pattern-with-economic-policies-that-generate-robust-wage-growth-for-vast-majority

[4] epi.org/publication/unionization—2022

per year. Let me ask every working person watching today a simple question: What would you do with an extra $3,250 per year?

The union difference is even higher for women and workers of color. Wages for women represented by a union are 4.7 percent higher than their nonunion counterparts. Black union members earn 13.1 percent more than nonunion workers, and Latino union members earn 18.8 percent more than their nonunion Latino peers. [5]

Contrast that to where we are right now. In 2021, nearly 48 million workers quit their jobs. We at the AFL–CIO talked to nearly 10,000 people to understand this: What drove them to leave? The bottom line is that people are fed up, they're fired up and tired of bad jobs for worse pay. Our research found that nearly 50 percent of the workforce has negative feelings about work. And while many people quit their jobs over intuitive issues like pay, more respondents reported that poor treatment at work led them to quit their jobs.

We heard workers talk about unfair treatment, poor management and toxic work environments. It is not difficult to understand why these workers sought better jobs. And, importantly, we found that workers largely thought that collective action would improve their jobs.

We now know that working people are not standing idle, waiting for employers to suddenly see the light and provide higher-quality jobs. Workers are excited. They're energized. They are organizing in new areas. They're ready to make change, and they're connecting the dots, they can do it through forming a union in their workplace. They know what we know: that unions improve outcomes for all workers, both union and nonunion, and their communities.

And despite the false narratives pushed by corporations, these same people are realizing: Unions are not some third-party outsider that comes in, negotiates a contract and leaves. Workers are the union. Workers negotiate the terms. Unions are workers. Unions are about you having a say in your own future.

That's why polling puts support for the labor movement at 71 percent—even higher among younger workers and people of color. Petitions at the National Labor Relations Board (NLRB) are up by 58 percent. Workers are expressing their desire to form unions across the country and across various industries. Many of the early successes at Starbucks were in places not famous for labor activism. One of the first Apple stores to organize was in Oklahoma, a state with very few unions. This is a truly national revival of organizing that goes beyond the partisan divide that seems to dominate our society. We are also seeing activism in new industries from video game developers to solar installers. And it's not slowing down. The number of people searching "How to form a union" went up 680 percent from July 2018 to April 2022. Why is this the case? It's because workers, especially young workers, women and workers of color know that organizing a union is the only way to achieve fair treatment and some measure of equity.

Employers are not responding to the uptick in union organizing by respecting their workers' right to organize. Instead, workers who choose to organize to improve their jobs face an endless barrage of anti-union tactics designed to intimidate and break their spirits. This union-busting playbook is not new, but employers—even those like Starbucks who boast progressive, worker-centered values—have grown increasingly brazen in the face of increased worker organizing.

But it's not just Starbucks. We are seeing blatant union-busting across the Nation. When workers organize, employers turn to anti-union consultants to try to stomp out the campaign. According to EPI, employers spend $340 million per year on law firms and consultants to help them intimidate their workers. EPI also found that consultants can get paid $350 or more per hour, or more than $2,500 a day, for these tactics. Employers are charged with illegally coercing, threatening or retaliating against workers for supporting a union in nearly one-third (29.2 percent) of all elections. [6]

These tactics run the gamut: mandatory anti-union meetings while threatening to discipline or terminate workers who do not attend, firing union activists, threatening to close stores if workers organize (or actually closing them), refusing to bargain, and promising raises or new incentives for nonunion workers—this is union-busting 101. The goal is to scare workers into thinking a union is impossible, and losing your job or new benefits if you support the union is a very real possibility.

At charter schools in Ohio and Kansas, where teachers are organizing with the American Federation of Teachers (AFT), classroom teachers are being pulled out of

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[5] Id.

[6] epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns

their classrooms to listen to anti-union propaganda. At a casino in Nevada, an employer tried to punish workers who had voted to organize by giving fully paid health care to employees other than those who had voted to organize.

Amazon, for example, spent nearly $4.3 million in 2021 on labor consulting firms to fight unionization efforts.[7] FedEx spent $837,000[8] in union-busting costs between 2014 and 2018.

UPS paid union-busters over $2,000 per day.[9] Quest Diagnostics spent $200,000 between 2015 and 2017.[10]

Nearly 6,000 workers, mostly Black workers and women, in Bessemer, Alabama, fought hard to form a union at Amazon. These workers, organizing with the Retail, Wholesale and Department Store Union-UFCW (RWDSU-UFCW), knew that they were in for a fight, but organized anyway. The lengths of Amazon's union-busting campaign, however, exceeded what many thought possible. The company engaged in a brutal and targeted campaign meant to separate workers. The company hired highly experienced union-busting consultants, paying them more than $3,000 per day, plus expenses[11] more than Amazon warehouse workers earn in a month.

The company's campaign was so demeaning and invasive that it included posters placed in bathroom stalls, urging workers to vote against the union. Amazon required workers to sit through mandatory anti-union meetings and photographed the IDs of workers who were brazen enough to question the tactic. Amazon sent text messages every day with coercive messages to not abandon the team. The company went so far as to have the U.S. Postal Service install a specialized mailbox where workers knew cameras could see them, to give the impression that they were under Amazon's surveillance. Amazon even got the local authorities to change the timing of local traffic signals so organizers couldn't safely talk to workers as they were leaving the facility. This is just one example of what workers can expect when they simply ask for a seat at the table to bargain over their working conditions. As of this month, there are more than 150 open unfair labor practice cases involving Amazon.[12]

Adding insult to injury, corporations like Amazon are able to write off union-busting costs as a general business expense. Taxpayers, workers and the Federal Government are effectively subsidizing these dehumanizing and anti-worker corporate efforts.

The laws meant to help employees know when union-busting consultants are targeting their workplace are woefully weak. Under current law, union-busting consultants are required to file mandatory reports with the U.S. Department of Labor (DOL) under the Labor-Management Reporting and Disclosure Act (LMRDA). But DOL filings show that in 2021, over 82 percent of anti-union persuaders violated the law[13] by failing to meet filing deadlines. These violations strip workers of the right to know, in a timely fashion, when employers are hiring anti-union consultants to influence their fight for a union.

These union-busting tactics are rampant because corporations see no downside or negative consequence. Anti-union corporations know that the National Labor Relations Board is woefully underfunded, making labor law enforcement more difficult. They know employers face extremely limited penalties when the NLRB is able to investigate and find a violation. And when the NLRB requires an employer to post a notice in the break room, reinstate a worker or provide back pay, the expense for the violator is negligible. Many times, the corporation has already successfully busted the union. For them, a labor law violation is simply the price of doing business.

Every other workplace law—whether it is the Fair Labor Standards Act, Occupational Safety and Health Act or the Civil Rights Act—includes much more robust penalty structures for employers who violate workers' rights. The National Labor Relations Act essentially stands alone in this regard. In fact, the fine for violating fishing laws in some states may be greater than the penalty for violating workers' federally protected right to organize, in many cases, because again, there are no fines for violating workers' rights.

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[7] marketplace.org/2022/04/12/companies-like-amazon-spend-millions-on-anti-union-efforts-wheres-that-money-going

[8] Id.

[9] prospect.org/labor/companies-required-to-report-their-union-busting-many-dont

[10] marketplace.org/2022/04/12/companies-like-amazon-spend-millions-on-anti-union-efforts-wheres-that-money-going

[11] documentcloud.org/documents/20476227-russ-brown-rwp-labor

[12] nlrb.gov/search/case/amazon—f[0]—case—type:C&s[0]—Open

[13] prospect.org/labor/companies-required-to-report-their-union-busting-many-dont

And for the workers who withstand these union-busting tactics and win their union? They must gear up for the next fight—the fight for a first contract. It takes more than 450 days for workers to get their first contract, and that delay time is getting longer. Employers refuse to bargain because they know there are no real consequences.

This is why we need to pass the Richard L. Trumka Protecting the Right to Organize (PRO) Act as soon as possible—to protect collective action, remove the barriers to worker voice and hold employers accountable when they violate workers' rights.

It is important to point out that it does not have to be this way. There are employers who recognize that worker voice through a union is an asset not a liability. Companies under the law today have the ability to voluntarily recognize a union. If workers come together and ask for recognition from the company, the company can voluntarily recognize them, but most companies don't.

We have some examples of employers who have taken the high road. The University of Vermont Medical Center remained neutral when 2,000 hospital staff organized just a few months ago. Similarly, the Rooted School, a charter school in New Orleans, decided to voluntarily recognize their employees' union after a majority requested representation. Now, they are building on that to engage in a collaborative bargaining process.

There are employers like Microsoft that said: "You know what? If our workers want to join a union, we should let that happen." So the company pledged neutrality with the Communications Workers of America (CWA). Microsoft recognized the trend of workers seeking to organize, and sought to work with the union because the company acknowledged the benefits of stable labor relations and collective bargaining.

There are examples all over the country, where employers embrace, rather than evade, their employees' desire to bargain collectively to improve outcomes for all. Whether it's Google cafeteria workers with UNITE HERE, cooks and servers who are working as contractors at Compass Group and Guckenheimer, or Sodexo workers in Atlanta who presented their managers with a plan to organize, and the companies said, "You know what? If workers win the election, we won't block it."

The fact is: all employers, including those who claim to "respect workers' right to organize," should make it real. If a corporation is going to pride itself on corporate social responsibility in its mission statement or offer grand announcements on inclusivity, respect and a commitment to treating workers well, and if they're going to call their workers "partners," then they have to act like it. And those businesses who rely on Federal funds—our taxpayer dollars—or contract with the government should be held to the highest standard when it comes to following the law and respecting worker voice.

Corporations who truly appreciate their workers' contributions must support the drive that most humans have to be heard, respected and have dignity on the job. The simple act of hiring a marketing firm to put together messaging on respect without truly demonstrating that respect is inadequate. The employers who embrace worker voice have an open, transparent approach, and actually follow through on the commitments they make. They welcome the opportunity to sit across the table and bargain collectively with their workers. To listen and solve problems together. Because workers are the ones who know how to do our jobs the best and make the company more successful.

Everyone wins when workers have a voice. The benefits of unions and collective bargaining extend far beyond the workplace. Communities do better when unions are present. Unions increase civic engagement, reduce racial resentment among white workers [14] and increase legislative responsiveness toward the poor. [15]

The 17 U.S. states with the highest union densities: have state minimum wages that are on average 19 percent higher than the national average and 40 percent higher than those in low-union-density states; have median annual incomes that are $6,000 higher than the national average; have a higher share of those who are unemployed that actually receive unemployment insurance; have an uninsured (without health insurance) population 4.5 percentage points lower, on average, than that of low-union-density states; have all elected to expand Medicaid, protecting their residents from falling into the "coverage gap"; have significantly fewer restrictive

[14] scholar.princeton.edu/sites/default/files/pfrymer/files/ajps12537—rev.pdf

[15] cambridge.org/core/journals/perspectives-on-politics/article/abs/reducing-unequal-representation-the-impact-of-labor-unions-on-legislative-responsiveness-in-the-us-congress

voting laws; are more likely to have passed paid sick leave laws and paid family and medical leave laws than states with lower union densities. [16]

The way I see it, we gather today with two potential paths forward. Unions and the labor movement stand ready and willing to work together with businesses all across this country: innovating together, becoming more skilled and efficient, and creating better outcomes for everyone. All we demand in exchange is for companies to respect the basic and legal right of workers to organize: for a living wage, for good health care, for safety in our workplaces and for dignity. That is our preferred path—one we know that can power America's economy into a new era.

But make no mistake: We are more than prepared for the other path. The path that is more prevalent today, where some of the country's largest and most profitable corporations fight workers' will and are intent on pushing us down. One in which workers are antagonized, dehumanized and pushed to the breaking point every single day. Let me be clear: Working people are fed up. We are organizing, striking and walking out to protect our rights everywhere, from Buffalo to Bessemer. We are coming together in incredible numbers at the grassroots level. And we are prepared to fight for as long as it takes.

What will help immensely is a Congress that levels the playing field: One that provides the NLRB with the funding it desperately needs to enforce the law and protect workers, ends corporate tax breaks for union-busting, holds CEOs accountable for their actions, and passes the PRO Act, so that every worker has the simple right to choose for themselves whether a union makes sense. These are not radical ideas. They are simple steps to ensure fairness for everyone. If we fix our broken system, I guarantee you: Working people will keep coming together in greater and greater numbers. Our movement will continue to grow and fight for the issues that matter to millions of working people across this country, and we will deliver.

Thank you.

[SUMMARY STATEMENT OF LIZ SHULER]

Right now, the labor movement's fight is more critical than ever. We are working across dozens of industries every day to ensure all workers receive not just a "livable" wage, but a wage we can thrive on—along with the better benefits, safer working conditions and fair treatment on the job that come with a collective bargaining agreement.

Yet at this moment, the very right to organize is under attack. It is under attack from corporations that made billions in record profits last year but refuse to pay their employees enough to afford rent or groceries. It is under attack from CEOs who have yachts so big they need bridges in ports to be modified—but balk at providing workers in their factories with bathroom breaks.

While pay for corporate CEOs has increased over 1,000 percent between 1978 and 2019, worker pay has risen only 13.7 percent. Since 1979, the wages of the top 1 percent grew nearly 160.3 percent, but the wages of the bottom 90 percent combined grew just 26.0 percent.

Working people are not standing idle, waiting for employers to suddenly see the light and provide higher-quality jobs. They are organizing in new areas. They're ready to make change, and they're connecting the dots: they can do it through forming a union in their workplace.

Employers are engaging in an endless barrage of anti-union tactics designed to intimidate and break organizing drives. This union-busting playbook is not new, but employers have grown increasingly brazen in the face of increased worker organizing.

These union-busting tactics are rampant because corporations see no downside or negative consequence. Anti-union corporations know that the National Labor Relations Board is woefully underfunded, making labor law enforcement more difficult. They know employers face extremely limited penalties when the NLRB is able to investigate and find a violation.

Congress must level the playing field by: funding the NLRB, ending corporate tax breaks for union-busting, holding CEOs accountable for their actions, and passing the PRO Act, so that every worker has the right to join a union.

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[16] epi.org/publication/unions-and-well-being

The CHAIR. President Shuler, thanks very much. Mary Kay Henry is the International President of the 2-million-member Service Employees International Union.

SEIU President Henry has been a champion for fast food service and health care workers for decades, most notably leading the fight for a $15 an hour minimum wage. President Henry, thanks for being with us.

STATEMENT OF MARY KAY HENRY, INTERNATIONAL PRESIDENT, SERVICE EMPLOYEES INTERNATIONAL UNION, WASHINGTON, DC

Ms. HENRY. Thank you, Chairman Sanders. And thank you, Ranking Member Cassidy, and Members of this Committee for holding this hearing. I am honored to be here today as the International President of the Service Employees International Union, representing the 2 million members who work across the service and care sectors.

This hearing is both urgent and timely because the deck is stacked against working families all across this Nation. Take the example of Crystal Orozco, a California fast food worker who has been in the industry for 15 years.

When Crystal demanded COVID safety protections for herself and her coworkers, her managers threatened to cut her hours. When Crystal and her coworkers began organizing together in a union, they faced intimidation and opposition from their employer.

When Crystal and her coworkers won a historic seat at a table for a half a million fast food workers in California, fast food corporations pooled their resources to put a landmark state labor law on hold and potentially overturn it.

Crystal's experience is all too common for workers in every part of our economy across industries work by SEIU members, Workers in the Fight for 15 and a Union, and partners with Starbucks Workers United.

That is why working people are demanding a voice on the job through their unions, and they are calling on each and every one of you to reimagine an economy that works for all of us, not just for billionaires and corporations.

Workers are coming up with new and creative, bold ways to organize together across industries, sectors, and geographies because they know the only way to counter corporate control is through collective worker power.

It is not just one or two industries. It is spreading like wildfire. It is spreading to Starbucks partners at over 300 stores, gig workers across the rideshare sector, and service and care workers in the South.

Airport service workers from coast to coast championed by Senator Markey with the Good Jobs for Good Airports Act. Homecare providers championed by Senator Casey with a Better Care for Better Jobs Act. Childcare workers championed by Senator Murray with the Child Care for Working Families Act.

With the support of the Protecting the Right to Organize Act championed by Senator Sanders, all of these workers and their

champions in this room have put forth bold proposals that together lift up millions of working people. But even with this support for workers and their unions at an all-time high, workers are hitting a wall built by the wealthy and the powerful.

Corporations have rigged the rules of our economy against working people to maximize their own profits. They are pulling out all the stops against the very workers that power their profits. They are exploiting workers, union busting, and retaliating against union organizing. They are bullying workers, plain and simple.

Often it is illegal. Union busting is a big business. McDonald's, Amazon, American Airlines, HCA Healthcare, and Starbucks are willing to spend hundreds of millions to keep union busting booming. Just look at Howard Schultz, who until yesterday, under the threat of a subpoena vote, refused to testify before this Committee.

Under Schultz's leadership, Starbucks continues to repeatedly and shamelessly stand in the way of partners who are demanding a voice in their workplace and a strong contract to build a better future. It is ridiculous that the future of tens of thousands of Starbucks workers is up to the whims of just one person, Howard Schultz, who continues to oversee a company that breaks the law without sufficient consequence.

It is not just Starbucks. Workers are routinely met with vicious union busting campaigns. Corporations break the law or strategically refuse to reach a first contract without facing any penalties. Federal labor law still contains racist and sexist exclusions rooted in Jim Crow. We need to write new rules that protect all workers black, brown, and white to ensure that we can all thrive.

It is time for elected officials to heed workers' demands. That starts with a Federal minimum wage of at least $15, investment in good union care jobs, the Protecting the Right to Organize Act, the Good Jobs for Good Airports Act, the Better Care Better Jobs Act, and the Child Care for Working Families Act, and measures that can make it easier for working people to join together in unions.

Workers' demands are big and bold, and they are necessary to rebalance the scales of our economy. History shows that sometimes the only way to rewrite the rules is through great disruption, militancy, and strikes.

Nothing is off the table because our future, the future of America's working families is at stake. We will not stop fighting until we win. Thank you.

[The prepared statement of Ms. Henry follows:]

PREPARED STATEMENT OF MARY KAY HENRY

Good morning and thank you to Members of the Committee. I'm honored to be here today as the International President of the Service Employees International Union, representing more than two million workers across the service and care sectors.

Thank you, Chairman Sanders and Ranking Member Cassidy, for holding this hearing today.

It's an urgent and timely topic because, to be frank, the deck is stacked against working families across the Nation.

Working People are United—Standing Up in Historic Numbers, Striking and Organizing Their Unions.

They're demanding that elected leaders—including Members of this Committee—take action to build an economy that works for all of us, not just billionaires and corporate executives.

I'll give you some examples today of just how rigged the rules are for people working across every sector of our economy:

Crystal Orozco, a California fast-food worker who has been in the industry for 15 years, is one of the first people who comes to mind when I think of how the COVID–19 pandemic unearthed many of the problems in our system.

When Crystal demanded COVID safety protections for herself and her co-workers, her managers threatened to cut her hours.[1]

When Crystal and her co-workers began to organize their workplace, they faced intimidation and opposition from their employer.

When Crystal and her co-workers won a historic seat at the table for half a million California workers, fast-food corporations pooled their resources to put a landmark state labor law[2] on hold and potentially overturn it.[3]

Sadly, this is just one of many examples of what we mean when we say the system is rigged against workers.

Because Crystal's experience is all too common among SEIU members, leaders in the Fight for $15 and a Union, partners with Starbucks Workers United, and all across the economy.

That's why working people like Francis Hall of Crosby, MN are demanding a voice on the job through unions, and why they're calling on all of you on this Committee to reimagine an economy that works for all of us—not just billionaires and corporate executives.

Francis, a homecare worker and union leader with SEIU Healthcare Minnesota, is another example of how working people aren't taking no for an answer. When she's not providing critical care to her clients, Francis has been actively talking to other homecare workers about the importance of organizing. She says, "I'm fortunate to be part of a union and want all workers, including all homecare workers, to be able to join a union as well."

They're coming up with new, creative, bold ways to organize together across industries, sectors and geographies because they know the only way to counter corporate control is through collective worker power.

And it's not just one or two industries in which workers are pushing the envelope and coming up with solutions to build power together—it's spreading like wildfire:

- **Fast-food workers in California fought** and won the FAST Recovery Act[4] to give more than 500,000 workers a seat at the table to improve their wages and working conditions.
- **Baristas at over 300 Starbucks stores, including Kathryn Howard of Salt Lake City, Utah** came together to win their unions and are demanding Starbucks meet them at a national table.
- **Airport service workers, like Morgani Brown of Charlotte, NC,** are demanding that every job within our publicly funded airport system is a good one that supports families as airlines rake in record profits from consumers and take billions of our tax dollars.[5] They have a champion in Senator Markey leading on the Good Jobs for Good Airports Act.[6]

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[1] Vanmel Inc. d/b/a Jack in the Box, Case 20-CA–284557.

[2] See Fast Food Accountability and Standards Recovery Act, 2022 Cal. Legis. Serv. Ch. 246 (A.B. 257) (WEST).

[3] See, e.g., Suhauna Hussein, 'I feel duped': Inside the fast-food industry's push to dismantle a new California labor law, L.A. Times, Feb. 2, 2023 available at *https://www.latimes.com/business/story/2023—02/inside-fast-foods-push-against-california-ab—257-higher-minimum-wages.*

[4] Fast Food Accountability and Standards Recovery Act, 2022 Cal. Legis. Serv. Ch. 246 (A.B. 257) (WEST).

[5] U.S. Department of the Treasury: Airline and National Security Relief Programs. Accessed March 3, 2023. *https://home.treasury.gov/policy—issues/coronavirus/assistance-for-american-industry/airline-and-national-security—relief-programs*. See also Patrick Burns, Halil Toros, and Daniel Flaming, "Flying Right: Giving U.S. Airport Workers a Lift" (Los Angeles: Economic Roundtable, 2017), available at *https://economicrt.org/wp—content/uploads/2017/06/Flying—Right—2017.pdf.*

[6] Good Jobs for Good Airports Act, S. 4419, 117th Cong. (2d Sess. 2022).

- **Service and care workers in the South** started the Union of Southern Service Workers to organize across industries around common problems they face, rejecting a legacy of systemic racism.
- **Home care providers in California** are done with a piecemeal approach, they're calling for statewide bargaining for half-a-million care workers. Home care workers across the country have a champion in Senator Casey with the Better Care Better Jobs Act. [7]
- It's spreading to **child care workers across the country,** who have a champion in Senator Murray with the Child Care for Working Families Act. [8]

Working people are driving forward solutions that support workers and their families across entire industries and across wide geographies.

This is happening as public support for workers and their unions is at a 57-year high. [9] NLRB data show union filings were up more than 50 percent in 2022, [10] and last year saw historic levels of strikes and worker-driven action.

But even so, even with support for workers and their unions at an all-time high, workers are hitting a wall built by and for the wealthy and powerful.

Corporations Have Rigged the Rules of Our Economy Against Working People to Maximize Their Own Profits.

They're pulling out all the stops against the very workers that power their profits.

They're exploiting workers, union-busting, and retaliating against worker organizing.

They're bullying workers, plain and simple. And, often, it's illegal.

Union-busting is big business, and employers like McDonald's, Amazon, American Airlines, HCA Healthcare, and Starbucks are willing to spend hundreds of millions to keep it booming.

Even when workers get creative and organize to make a change, corporations and their lobbyists spend millions to squash the gains workers make.

That's Crystal's story. Immediately after 500,000 fast-food workers won a voice on the job, fast-food corporations bankrolled a deceptive, multi-million-dollar campaign to silence them. [11]

Or just look at Howard Schultz, who has refused to testify before this very Committee.

Under Schultz's leadership, Starbucks continues to repeatedly, shamelessly stand in the way of partners who are demanding a voice in their workplace and a strong contract to build a better future for themselves and their families. [12]

Rachel Ybarra and their coworkers organized a store in Seattle, naming erratic scheduling, short staffing, low pay, and disrespect. Theirs became the twelfth union store that Starbucks corporate leadership decided to close after a campaign of anti-union bullying failed to quash workers' organizing. [13]

It's ridiculous that the future for tens of thousands of workers in a company like Starbucks is up to the whims of just one person—Howard Schultz—who continues to oversee a company that breaks the law without sufficient consequence.

It's not just Starbucks.

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[7] Better Care Better Jobs Act, S. 100, 118th Cong. (1st Sess. 2023).

[8] Child Care for Working Families Act, S. 1360, 117th Cong. (1st Sess. 2021).

[9] Megan Brenan, Approval of Labor Unions at Highest Point Since 1965, Gallup, Sept. 2, 2021 available at *https://news.gallup.com/poll/354455/approval-labor—unions-highestpoint—1965.aspx.*

[10] National Labor Relations Board, First Three Quarters' Union Election Petitions Up 58 percent, Exceeding All fiscal year 2021 Petitions Filed, July 15, 2022 available at *https://www.nlrb.gov/news-outreach/news-story/correction-first-three-quarters—union-election-petitions-up—58-exceeding.*

[11] See, e.g., Suhauna Hussein, 'I feel duped': Inside the fast-food industry's push to dismantle a new California labor law, L.A. Times, Feb. 2, 2023 available at *https://www.latimes.com/business/story/2023—02—02/inside-fast-foods-push-against-california-ab—257-higher-minimum-wages.*

[12] See, e.g., Dee-Ann Durbin, Starbucks violated workers' rights 'hundreds of times,' says labor judge, TODAY, Mar. 2, 2023 available at *https://www.today.com/food/news/starbucks-violated-worker-rights—unionization-labor-judge-rcna73078.*

[13] Rachel Ybarra, Starbucks cannot silence us by closing our stores, Seattle Times, Dec. 16, 2022 available at *https://www.seattletimes.com/opinion/starbucks-cannot-silence-us-by-closing-our-stores/.*

When workers exercise their right to form a union, they are routinely met with vicious corporate union-busting campaigns. Corporations break the law or strategically refuse to reach a first union contract —without facing any penalties.

Federal labor law still contains racist and sexist exclusions rooted in Jim Crow. We need to write new rules that protect all workers—Black, brown, and white—to ensure we can all thrive.

It's time for politicians to heed workers' demands.

Working people have made meaningful progress under President Biden.

We've won 12 million new jobs—and many of these are union jobs.

We've won higher wages, action on climate, lower prescription drug costs, and more rights for pregnant and postpartum workers.

But there's more work to do. Workers are demanding that their elected leaders finish the job by taking up a workers' agenda:

- Pass a minimum wage of at least $15.
- Pass legislation that makes it easier for workers to come together in unions and stop corporations from getting in their way—like the PRO Act. [14]
- Pass the Good Jobs for Good Airports Act [15] to ensure that all airport workers are respected, protected and paid living wages.
- Invest in our care economy to ensure care is affordable for working families and care jobs are good, union jobs, by passing the Better Care for Better Jobs Act [16] and the Childcare for Working Families Act, [17] among other measures.
- Pass commonsense immigration reform.
- And substantially increase funding for the Federal agencies that protect workers' rights, including the National Labor Relations Board, the Department of Labor, and the Equal Employment Opportunity Commission.

We need leaders who advance the vision of unions for all and hold union-busting corporations accountable.

In turn, working people of all races and backgrounds will back politicians who take action to support their demands.

Their demands are big and bold, and they're necessary to rebalance the scales of our economy.

History shows sometimes the only way to rewrite the rules is through great disruption, militancy, and strikes.

Nothing is off the table because our future—the future of America's working families—is at stake.

We won't stop fighting until we win.

[SUMMARY STATEMENT OF MARY KAY HENRY]

Good morning and thank you to Members of the Committee. I'm honored to be here today as the International President of the Service Employees International Union, representing more than two million workers across the service and care sectors. It's an urgent and timely topic because, to be frank, the deck is stacked against working families across the Nation. Take the example of Crystal Orozco, a California fast-food worker who has been in the industry for 15 years. When Crystal and her co-workers won a historic seat at the table for half a million California workers, fast-food corporations pooled their resources to put a landmark state labor law [1] on hold and potentially overturn it. [2] Working people are united—standing up in historic numbers, striking and organizing their unions. Working people are driv-

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[14] Protecting the Right to Organize Act, S. 567, 118th Cong. (1st Sess. 2023).
[15] Good Jobs for Good Airports Act, S. 4419, 117th Cong. (2d Sess. 2022).
[16] Better Care Better Jobs Act, S. 100, 118th Cong. (1st Sess. 2023).
[17] Child Care for Working Families Act, S. 1360, 117th Cong. (1st Sess. 2021).

[1] See Fast Food Accountability and Standards Recovery Act, 2022 Cal. Legis. Serv. Ch. 246 (A.B. 257) (WEST).

[2] See, e.g., Suhauna Hussein, 'I feel duped': Inside the fast-food industry's push to dismantle a new California labor law, L.A. Times, Feb. 2, 2023 available at *https://www.latimes.com/business/story/2023–02–02/inside-fast-foods-push-against-california-ab–257-higher-minimum-wages.*

ing forward solutions that support workers and their families across entire industries and across wide geographies.

This is happening as public support for workers and their unions is at a 57-year high.[3] NLRB data show union filings were up more than 50 percent in 2022,[4] and last year saw historic levels of strikes and worker-driven action. But even so, workers are hitting a wall built by and for the wealthy and powerful. Corporations have rigged the rules of our economy against working people to maximize their own profits. It's ridiculous that the future for tens of thousands of workers in a company like Starbucks is up to the whims of just one person—Howard Schultz—who continues to oversee a company that breaks the law without sufficient consequence. It's not just happening at Starbucks. Union-busting is big business, and employers like McDonald's, Amazon, American Airlines, HCA Healthcare, and Starbucks are willing to spend hundreds of millions to keep it booming. It's time for politicians to heed workers' demands.

Working people have made meaningful progress under President Biden. We've won 12 million new jobs—and many of these are union jobs. We've won higher wages, action on climate, lower prescription drug costs, and more rights for pregnant and postpartum workers. But there's more work to do. Workers are demanding that their elected leaders finish the job by taking up a workers' agenda: That starts with a Federal minimum wage of at least $15, investments in good union care jobs, the PRO Act,[5] the Good Jobs for Good Airports Act, the Better Care Better Jobs Act, the Childcare for Working Families Act, commonsense immigration reform, funding for agencies that protect workers' rights and measures that make it easier for working people to join together in unions. We won't stop fighting until we win.

The CHAIR. President Henry, thank you very much. Sean O'Brien is the General President of the International Brotherhood of Teamsters and a fourth generation Teamster. Since his election last year, he has been all over this country urging workers to stand up and fight for their rights. President O'Brien, thanks so much for being with us.

STATEMENT OF SEAN O'BRIEN, GENERAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WASHINGTON, DC

Mr. O'BRIEN. Good morning, Chairman Sanders, Ranking Member Cassidy, distinguished Members of the Committee, and my union sisters, President Shuler and Henry. My name is Sean O'Brien and the General President of the International Brotherhood of Teamsters.

Thank you for the opportunity to appear today before you. It is important the American public knows that their elected officials care about regular people and not just billion-dollar corporations. For that reason, I am encouraged that this Committee has compelled Howard Schultz to appear as a witness.

The last time I testified in 2022, Senator Lindsey Graham said workers in the U.S. didn't want to belong to unions anymore. In reality, the opposite is true. The percentage of American workers who support unions is at an all-time high, but they are unable to join unions, form unions, or get a first contract because in America, the game is rigged.

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[3] Megan Brenan, Approval of Labor Unions at Highest Point Since 1965, Gallup, Sept. 2, 2021 available at *https://news.gallup.com/poll/354455/approval-labor-unions-highestpoint–1965.aspx.*

[4] National Labor Relations Board, First Three Quarters' Union Election Petitions Up 58 percent, Exceeding All fiscal year 2021 Petitions Filed, July 15, 2022 available at *https://www.nlrb.gov/news-outreach/news-story/correction-first-threequarters-union-election-petitions-up–58-exceeding.*

[5] Protecting the Right to Organize Act, S. 567, 118th Cong. (1st Sess. 2023).

Our nation's labor laws are weak, ineffectual, and unenforced. Look at Starbucks. Almost 300 Starbucks locations have voted to unionize, but the company and Howard Schultz refuse to come to the bargaining table.

These workers want a union at 300 stores. Howard Schultz has said there will never be a union at Starbucks. He stated his intentions clearly. He has closed unionized Starbucks locations. He has threatened workers in their benefits. As a result, there have been more than 500 unfair labor practice charges filed against Starbucks.

But sadly, those groups do nothing to stop Schultz's illegal behavior. Why? Because there are no meaningful consequences for businesses and CEOs like Howard Schultz when they break our laws. Instead of supporting legislation to protect our workers' choice to join a union, half the Senate Rules Committee are only willing to offer a right to work laws.

These deceptive laws create the ability to leave a union while still reaping all the benefits and belonging to one. We have the data on the right to work these laws, lower wages, create substandard benefits, and erode workers' rights in every state where they are passed. These laws never benefit working people, only big business.

That is why the Koch brothers and Wal-Mart have always been the biggest donors to the National Right to Work Foundation. I have spent the last 3 years traveling this Nation, visiting hundreds of warehouses, loading docks, and job sites, and listening to real union members.

Teamsters are conservatives and progressives. Some are laser focused, focused on politics, and some stay out of it altogether. Our members love their union for one simple fact, they get more money and better benefits because they are Teamsters. It is not complicated. Even nonunion workers in right to work states make more money because of Teamsters. The data proves it.

Going to work without union representation is like defending yourself in court with no lawyer on your side. Why would a politician, Republican or otherwise, advocate for any American worker to be in that position? I know why Wal-Mart would.

But why would somebody, someone to represent the people, want workers to be more vulnerable and exploited. Just a couple of months ago, Teamster real members were telling every one of you that working conditions were bad with these major rail carriers. These workers felt vulnerable.

Safety concerns were ignored. The companies were understaffed. The trains ran too long and railroads were overworked. Nobody cared until it was too late. This kind of behavior is where the term getting railroaded comes from 100 years ago, when the railroads always got their way, when any employer, be the rail carriers, package companies, or coffee shops gets away with repeated abuse of American workers.

The legislators who let it happen are complicit in these crimes. The Teamsters biggest employer is UPS. We have a contract coming up with the national negotiation set to start in a few weeks.

This is the largest private sector collective bargaining agreement, representing 360,000 workers.

UPS's biggest competitors are FedEx and Amazon. This may come as news to some Committee Members, but companies that threaten their workers and violate their rights are not interested in investing in their workforce and they are not creating good jobs. Amazon's whole business model is about avoiding responsibility for their workers. They have a 150 percent turnover ratio.

A Teamster package car driver at UPS makes twice what the same driver makes on Amazon and FedEx, twice as much. Why is that? It is because a driver at UPS is a Teamster. We get twice as much because we are union.

Remember, UPS still made more money in profits these past 3 years than it ever has made in history. Do the Members of this Committee want American workers to make more or less? This summer, I promise you, the Teamsters at UPS and the negotiating committee will negotiate the strongest private sector collective bargaining agreement in the country.

It will set the standard for what a good union job in America should be. And all of America will be watching as the Teamsters take on Carol Tome and UPS. We are at a critical moment. Workers are drawing a line while conservative court chip away at the Constitutionally protected right to organize.

I ask the Members of this Committee, especially those who cosponsored Senator Paul's Right to Work bill, whose side will you be on? Thank you.

[The prepared statement of Mr. O'Brien follows:]

PREPARED STATEMENT OF SEAN O'BRIEN

Good morning, Chairman Sanders, Ranking Member Cassidy, distinguished Members of the Committee and my "Sisters" in Labor, Presidents Shuler and Henry. My name is Sean O'Brien. I serve as the General President of the International Brotherhood of Teamsters. Thank you for the opportunity to appear before you today to discuss corporate America's longstanding, systematic and often illegal attack on working people who organize to form unions.

Union support is at an all-time high. A Gallup survey done in August 2022 found that 71 percent of Americans approve of unions.[1] In 2021, the Cornell School of Industrial Relations published its first annual report tracking instances of workers withholding their labor. In 2022, that report totaled 424 work stoppages involving approximately 224,000 workers. Work stoppages had increased by 52 percent year to year and the total number of workers involved in work stoppages increased by 60 percent. During the first 9 months of Fiscal Year 2022, union representation petitions filed at the NLRB increased 58 percent. By May 25, fiscal year 2022 petitions exceeded the total number of petitions filed in all of fiscal year 2021. At the same time, unfair labor practice (ULP) charges increased 16 percent.[2]

It's clear that Gallup's opinion poll results don't just reflect unrealized sentiment. Workers are taking action to improve their standard of living, stay safe, and have a voice at work. They are motivated by longstanding inequity in a system rigged against them, but it is the dramatic and tragic experience of many working throughout the pandemic that understandably lit the fuse.

In October 2022, the Economic Policy Institute (EPI) published a report on the productivity pay gap. The report showed that, unlike prior decades, from 1979 to

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[1] *https://news.gallup.com/poll/398303/approval-labor-unions-highest-point–1965.aspx*

[2] *https://www.nlrb.gov/news-outreach/news-story/election-petitions-up–53-board-continues-to-reduce-case-processing-time-in#:?:text=In percent20Fiscal percent20Year percent202022 percent20(October,1 percent2C638 percent20petitions percent20field percent20in percent20FY2021.*

2020, net productivity rose 61.8 percent, while the hourly pay of typical workers increased only 17.5 percent over four decades. The wealth generated by increased productivity isn't going to workers, but it isn't going into a black hole. Additional research by EPI concludes that compensation of top CEOs increased 1,460.2 percent from 1978 to 2021. Top CEO compensation grew roughly 37 percent faster than stock market growth during this period and far eclipsed growth in a typical worker's annual compensation. Increased wealth also went into higher profits like returns to shareholders. [3]

It is against that economic backdrop that, in April 2020, the Bureau of Labor Statistics (BLS) reported that the pandemic-induced unemployment rate had reached 14.8 percent, the highest rate observed since data collection began in 1948. Many millions of others, including a majority of our union's members, continued to work in essential occupations. As Chair Sanders aptly put it in his recent article for the Nation, while millions of essential workers got sick and tens of thousands died unnecessarily, we were reminded that, like the kings and queens of past eras, the very rich know nothing about how most people live, couldn't care less about real people, and firmly believe they have a divine right to rule. [4]

All essential workers faced danger, hardship, and greedy, callous, and self-interested employers during the pandemic crisis, but unionized workers were able to secure enhanced safety measures, additional premium pay, paid sick time, and a say in the terms of furloughs or work-share arrangements to save jobs. Perhaps most importantly, union workers felt safer to speak out about hazards on the job, whereas nonunion workers faced retaliation for doing so. This should come as no surprise. On average, a worker covered by a union contract earns 11.2 percent more in wages than a peer with similar education, occupation, and experience in a nonunionized workplace. Union workers are also more likely to be covered by employer-provided health insurance and nine in 10 workers covered by a union contract (91 percent) have access to paid sick days, compared with 73 percent of nonunion workers. [5] The union difference for workers is real. Encouraging and supporting unionization sets standards within industries that require employers to ensure safe workplaces and family sustaining wages to be competitive—a win for union and nonunion workers. This summer, it is with this truth in mind that Teamsters at UPS will negotiate and ratify the strongest and most comprehensive private sector collective bargaining agreement in the country.

Yet despite clear evidence that workers support unions, need unions, and are taking action to form their unions—and despite having the most pro-union President of our time in office—the Bureau of Labor Statistics (BLS) reported in January that the percent of workers who are union members had once again declined over the prior year. [6] Anti-union forces in business and politics were quick to conclude that workers don't in fact want to be union members, but that's not the truth. The truth is that when workers set about forming their union, they often face insurmountable obstacles. The law is not on their side. Where the law is balanced or favorable to workers, there is a lack of resources to allow for impactful enforcement. And, at the first sign of worker collaboration, employers, armed with seemingly limitless funds, will immediately engage in a campaign of threats and intimidation tactics. In fact, these anti-union campaigns have become so formulaic and commonplace that employers spend $340 million per year on "union avoidance" consultants who teach them how to exploit weakness in Federal labor law to effectively scare workers out of exercising their legal right to collective bargaining. [7] And when workers do win an election, employers use the same tactics to extend first contract negotiations for years. [8]

A December 2019 EPI report concludes that in 2016—2017, employers were charged with violating workers' legal rights in 41.5 percent of all NLRB-supervised union elections.

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[3] *https://www.epi.org/productivity-pay-gap/*; *https://www.epi.org/publication/ceo-pay-in-2021/*

[4] *https://www.thenation.com/article/society/bernie-sanders-angry-about-capitalism/*

[5] *https://www.epi.org/publication/why-unions-are-good-for-workers-especially in-a-crisis-like-covid-19-12-policies-that-would-boost-worker-rights-safety-and-wages/#:?:text=During percent20the percent20crisis percent2C percent20unionized percent20workers,many percent20ways percent20unions percent20help percent20workers.*

[6] *https://www.bls.gov/news.release/pdf/union2.pdf*

[7] *https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/*

[8] *https://files.epi.org/page/-/pdf/bp235.pdf*

Employers were charged with illegally firing workers in at least one-fifth of elections. In nearly a third of all elections, employers were charged with illegally coercing, threatening, or retaliating against workers for union support. [9]

In our over 100-year history, the Teamsters have encountered too many anti-union employers to count. The Teamsters' Union was proud to announce last year that we are engaging in historic efforts to organize mechanics at Delta Air Lines. For years, Delta has persisted as the most vicious anti-union mainline carrier, using its deep pockets to unlawfully interfere with union elections and mislead its employees about organizing efforts. In 2019, Delta infamously hung posters in employee break rooms suggesting that its workforce would be better served with an Xbox, reading that, "A new video game system with the latest hits sounds like fun. Put your money toward that rather than paying dues to the union." Delta's employees were not fooled, and neither are we; we are prepared to defeat Delta's reprehensible union-busting once and for all and welcome its mechanics into the International Brotherhood of Teamsters. [10]

The Teamsters represent 10,700 Sysco drivers and warehouse workers. Sysco is the largest broadline foodservice company in the U.S., with revenue of $73.6 billion for the calendar year 2022. Like its competitors in the foodservice industry, such as U.S. Foods and Performance Food Group, Sysco has grown primarily through acquisitions of smaller regional foodservice companies. Union members often see their employer change multiple times in their careers as companies are repeatedly acquired or merged. In 2013, Sysco attempted to merge with the second largest broadline foodservice company, U.S. Foods. The Teamsters strongly opposed this merger. It would have created virtual monopoly power for Sysco in numerous markets, and could have resulted in significant facility closures and, in the absence of meaningful competition, downward pressure on foodservice workers' wages nationwide. [11]

Nonunion foodservice drivers and warehouse workers actively seek out union representation. In the past 10 years, 30 certification elections have been held at Sysco by workers seeking Teamster representation. Sixty percent of those elections were won. Despite an existing bargaining relationship with the Teamsters covering approximately 15 percent of Sysco's global workforce, Sysco consistently fails to respect labor laws and honor employees' choice to gain union representation. In the past 10 years, over 330 unfair labor practice charges have been filed against Sysco. In the past 10 years, Sysco has filed at least 28 reports with the U.S. Department of Labor (DOL) for retaining labor relations consultants or persuaders. These consultants often hold captive audience meetings with workers to intimidate them and provide them with misleading information to encourage them to vote against union representation.

The Teamsters represent 7,500 Republic Services refuse truck drivers and related employees. Republic Services is the second-largest waste company in the U.S. with revenue of $13.5 billion for calendar year 2022. Nonunion Republic Services drivers and waste industry workers have a strong history of active organizing. In the past 10 years, 51 certification elections have been held at Republic Services by workers seeking Teamster representation. Fifty-nine percent of those elections were won. Despite an existing bargaining relationship with the Teamsters covering over 20 percent of Republic's workforce, Republic consistently fails to respect labor laws and honor employees' choice to gain union representation. In the past 10 years, nearly 275 unfair labor practice charges have been filed against Republic Services. [12] In the past 10 years, Republic and its subsidiaries have filed at least 10 reports with the U.S. Department of Labor on engagement of persuaders and consultants. [13] Four decertification elections involving Teamster-represented locations have been held at Republic in the past 10 years. Decertification is another union busting tactic. All too often, it is promoted by management through misinformation and false promises of raises and benefits if the union is voted out.

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[9] *https://www.epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns/*

[10] *https://www.vox.com/the-goods/2019/5/10/18564745/delta-anti-union-video-game-poster*

[11] *https://teamster.org/2015/04/teamsters-decry-syscos-bullying-rally washington-dc/*

[12] Both ULP calculations searched for Sysco or Republic Services in the NLRB case search, for closed cases from 1/1/2013–21/31/2022. There may be additional filings made under different subsidiary names not captured here.

[13] Both OLMS searches covered 2013–2022 and searched for Sysco, Republic Services, Republic Waste, Allied Waste, or BFI in the company or organization name fields. There may be additional filings made under different subsidiary names not captured here.

By now, we are well versed in Amazon and Starbucks' anti-union tactics. According to filings with the Department of Labor (DOL), in a single year Amazon spent $4.3 million on consultants to prevent its employees from unionizing.[14] As part of their anti-union activity, they have surveilled workers' conversations, forced workers to attend closed-door anti-union meetings and discriminated against pro-union workers.[15] Workers have been fired after engaging in lawful union organizing at both Amazon and Starbucks locations, and store locations have been shuttered in an effort to obstruct union activity.[16]

Amazon has abandoned development plans when local communities have demanded that the company commit to ensuring that the jobs created are good jobs and the environmental concerns that come with Amazon facilities are mitigated. In 2021, Amazon announced that it was building an air cargo hub in Newark, N.J., but pulled out the following year when the Port Authority of New York and New Jersey conditioned the lease on labor and environmental protections. If companies like Amazon cannot bully local officials and communities, then they take their toys and go home.[17]

Throughout the second half of 2022, Amazon workers at the company's regional air hub in San Bernardino, CA, took courageous steps to demand higher wages, safer working conditions, and an end to retaliation against worker organizing. In October, over 100 workers set up a 1-day ULP strike, walking on a picket line with hundreds of community members there in solidarity. Teamsters from nearby unionized warehouses were proud to be there in support of their fellow brothers and sisters in the industry.

In a recent op-ed, San Bernardino Air Hub worker Sara Fee described her motivations for organizing: "I would like to get paid a dignified wage. I literally barely make enough to support myself.. I would also like the warehouse to be a safe place; we have high rates of musculoskeletal injuries, concussions, heatstroke, and repetitive motion injuries.[18] And I would like it to be a place where you are not in fear of losing your job all the time. Where you could have a career or stay there and have a good job for a while. That's why last summer we started our group of KSBD employees, Inland Empire Amazon Workers United, and went on 1-day strikes in August and October."[19]

With workers coming together in serious numbers, what did Amazon do in return? High-priced union-avoidance consultants began to surveil Sara and others who were organizing, isolating them, and attempting to divide and conquer. When Sara spoke up about this, she was suspended. In response, the San Bernardino workers began wearing stickers saying, "Where's Sara?" Management noticed this, and Sara soon returned to work. Despite Amazon's ruthless attempts to target Sara, clear-cut worker power protected Sara in the end.

Both Andy Jassy and Howard Schultz have publicly asserted that their employees are better off without a union. Both make the claim that a union will interfere with the workers' direct line of communication with management and each individual employee's ability to advocate in their self-interest.[20]

This image of "familial harmony" between management and workers at Amazon is especially tough to swallow. Amazon's anti-union tactics are not just about captive audience meetings and direct threats to workers engaged in organizing. Their entire business model depends on worker exploitation and fosters worker turnover to stifle organizing and avoid investment in and responsibility for its employees. The company uses anticompetitive business practices to increase its dominance and drive down labor standards within its core industries. In order to do this, the company relies on weak and outdated labor, occupational safety, and antitrust law, underfunded and understaffed enforcement agencies, and holes in regulatory jurisdiction.

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[14] *https://www.nytimes.com/2022/04/02/business/amazon-union-christian-smalls.html*

[15] *https://www.huffpost.com/entry/amazon-anti-union-consultants—n—62449258e4b0742dfa5a74fb*; *https://www.bloomberg.com/news/articles/2022–05–19/amazon-threatened-workers-over-union-vote-labor-officials-find*

[16] *https://www.cnn.com/2022/11/02/business/starbucks-union-organizers-risk-takers–22-ctrp/index.html*

[17] *https://www.nytimes.com/2022/07/07/business/economy/amazon-newark-airport-new-jersey.html#:?:text=the percent20main percent20story-,Amazon percent20Hub percent20in percent20Newark percent20Is percent20Canceled percent20After percent20Unions percent20and percent20Local,of percent20dollars percent20over percent2020 percent20years*.

[18] What it's like working at Amazon during a heat wave—Los Angeles Times *(latimes.com)*

[19] *https://labornotes.org/2023/02/how-my-co-workers-got-me-reinstated-amazons-san-bernardino-air-hub*

[20] *https://3www.axios.com/2022/11/30/andy-jassy-sticking-with-anti-union-talking-points*; *https://www.cnn.com/2023/02/21/business/howard-schultz-unions/index.html*

Last June, leaked documents showed that Amazon had a 150 percent turnover rate. The documents warned, "If we continue business as usual, Amazon will deplete the available labor supply in the U.S. network by 2024."[21] According to a report by the Strategic Organizing Center (SOC), Amazon's punishing pace-of-work results in worker injury rates that are nearly twice as high as that of all other non-Amazon warehouse facilities.[22] As of last month, OSHA has cited six Amazon warehouses for failure to provide a safe workplace due to unsafe conditions and ergonomic hazards.[23]

Amazon's Delivery Service Partner (DSP) program is a textbook example of how Amazon utilizes weaknesses in both labor and antitrust law to obstruct worker organizing. Amazon has set up more than 2,000 nominally independent DSPs in the U.S. to deliver its packages, employing an estimated 115,000 drivers. Amazon dictates the order of deliveries, the route, the progress and speed of each delivery. From the delivery vehicles to the drivers—DSP employees and their trucks or vans are branded with the Amazon logo. Amazon monitors DSP drivers though an app called Mentor that is installed on navigation devices DSP drivers must use. Amazon dictates prices for each delivery and limits the size of DSPs by limiting the number of routes it assigns to each. There are reports that Amazon terminates DSPs who attempt to reduce their drivers' grueling workload or increase their pay. DSPs and their workers cannot fight back. When they do, Amazon can simply terminate their contracts and shift this work to other DSPs. Keeping each DSP small and thus fragmented allows Amazon to prevent DSPs from challenging Amazon's power over them. For example, Amazon—DSP contracts contain "de facto" noncompete clauses that require DSPs to accept delivery request "Monday through Sunday, 365 days a year, at times and days designated by Amazon." By preventing DSPs from working with competitors and growing their "so-called" independent operations, Amazon ensures it remains the only source of income for DSPs, and that they never build the power necessary to confront Amazon on their own.[24]

Despite this extensive control and branding by Amazon, Amazon asserts that DSPs are independent businesses and disclaims corporate responsibility for the DSPs and employment responsibility for DSP drivers. Yet, in numerous instances, Federal wage and hour lawsuits filed by drivers against DSPs name Amazon as a co-defendant. In fact, Amazon has settled multiple cases in which it was a named defendant, accepting no liability under the terms of the settlement agreements. Thus, the company has avoided lengthy litigation that could ultimately determine Amazon to be a joint employer. By avoiding this classification, it enjoys all the control associated with having its own in-house fleet without concern for unionization efforts. With its dominance, Amazon uses the DSP arrangement to eradicate labor market competition by dictating standards to its supposed competitors, while also making them rely on Amazon for their business. Amazon is also replicating the DSP model in the tractor trailer middle mile segment with its Amazon Freight Partners. Amazon's freight operations serve both inter-facility movement of Amazon products and third-party shippers. These small trucking operations are often poorly vetted and a recent Wall Street Journal investigation showed that Amazon routinely hired companies with poor safety track records.[25]

Unjust barriers to union representation and collective bargaining rights permeate Federal labor law. For decades, FedEx has exploited what is sometimes referred to as the "express carrier loophole," placing tens of thousands of unequivocally non-airline employees, including truck drivers and package handlers, under the Railway Labor Act (RLA), instead of the NLRA.[26] For a company that once circulated a manual to managers entitled "Keeping the People Philosophy Alive: Making Unions Unnecessary," any insinuation that this is simply a fortuitous statutory quirk should be dismissed.

Because the RLA requires an "all or nothing" approach to craft bargaining, this means that upwards of 100,000 employees would have to be organized simulta-

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[21] *https://www.theguardian.com/technology/2022/jun/22/amazon-workers-shortage-leaked-memo-warehouse*

[22] *https://thesoc.org/news/report-shows-amazon-workers-injured-more-than-twice-industry-average/*; *https://thesoc.org/what-we-do/the-injury-machine-how-amazons-production-system-hurts-workers/*

[23] *https://www.osha.gov/news/newsreleases/national/02012023*

[24] *https://www.cnn.com/2021/09/22/tech/amazon-dsp-portland/index.html*; *https://www.vice.com/en/article/wxdbnw/i-had-nothing-to-my-name-amazon-delivery-companies-are-being-crushed-by-debt*

[25] Christopher Weaver, "Amazon Routinely Hired Dangerous Trucking Companies, With Deadly Consequences," Wall Street Journal, Sept. 22, 2022.

[26] *https://www.politico.com/story/2010/06/ups-fedex-worlds-apart-on-labor-law–039079*

neously into a single unit, as opposed to the NLRA, which allows location by location organizing, as would be found at any FedEx competitor. This status, which FedEx has spent millions of dollars lobbying to preserve, is not rooted in well-reasoned labor law, but in a desire to deny rights to its employees.

There is a misconception that unions stifle economic growth and entrepreneurship. There is a fear in these halls about speaking ill of anyone deemed a "job creator." But many longstanding union companies like UPS are growing aggressively, taking in over $100 billion in profits in 2022,[27] while I wouldn't wish the kinds of jobs that Amazon creates on my worst enemy.

Teamsters have fought for nearly 120 years to ensure delivery and logistics work can support families with benefits and sustain middle class careers, but Amazon's power and approach to employing workers are gutting these industries. Bureau of Labor Statistics data show that, when adjusted for inflation, average annual pay for workers in the General Warehousing and Storage Industry (NAICS 49311) have declined 8.6 percent in the last 10 years, despite employment increasing substantially. Similarly, in the Couriers and Express Messengers Industry (NAICS 4921), where the vast majority of Amazon DSPs are categorized, inflation-adjusted average annual pay dropped by 10.8 percent.[28]

A 2020 investigation into Amazon's labor practices by Bloomberg resulted in an expose titled "Amazon has turned a Middle-Class Warehouse into a McJob."[29] The article concludes that, "despite a starting wage well above the Federal minimum, the company is dragging down pay in the logistics industry." The article cites a report by the Government Accountability Office (GAO) stating that Amazon is a close 4th behind Walmart, McDonalds and two dollar-store chains for having the largest number of employees, including full-time employees who struggle to pay their bills and who must utilize Supplemental Nutrition Assistance Program (SNAP) benefits.[30]

The Strategic Organizing Center (SOC) conducted a survey of locations where Amazon directly employs a significant percentage of workers in the warehousing and storage industry and, based on evidence from the Bureau of Labor Statistics and other publicly available sources, identified several local labor markets where average wages in the industry fell after Amazon's arrival. The data detailed below were submitted to the Federal Trade Commission in February 2020, calling on the FTC to open an investigation into Amazon's anti-competitive practices.[31]

Amazon opened its largest New Jersey fulfillment center in Mercer County in June 2014. Mercer County's annual salary and weekly earnings averages in warehousing and storage have both fallen by 18 percent since the year of Amazon's arrival. A $45,699 average annual salary for warehouse work in 2014 had fallen to $37,546 by 2018. This was not part of a pre-existing trend. Prior to Amazon's emergence into this local labor market, wages in warehousing and storage had risen for three consecutive years at both the county and state levels.

Amazon is also one of the largest direct employers in Lexington County, South Carolina, and the county's largest source of warehousing and storage employment. After Amazon opened a fulfillment center in Lexington County in October 2011, the average annual salary and weekly earnings for warehousing and storage work in the county both fell by 21 percent. The story is the same in Chesterfield County, Virginia. Since Amazon opened a fulfillment center in Chesterfield County in October 2012, the average annual salary and weekly earnings for warehousing and storage work in the county have also fallen by 21 percent.

The SOC concluded that Amazon's establishment of warehouses in concentrated labor markets where it can easily drive down wages for warehousing and storage labor is not by accident, but rather by design. Amazon leases more of its warehouses from Prologis, a corporate real estate developer, than from any other landlord. Prologis assists clients like Amazon with locating their warehouses strategically, not only in a manner that is most efficient for logistics operations, but in a manner that allows them to take advantage of vulnerable workers and weak local economies.

For instance, one Prologis site selection document identifies a high unemployment rate and low local median income as being the "labor advantages" of one site's location outside of Atlanta, where Amazon also has a warehouse. In another Prologis

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[27] UPS Form 10-K, Filed 2/21/2023

[28] Bureau of Labor Statistics Quarterly Census of Employment and Wages, 2010–2020.

[29] *https://www.bloomberg.com/news/features/2020–12–17/amazon-amzn-job-pay-rate-leaves-some-warehouseemployees-homeless*

[30] *https://www.gao.gov/products/gao–21–45*

[31] *https://thesoc.org/wp-content/uploads/2021/09/Petition-for-Investigation-of-Amazon.pdf*

document, the "labor advantages" for a second area where Amazon has a facility are presented as a "combination of low wages in a nonunion environment." These site selection preferences raise the prospect that when Amazon does act as a direct employer, it may knowingly distance its warehouses from tighter local labor markets with higher wage expectations and place them instead in looser labor markets where workers are more likely to accept suppressed pay rates because of a lack of employment options. This strategy would allow Amazon to depress wages and exploit workers, particularly ones who lack union representation. [32]

Congress can do a lot to address the weaknesses in law that have allowed corporate America to violate workers' rights and degrade labor standards to their own enrichment. And, specifically to address the disconnect between workers' desire to form a union and their ability to form a union. I suspect that my fellow Presidents on the panel today and I share many of the same ideas. Here are a few:

1. **Pass the Protecting the Right to Organize (PRO) Act**. The PRO Act would address weaknesses and close loopholes in Federal labor law. Especially relevant to this testimony, the bill would bring clarity and accuracy to legal definitions of joint employment and independent contractor status; impose meaningful penalties on employers who violate the NLRA; ban captive audience meetings; expedite first contract negotiations, and protect the right to strike. We must never forget that workers' right to organize is a constitutional right—freedom of association and the power to picket are guaranteed by our First Amendment, and the right to strike is enshrined in our Thirteenth Amendment.

2. **Hold Corporate CEOs Accountable**. Recently, Starbucks CEO Howard Schultz was invited to testify before this Committee about why the National Labor Relations Board has lodged over 75 complaints against Starbucks for violating Federal labor laws. Mr. Schultz declined. The Teamsters urge this Committee to use all available avenues to compel Mr. Schultz to publicly answer for his union busting actions.

3. **Fully Fund the NLRB and OSHA**. The recent surge in collective worker action means more work for the NLRB and for OSHA. Both agencies have been starved for resources for too long. We can pass model legislation, but it means little without meaningful enforcement.

4. **Modernize Antitrust Laws and Address the Impact of Excessive Concentration and Anti-competitive Action on Labor Markets**. The Teamsters will continue to support robust antitrust enforcement and reform. Our agenda is defined by three objectives: 1) curtailing concentrations of corporate power that harm workers, 2) attacking unfair and abusive business models and practices that threaten workers, and 3) empowering working people to engage in collective action against corporate criminals who seek to deny their fundamental right to organize. Congress can take a first step in advancing this agenda by passing Senator Klobuchar and Grassley's American Innovation and Choice Online Act. This legislation is the tip of the spear of a broader pro-worker antitrust agenda, and would stop predatory Big Tech platforms like Amazon from placing their own products and services at an unfair advantage over high-road employers in the warehousing and logistics sector. In addition to supporting greater oversight of the labor market impacts of companies like Amazon, we support enforcement and regulation efforts to treat pernicious practices such as use of vertical restraints and misclassification schemes as unfair methods of competition. The labor dispute exemption to antitrust law must also be respected, and if necessary Congress should clarify for the courts what our labor and antitrust laws already state clearly: worker organizing efforts to improve labor conditions are exempt from antitrust scrutiny, in acknowledgement of workers fundamental right to organize.

5. **Pass the Public Service Freedom to Negotiate Act:** The PSFNA gives public employees in every state the freedom to join together in a union and collectively bargain over wages, hours, and terms and conditions of employment.

6. **End Special Tax Treatment for Union Busting Activity:** The No Tax Breaks for Union Busting Act would end the taxpayer subsidization of anti-union activity by corporations. The bill would classify business' in-

[32] *https://thesoc.org/wp-content/uploads/2021/09/Petition-for-Investigation-of-Amazon.pdf,pages15–16. https://freightpartner.amazon.com/marketing/*; *https://relay.amazon.com/*

terference in worker organization campaigns as political speech under the tax code and therefore not tax deductible.

7. **Deny Federal Contracts to Union Busting Companies:** Full stop.

8. **Increase the presence of workers on the boards of corporations that are privately owned.**

9. **Enforce the DOL Rule on ESG Investment:** And ensure that union workers can put their own pension money to work in their best interest.

10. **Close the Express Carrier Loophole:** And ensure that tens of thousands of misclassified non-airline workers are appropriately covered by the NLRA.

Referencing again Chair Sanders' recent article, for much of the 20th century there was a shared understanding of the role unions needed to play, not just in improving the circumstances of workers but in providing a counterbalance to powerful business interests. The corporate world understands that strong unions can put a check on the kinds of greed, exploitation, and unilateral decisionmaking that exist in non-union companies.[33]

We are at a critical moment. Workers are drawing a line against employers who refuse to bargain fairly with them while conservative courts chip away at the constitutionally protected right to organize and engage in lawful, protected concerted activities. Earlier this year, Supreme Ct. heard oral argument in Glacier Northwest, Inc. v. International Brotherhood of Teamsters Local Union No. 174. At issue in this case is whether the declared policy of the United States to promote collective bargaining involving both small and large, multi-state companies will be allowed to disintegrate into 50 or more separate state labor laws and rules or whether that declared policy will remain part of a long-established, uniform, Federal administrative system. If it devolves into separate, non-uniform systems administered by state and local politicians and corporate interests who contribute to their campaigns, then workers across the country will continue to be crushed by the weight of huge, corporate syndicates that put profit over lives, families, communities, and sheer common decency.

For over six decades, this Court has consistently recognized that, in exercising its authority under the Supremacy Clause of the United States Constitution, Congress established a regulatory system governing the process of collective bargaining for employers and unions across the country. In addition to creating Federal labor standards through the National Labor Relations Act, it established the National Labor Relations Board as the agency to administer the NLRA. This included administratively determining what conduct is protected or prohibited by its provisions. In the Garmon case, which was decided in 1959, the Supreme Court balanced the Federal interests embodied in the NLRA and certain state interests so as to avoid state law interference with Federal labor policy while preserving the states' authority over matters of local concern. While preserving the role of the Federal statute and agency over labor relations, the recognized certain specific areas involving deeply rooted state interests are not displaced by the Federal statutory scheme: namely situations involving violence and threats of violence, including sabotage and breach of the peace.

In the Glacier case, the company claimed that cement drivers who lawfully went on strike against it returned their vehicles with cement still in the drums. The drums were left rolling and that kept the cement intact. But because the company's managers could not figure out how to unload or deliver the concrete to the company's customers, it decided to unload and waste its concrete. The company then retaliated against those drivers by imposing discipline on them. The NLRB later issued a complaint against the company. A decision by the NLRB is pending. In making its decision, the NLRB will determine whether the drivers' conduct of safely returning the cement in the cement trucks to the employer after they lawfully went on strike was lawfully protected conduct.

While the NLRB case is going on, the company has urged the Supreme Court to ignore the existing law and circumvent the NLRB altogether and to let companies run wild into state courts to enjoin and even attempt to criminalize all strikes. For many decades, Federal law has protected workers' right to strike in order to improve their wages, hours and working conditions, and it has required that labor disputes be handled in a consistent, uniform way that promotes United States labor policies. The anti-worker case before the Court is undemocratic and disregards longstanding legal precedent. It is about corporations using the legal system to try to

[33] *https://www.thenation.com/article/society/bernie-sanders-angry-about-capitalism/*

deny workers their inherent rights. Regardless of the outcome, American workers will never be broken.

For both the American worker and our entire country, the Supreme Court must affirm the lower court's ruling that the legality of the strike falls exclusively within the jurisdiction of the National Labor Relations Board.

Unions are good for workers, good for the economy and good for business.[34] President Biden has been quite clear that his Administration is built on the principle that a strong America relies on strong unions. The Teamsters stand with workers wherever and whenever they are ready to claim their power at work. I know I am the one answering your questions today, and I am encouraged by the convening of this hearing with this panel and by Chair Sanders' leadership, but I have to ask: what is Congress going to do to ensure that workers are free to exercise their labor rights without the threat of coercion and intimidation? Why is the PRO Act not passed overwhelmingly with bipartisan support? Why is there not a single Senate Republican co-sponsor on that bill? Why is Congress allowing corporate criminals to destroy good middle class careers and create dead-end low-wage jobs in their place? As Senator Ted Kennedy once remarked, "Federal Express is notorious for its anti-union ideology, but there is no justification for Congress becoming an accomplice in its union-busting tactics."[35] At the Teamsters union, we often say that fighting for workers' rights is a full contact sport. The Teamsters are in this fight to win. Whose side will you be on?

I thank you for your time and attention and look forward to your questions.

The CHAIR. President O'Brien, thanks very much. Senator Cassidy, do you want to introduce your witness?

Senator CASSIDY. Sure. Welcome to all our witnesses, but I will first introduce Mr. Ring. Mr. Ring is a former chairman of the NLRB and an expert in the field of labor and employment. Mr. Ring was confirmed to the NLRB on April the 11, 2018 and served as chair until January 2021, and then as a Board member till the end of his term in December 2022.

He led efforts to streamline the NLRB's case handling procedures, reducing backlog to a historic low. He holds a B.A. from Catholic University and a J.D. from Catholic University's Columbus School of Law. Chairman Ring, we welcome your presence and expertise. We look forward to your testimony.

STATEMENT OF HON. JOHN F. RING, PARTNER, MORGAN LEWIS & BOCKIUS, FORMER CHAIRMAN OF THE NATIONAL LABOR RELATIONS BOARD, WASHINGTON, DC

Mr. RING. Thank you, Senator. Chairman Sanders, Ranking Member Cassidy, and Members of the Committee, thank you for your invitation to participate in the hearing today. It is an honor to appear before you.

Senator Cassidy said I am a partner at the law firm of Morgan Lewis, where I practiced labor law for almost 30 years before serving on the National Labor Relations Board. I recently turned to Morgan Lewis following my service.

As I noted in my confirmation hearing in front of this Committee almost 5 years ago, my career in the labor field started at the Teamsters' Washington, DC. headquarters, where I worked for nearly 7 years during college and law school.

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[34] *https://www.ilr.cornell.edu/scheinman-institute/blog/outreach/unions-are-having-moment-heres-how-can-be-good-labor-and-business*

[35] *https://www.nytimes.com/1996/10/01/us/senate-fight-over-phrase-demonstrates-words-effect.html*

That experience offered an important perspective that shaped my law practice, gave me tremendous respect for the collective bargaining process, and informed my overall approach to labor law. As this Committee looks at the state of union organizing, I know that there are many who think that the PRO Act is a panacea and that corporate America is the problem.

I would urge Congress, particularly this Committee, not to turn its back on the National Labor Relations Act quite yet. Instead, Congress should consider whether the problems the PRO Act is supposed to fix can be addressed short of a major rewrite in Federal labor law.

After my recent service on the NLRB, I am convinced that some commonsense modifications to at least three aspects of the NLRB's current enforcement approach would accomplish a great deal.

First and foremost, the NLRB must process its cases more quickly. Parties, employees, unions, and employers should not have to wait years to get their cases resolved. It is simply justice denied for employees to wait multiple years for a union election, or to wait to be reinstated following an unfair labor practice.

The delays are so bad that the PRO Act seeks to establish an NLRB workaround, creating a dual track for a private right of action for labor violations. The good news from my perspective is that this is all fixable. One of the accomplishments that I am most proud of from my time as an NLRB chairman was the work, we did to reduce case processing time.

When I arrived at the NLRB in 2018, there were cases that had been pending for almost 10 years, and many were 3 to 5 years old. By making modest process management improvements, we were able to reduce the median age of cases pending before the Board from 233 days in Fiscal Year 2018, to 85 days at the end of 2000—Fiscal Year 2020. So, it can be done.

For the second enforcement change that I would like to recommend, that the Board must return to its focus—and focus on its core mission. That is overseeing union organizing and collective bargaining. In recent years, the Board has embarked on a series of ill-fated efforts to test the boundaries of its statutory authority that has wasted countless resources, clogged the Board's docket, and diverted the agency's attention from its core mission.

Several years ago, for example, the NLRB decided that it would challenge mandatory arbitration agreements. After years of litigation and hundreds of charges, the Board was resoundingly rebuffed by the Supreme Court. And the Board has pushed other of these wasteful forays in an attempt to expand the Act's protections, from policing employer handbooks, to just recently deciding to prohibit standard provisions in all employers' severance agreements.

These various initiatives have little to do with unionization or collective bargaining. Unfortunately, while pursuing all these initiatives, the Board fails those who need it the most. Last month, amid the Board's recent renewed activity to expand protections again on these various non-core issues, the Board finally issued an election for 86 mechanics at a Nissan plant in Mississippi after 2 years.

The machinists union statement after the decision lamented, "a broken and painstakingly slow NLRB process." Finally, the NLRB needs to end the destructive practice of policy and precedent oscillation. When I was chairman, we worked to restore much of the decades old precedent that had been upended by the Board before us.

The current Board is determined, it appears, to swing the pendulum even further. These swings in precedent makes it difficult for anyone to know the rules and undermines respect for the Board. Industrial peace is best served when everyone knows what the rules are and has confidence in the Board to enforce those rules in a neutral and consistent manner.

In closing, I would say that rather than rewrite Federal labor law, Congress should consider these necessary NLRB enforcement changes. Not only are they eminently doable, these changes avoid the PRO Act's sweeping and far-ranging impacts, particularly on employee free choice, basic democratic rights to a secret election, and free debate. I appreciate the opportunity to be here with you today.

[The prepared statement of Mr. Ring follows:]

PREPARED STATEMENT OF JOHN F. RING

Chairman Sanders, Ranking Member Cassidy, and Committee Members, thank you for your invitation to participate in this hearing. It is an honor to appear before you today. [1]

I am a partner in the law firm, Morgan, Lewis & Bockius LLP, where I practiced labor law for almost 30 years prior to serving on the National Labor Relations Board ("NLRB" or "Board"). I had the privilege of serving as Chairman from April 2018 to January 2021, and as a Board Member until the end of my term on December 16, 2022. I recently returned to Morgan Lewis and private practice. My law practice has focused on management-side negotiating and administering collective bargaining agreements, mostly in the context of multiemployer bargaining. As I noted during my confirmation hearing in front of this Committee almost 5 years ago, my career in the labor field started at the International Brotherhood of Teamsters Washington D.C. headquarters, where I worked for nearly 7 years during college and law school. That experience offered an important perspective that shaped my law practice, gave me tremendous respect for the collective bargaining process, and informed my overall approach to labor law.

Today I am here to talk about the Protecting the Right to Organize Act ("PRO Act"), S. 567, reintroduced in the Senate last week. This legislation has been introduced in every Congress over the past 10 years and has failed to pass each time, including when both houses of Congress and the White House were controlled by the same party. There is a reason this legislation has failed to be enacted in my view. The PRO Act advances the objectives of a small interest group—labor unions—and represents a compilation of every "wish list" item the labor movement could come up with to change the historic balance between labor and management to favor unionization. It is based on unions' belief that increasing union membership is in the best interest of the country.

While no one can fault organized labor's desire to pursue legislation that would advance its own self-interest, there are several reasons to step back and take a more serious approach. This is particularly true today where the country faces the challenges of a changing workforce, unprecedented global economic forces, and a highly integrated market economy where we do not have the luxury of approaching issues in isolation. Indeed, given these challenges, we need to be focused not on how we address historic grievances, but on how we build the best labor-management framework for the workforce of the future.

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[1] My testimony today reflects my own views, which should not be attributed to Morgan Lewis & Bockius or the NLRB. I am grateful to Lauren M. Emery and Gregory B. Nelson for their assistance.

As this Committee considers the PRO Act, I would ask that it take into consideration several points. First, while not perfect, the National Labor Relations Act ("NLRA" or "Act"), as amended over the years, is a unique and carefully crafted law that has done an admirable job over the last almost 90 years of balancing labor and management interests to accomplish its central objectives: promoting workplace democracy and ensuring industrial peace.

Second, before undertaking a radical overhaul of Federal labor law, I would suggest that many of the criticisms levied against the NLRA, which the PRO Act is supposed to address, can be fixed through certain relatively easy modifications to the NLRB's enforcement approach.

Finally, as the Committee considers the sweeping and far-reaching changes that will affect every segment of our economy, I would urge the Committee to take a more serious approach. As discuss below, there are many unanswered questions that deserve input and debate from all stakeholders, not just those promoting the PRO Act.

The NLRA: Workplace Democracy and Industrial Peace

Before Congress embarks on an overhaul of the NLRA, it is worth taking stock of the Act's successes and not just focus on its failures. Indeed, the success of the Act should not be underestimated. Although the law is not perfect, it is far from requiring a total rewrite.

The NLRA has been in place for almost a century, and, over that time, has continued to achieve the objectives Congress set: ensuring workplace democracy and industrial peace. As is clear from the statutory language of the Act and its legislative history, the NLRA seeks to ensure industrial peace by affording employees the right to organize while seeking to prevent "strikes and other forms of industrial strife or unrest."[2] As the Supreme Court has recognized, the NLRA "is not intended to serve either party's individual interest, but to foster in a neutral manner a system in which the conflict between these interests may be resolved."[3]

No one would claim the NLRA is perfect. As evidenced by a series of amendments over the years, Congress has seen fit to fix some of those imperfections as they have been identified. Both labor and management interests can find fault with the Act for one thing or another. Union interests say that the Act is deficient in supporting their organizing goals and in stopping employers from violating the law. Some management interests says the Act throttles their business objectives and denies employees free choice.

Until recently, it was widely understood that the NLRA was created to provide both the employer and the employees a voice—workplace democracy—and to maintain a system that promotes a more productive relationship between labor and management. Until recently, most would say the NLRA has admirably achieved these goals. Now Congress is considering a major overhaul. The real question is whether the Act is not meeting its goals or whether the goals of the Act have changed.

Nevertheless, it is important to recognize that the NLRA has largely done what Congress intended. It does not establish involuntary sectoral bargaining or a European-type model of works councils. It doesn't force unions on employees or impose economic terms on employers. Rather, it affords employees the right to form, join or assist a union, or not do so, based on the circumstances of their individual workplace. In making that decision about whether to be unionized, the Act provides for robust American-style democratic debate, one that has always included all voices including that of the employer.

It is only through an employee's ability to hear all arguments—from a union, their employer, and their coworkers—that they can make an educated decision about whether or not they wish to be represented. The NLRA offers employees a voice and the ability to collectively decide upon representation while, at the same time, allowing employers to lawfully communicate with its employees in a non-coercive manner. From its inception, the NLRA has struck the delicate balance between empowering employees, while allowing employers to present their arguments to workers.

In fact, in the creation of our Federal labor law, there was clear "congressional intent to encourage free debate on issues dividing labor and management."[4] The Supreme Court has "characterized this policy judgment, which suffuses the NLRA as a whole, as 'favoring uninhibited, robust, and wide-open debate in labor disputes,'

[2] 29 U.S.C. § 151 et seq..
[3] First National Maintenance Corp. v. NLRB, 452 U.S. 666, 680–681 (1981).
[4] Linn v. United Plant Guard Workers of Am., Loc. 114, 383 U.S. 53, 63, (1966).

stressing that 'freewheeling use of the written and spoken word . . . has been expressly fostered by Congress and approved by the NLRB.'"[5]

The NLRA also offers employees the rights and related protections to act on a concerted basis for their mutual benefit. Employees may decide to act concertedly without joining a union, and the Act protects that activity. In those workplaces where employees indicate their interest in a union, the Act establishes a procedure for determining support that is anchored in the most fundamental American democratic ideal: the right to a secret vote. Further grounded in another of our Nation's founding principles of capitalism, the Act establishes a system of collective bargaining that offers union and management the ability to negotiate a labor contract based on the relative economic strength of each party.

Congress further ensured that there would be compliance with the Act, creating the NLRB and unique enforcement procedures and remedies that advance the public interests underlying the statute. Under the NLRA, parties can pursue a charge or petition for a union election without the need for an attorney or legal representation. This is a rare system when compared to most other Federal and state employment statutes.

Additionally, the NLRB annually processes thousands of charges and petitions. In 2022 alone, the Agency oversaw 1,522 representation elections, reviewed almost 18,000 unfair labor practices ("ULP"), achieved $51.6 million in monetary remedies, and secured offers of reinstatement for almost 1,000 employees. And while these enforcement achievements are notable, a hallmark of the NLRB's success has been the ability to resolve labor disputes at their early stages. In 2022, the Agency brokered 5,587 ULP settlements and adjustments, and out of the almost 18,000 charges filed, the General Counsel issued complaints in only approximately 4 percent of cases, a testament to the Agency's ability to review, dismiss and settle a large majority of charges.

With this basic structure, the NLRA has produced enormous benefits for millions of Americans, including employees, unions, employers and the U.S. economy, for almost nine decades. In recent years, however, and particularly as the PRO Act has dominated the conversation, some have decided that the NLRA is outdated and in need of overhaul. In my view, before we jump to such a conclusion, we should take account of the effectiveness and accomplishment of our current Federal labor law. Given its successes, the Act is worth preserving.

NLRA Fixes Without PRO Act Overhaul

The NLRA undeniably has produced enormous benefits to the country. However, having recently completed my term on the NLRB and after serving for almost 3 years as Chairman, I am convinced that there are undoubtedly ways to make it better. And before undertaking such a substantial overhaul of the NLRA, Congress should consider whether certain modifications could be made to the Board's enforcement of the Act. Doing so could go a long way toward achieving many of the goals of the PRO Act.

First, the NLRB should be able to process its cases—from start to finish—faster. Nowhere is the old adage "justice delayed is justice denied" more apt than with the NLRB. Employees willing to exercise their rights under the Act should not have to wait years for a decision. Second and relatedly, the NLRB should recommit its focus to its core union-related mission. In my view, the Board should stop distracting itself from traditional matters in order to achieve peripheral objectives. Time and again in recent years, the Board has spent countless resources and racked up untenable case delays seeking to advance new and imaginative legal theories at the expense of its core collective bargaining mission. Third, the NLRB should end the destructive practice of policy and case precedent oscillation.

Considering case processing delays, the NLRB has long been criticized for the time it takes to issue its cases.[6] One of the accomplishments of which I am most proud from my time as NLRB Chairman is the work we did to reduce case processing time and nearly eliminate the Board's case backlog. When I arrived at the NLRB in 2018, there were cases that had been pending almost 10 years and many were 3 to 5 years old. In my view, this was appalling. We immediately initiated a

[5] Chamber of Com. of U.S. v. Brown, 554 U.S. 60, 67 (2008) (citing Letter Carriers v. Austin, 418 U.S. 264, 272—273, (1974)).

[6] See e.g., GAO Report to Congressional Requesters, The National Labor Relations Board Action Needed to Improve Case-Processing Time at Headquarters (Jan. 1991). see also, Miller, An administrative appraisal of NLRB, Industrial Research Unit, Wharton School, University of Pennsylvania Related Series: Labor relations and public policy series; no. 16 (1977).

series of process management changes. A majority of Board Members at the time committed to this initiative, collectively affirming the critical importance of timely case processing to the mission of the Act. This was a relentless focus, particularly in representational matters.

Based on our efforts, the median age of all cases pending before the Board was reduced from 233 days in fiscal year 2018 to 157 days at the end of fiscal year 2019, an almost 33 percent reduction. The next year, fiscal year 2020, the median age of cases before the Board was reduced further from 157 days to 85 days, a 46 percent reduction. At the end of fiscal year 2020, the number of cases pending before the Board is at its lowest level in over 40 years. [7]

I am pleased that the Board has continued many of the reforms we initiated. But I know there is more that can be done. In my view, before Congress embarks on efforts to overhaul our labor laws, particularly changes that would allow individuals to bypass the Board if it does not act promptly, it should find ways to build on the process improvements in case processing that we began. As our efforts showed, case processing can be improved, and the advantages to all NLRB stakeholders is tremendous.

Some case-processing delays could be addressed by another change in the Board's enforcement approach that I would strongly recommend. In recent years, the Board has periodically embarked on a number of ill-fated efforts to test the boundaries of its statutory authority. In 2014, for example, the Board took the position for the first time that the Act prohibited mandatory arbitration agreements. This new interpretation not only expanded the historic understanding of Section 7 rights, it placed the NLRA squarely in conflict with the Federal Arbitration Act. There were immediately legal challenges, but the Agency continued to prosecute hundreds of cases under the new interpretation of the Act. After more than 5 years of litigation, the Supreme Court resoundingly rejected the Board's overreach in *Epic Systems*. [8]

In the end, the NLRB wasted countless resources, flooded the dockets at the Board and in the Regions and diverted attention from its core mission. Indeed, many of these cases contained other charges of violations under established precedent that were left unresolved for years while the mandatory arbitration issue was litigated. This all was entirely predictable. [9] And it is safe to say, nothing in this diversion helped organize one union member or achieve one successful collective bargaining outcome.

As another example (and there are many others), the Board in 2004, began a new aggressive enforcement policy toward ordinary employer rules, policies and handbook provisions. [10] The maintenance of commonplace, facially neutral rules—imposing innocuous requirements like civility in the workplace—were now being found unlawful. Like the mandatory arbitration cases, there were hundreds of these rules cases that flooded the docket and distracted the Board. And because these rules

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[7] NLRB Press Release: NLRB Closes Out fiscal year 2020 With Favorable Case Processing Results *https://www.nlrb.gov/news-outreach/news-story/nlrb-closes-out-fy–2020-with-favorable-case-processing-results (Oct 30, 2020)*; NLRB Press Release: NLRB Closes Out fiscal year 2019 With Positive Case Processing Results *https://www.nlrb.gov/news-outreach/news-story/nlrb-closes-out-fy–2019-with-positive-case-processing-results* (Oct 7, 2019).

[8] Epic Systems Corp. v. Lewis, 584 U.S.——, 138 S.Ct. 1612 (2018).

[9] See Murphy Oil, 361 NLRB 774, 830 (2014) ("My colleagues in the majority embark on this course in good faith, motivated by the goal of enforcing the Act as they understand it. Their good intentions, however, cannot change the fact that both D. R. Horton and today's decision are steering the agency on a collision course with the Supreme Court. This might be understandable if these cases involved the core employee-to-employee concerted activity that lies at the heart of the Act. As shown, that is not the case. What is at stake here, instead, is merely an increase in the utilization of class and collective action procedures established by other Federal laws and administered by the Federal courts according to decades of their own precedent—all areas where this agency has no expertise. In these circumstances, the likely outcome is a regrettable but completely predictable, understandable diminution of deference to the Board's orders, as various courts continue to reject D. R. Horton's reasoning and this agency's attempt to interfere with their management of their own cases. And, unfortunately, in the interim, reviewing courts will be less and less likely to defer to the Board's construction of Section 7 in other contexts after dealing with D. R Horton's unjustified refusal to apply the FAA as the courts have directed. Finally, and most importantly, this unfortunate conflict will almost certainly end with the inevitable reaffirmation by the Supreme Court that the Act, too, must yield to the Federal policy of enforcing arbitration agreements according to their terms. The prospect of victory is too slight, and the possible rewards are too limited to justify D. R. Horton's extraordinary cost in diverted resources and lost judicial deference, in my view.") (Member Johnson dissenting) (footnote omitted).

[10] See Lutheran Heritage Village-Livonia, 343 NLRB 646 (2004).

cases came at around the same time the NLRB was pursuing its mandatory arbitration theory, the backlog only worsened.

With a change in majority, the NLRB in December 2017 adopted a more commonsense approach to enforcing employer rules, policies and handbooks that eliminated these cases.[11] This change allowed the Board to better focus on the core mission but, unfortunately the damage was already done. There was a backlog of these rules cases when I arrived at the Board, many of which contained other violations that went unresolved for years. This, of course, is particularly unfortunate when those violations involved representational issues or employees discharged for engaging in activity protected by the Act. I was pleased that we were able to clear the backlog of these cases, but the problem was one created by the Board and totally avoidable.

Unfortunately, the NLRB appears to be reverting to its prior course. Both the Board and General Counsel are once again pursuing issues that either are outside the core mission or involve dubious statutory interpretations that will result in litigation unlikely to prevail. For its part, the Board looks like its reupping its mandatory arbitration agreement and employer rules legal battles. Recently asking for public briefing on these issues, the Board appears poised to devote its limited resources to protecting matters that have nothing to do with unionization and collective bargaining. Making this argument, among others, Member Marvin Kaplan and I, as minority members of the Board at the time, dissented to these latest diversions.[12]

And this appears to be just the start of the NLRB's efforts to distract itself once more from its core mission. Just a few weeks ago, for example, the Board issued a decision effectively invalidating all private sector severance agreements that contain confidentiality or non-disparagement provisions affecting largely non-union settings. If the past is any indication of how this will play out, the Board's decision to police all severance agreements will result in another drawn-out legal battle that drains agency resources and clogs the Board's docket. And, of course, this comes at the expense of the Board's ability to timely process pending organizing petitions and unfair labor practices.

The harm done to the Agency's core mission by these types of distractions is real and cannot be overstated. For example, while the NLRB has been focusing on mandatory arbitration agreements, employer handbooks and severance agreements, a group of 86 maintenance technicians at a Nissan plant in Mississippi recently waited almost 2 years for their case to be decided. The Board ultimately ruled in the union's favor on February 2, 2023, but the delay caused potentially irreparable damage to the employees' organizing effort.[13]

In a statement provided to the press following the decision, the Machinists Union said: "It is unfortunate that a broken and painstakingly long NLRB process has again allowed a company to put the brakes on workers obtaining a voice on the job without delay. The IAM will discuss the ruling and its consequences with this group of skilled tool and die maintenance technicians at Nissan to determine the best path

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[11] The Boeing Co., 365 NLRB No. 154 (2017).

[12] See Stericycle, Inc., 371 NLRB No. 48 slip op at 8 (2022) ("The Supreme Court recently reminded us that 'Section 7 focuses on the right to organize unions and bargain collectively.' In keeping with this observation, the Board ought to devote the better part of its time and energy to ensuring free and fair elections and to dealing with employers who quell organizational efforts through intimidation or who refuse to bargain in good faith. Scrutinizing facially neutral workplace rules that target unprotected conduct to determine whether they might be construed by labor-law professionals to reach some protected conduct as well consumes resources better devoted to going after the real bad apples. Policing the margins of Section 7 in this way occupied an undue amount of the Board's resources, distracted the Agency from its core mission, and interfered with the Board's ability to issue cases in a timely manner. The majority's decision to issue this Notice and Invitation should prompt concern that those days may soon return.") (Members Kaplan and Ring dissenting); Ralph's Grocery, 371 NLRB No 50 slip op at 7n. 19 (2022) ("Dozens of cases, including this one, were decided under D. R. Horton and Murphy Oil only to have the violation finding denied enforcement by a court of appeals both before and after Epic Systems. The resources expended on the fruitless litigation of those cases contributed significantly to the backlog of pending cases in place at the time we joined the Board. For example, the median age of cases pending at the Board stood at 233 days at the end of fiscal year 2018, shortly after Epic Systems was decided. Thereafter, the median age of pending cases decreased to 157 days at the end of fiscal year 2019, 85 days at the end of fiscal year 2020, and 72 days at the end of fiscal year 2021. Indeed, this case remains pending at the Board even though the court of appeals issued its mandate denying enforcement in part and remanding on August 27, 2018. The likelihood is that the majority's efforts to challenge arbitration agreement will result, once again, in delayed case processing.") (Members Kaplan and Ring dissenting).

[13] Nissan N. Am, Inc., 372 NLRB No. 48 (Feb. 2, 2023).

forward."[14] It seems the Board's message to those like the Nissan mechanics is that protecting non-union employees against mandatory arbitration, employer handbooks and severance agreements is more important than them.

The General Counsel also is focusing on many areas that do nothing for union organizing and collective bargaining, including efforts to expand NLRA coverage for college athletes[15] and for the faculty at religiously affiliated colleges and universities.[16] She is pushing to expand the definition of protected activity for non-union employees unrelated to union organizing,[17] and to affording so-called Weingarten rights to non-union employees.[18] Assisting other Federal and state agencies, the General Counsel has signed various inter-agency coordination agreements,[19] including a memorandum with the Federal Trade Commission to assist that agency with its merger review activities.[20] All these far-flung initiatives, I should note, have being undertaken while the NLRB continues to say it is underfunded and understaffed.

In addition, the General Counsel is urging the Board to make radical changes in well-established precedent that will further divert the NLRB from its core mission. In changes that would fundamentally alter union organizing, the General Counsel has proposed radical interpretations of the Act prohibiting employer communications to employees over matters protected by the Act and abolishing employees' rights to an NLRB secret ballot election. Of course, the argument that these changes are supported by existing statutory authority is belied by their inclusion in the PRO Act and other legislative measures over the years. Nevertheless, neither has any chance of surviving judicial scrutiny.[21] More to the point, these overreaches will result in the same endless litigation, wasted Board resources and distraction from the NLRB's core mission.

The third change in the NLRB's enforcement approach I recommend is an end to the destructive practice of policy and case precedent oscillation. In recent years, the Board has earned the reputation of an unreliable arbiter of labor disputes. The policy swings make it difficult for all the Board's stakeholders—unions, employers and employees—to know the rules, and it undermines confidence in the Board. These policy flip-flops also undermine the confidence of reviewing courts that must enforce the Board's orders. And the NLRB's non-acquiescence policy, which lets the Board

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[14] Josh Eidelson, Nissan Techs Can Vote on Union, U.S. Labor Board Rules, Bloomberg, Feb 2, 2023.

[15] NLRB General Counsel Memorandum GC 21–08, Statutory Rights of Players at Academic Institutions (Student-Athletes) Under the National Labor Relations Act (Sept. 29, 2021).

[16] NLRB General Counsel Memorandum GC 21–04, Mandatory Submissions to Advice (Aug. 12, 2021).

[17] Id.

[18] Id.

[19] NLRB General Counsel Memorandum GC 23–03, Delegation to Regional Directors of Section 102.118 Authorization Regarding Record Requests from Federal, state, and Local Worker and Consumer Protection Agencies (Nov. 9, 2022); NLRB General Counsel Memorandum GC 22–03, Inter-Agency Cooperation (Feb. 10, 2022); see also NLRB Release, National Labor Relations Board and Department of Justice Announce New Partnership to Protect Workers (July 26, 2022).

[20] NLRB News Release, National Labor Relations Board and Federal Trade Commission Forge New Partnership to Protect Workers from Anticompetitive and Unfair Labor Practices (July 19, 2022).

[21] The General Counsel's new and radical position that employers should be prohibited from union-related speech during paid time is contrary to Section 8(c) of the NLRA and the First Amendment. Section 8(c) affirmatively protects the expression of union-related "views, argument, or opinion," and the Supreme Court has held Section 8(c) "implements the First Amendment" and reflects a "policy judgment, which suffuses the NLRA as a whole, . . . 'favoring uninhibited robust, and wide-open debate in labor disputes.'" Chamber of Com. Of U.S. v. Brown, 554 U.S. 60, 67–68 (2008) (citation omitted). Likewise, the General Counsel's proposal to eliminate NLRB secret-ballot elections is without legal support. Although the General Counsel advocates this approach based on Joy Silk Mills, Inc., 85 NLRB 1263 (1949), enforced, 185 F.2d 732 (D.C. Cir. 1950), cert. denied, 341 U.S. 914 (1951), two subsequent Supreme Court decisions—Gissel Packing Co. v. NLRB, 395 U.S. 575 (1969), and Linden Lumber v. NLRB, 419 U.S. 301 (1974)—have rejected mandatory union recognition based on authorization cards (absent "outrageous," "pervasive" or other unlawful conduct that would "seriously impede" holding a fair election). The Supreme Court and the courts of appeals have consistently held that authorization cards are "admittedly inferior" to elections, they are subject to "abuses" and "misrepresentations," and employers "concededly may have valid objections to recognizing a union on that basis." Notably, Congress has repeatedly considered amendments to the NLRA which, if enacted, would have required union recognition based on authorization cards; the failure to enact these proposals is compelling evidence that card-check recognition is not available under current law.

ignore individual circuit court decisions, creates additional enforcement inconsistencies.

The Obama-era Board in particular overturned numerous long-standing case precedents in many areas of established Board law. By some estimates, the Board overturned more than 4,000 years of collective precedent in some 91 cases. Much of this was part of what I described above: ill-fated efforts to test the boundaries of its statutory authority in areas such as mandatory arbitration clauses. In other areas, the Board upended the historic balance between employer and employee interests that had been the hallmark of our Federal labor law.

While I was NLRB Chairman, the Board worked to restore much of the precedent that had been changed by the prior majority. We returned many of the standards to what they had been for decades, including joint employment, independent contractor and rules governing the conduct of union elections. Notably, we restored much of this precedent; we did not attempt to swing to the other extreme. In a number of cases, we aligned our precedent to the standard set by prior court decisions to ensure consistent enforcement. We also undertook an aggressive rulemaking initiative—doing more than any prior Board—to provide better guidance and greater stability in the law.

Now, the current Board and General Counsel has embarked on a mission to undo nearly every case precedent we restored. This, of course, is in addition to pushing for their other new ill-fated precedent changes described above. The current Board is also working to undo the rulemaking we did. And the General Counsel announces a new policy change nearly every few weeks, making compliance with ever-changing Board law nearly impossible.

Industrial peace is best served when everyone knows what the rules are and can have confidence that the NLRB is enforcing those rules in a neutral and consistent manner. The Board's current approach has undermined confidence in the Board and its precedent.

The bottom line is that, before Congress pushes ahead with a major overhaul of Federal law, it should first consider what could be done to improve the enforcement efforts under the Act. The NLRB should more expeditiously process all its matters, and particularly representation petitions. If the employer violates the Act during an election, it should be addressed within a matter of months, not years. In the event an employer fails to bargain in good faith for its first contract, the Board must be able to get the parties back to the table in less than 2 years. None of this is a criticism of the Agency or its personnel; they are working within the current system. I raise these points to say that the NLRA may not be as broken as are its current enforcement methods.

A More Serious Discussion Is Required for an Overhaul of Federal Labor Law

S. 567 is a list of pro-labor changes unions have been seeking for years. It has been presented as the only way to update our labor laws in light of the changing economy, a growing economic gap between labor and management and the need to strengthen employee rights, among other reasons. But is it? I would suggest that there has not been serious consideration of the proposed changes, how they will affect the economy, including job creation and economic growth, and whether the changes will solve—or make worse—the problems they are intended to address.

To date, the PRO Act debate has been one-sided. If Congress is going to consider Federal labor law reform, and certainly any reform of the magnitude of the PRO Act, there must be a more serious review of the legislation's impact as well as input from and dialog among all stakeholders.

Of most serious concerns are the PRO Act changes that would detrimentally affect employee free choice and stifle basic democratic rights to a secret ballot and free debate, impose collective bargaining agreements on parties, wholly change how employers structure their business operations, and incentivize more strikes, picketing and secondary boycotts. These and other proposals in the legislation completely upend Federal labor law and will have wide-ranging consequences that need to be fully considered.

Employee's Right to Vote

S. 567 would eliminate one of the most fundamental protections afforded employees under the NLRA: the guaranteed right to a vote on whether to unionize. Instead, the PRO Act calls for the use of "card check" in lieu of a secret ballot election. The secret ballot election, of course, is the way representation elections have been

conducted since the inception of the Act. It's how we elect our government officials. And it is the method Congress chose to use when imposing certain labor provisions in the United States-Mexico-Canada Agreement (USMCA) and for organizing of Congressional offices.

As proposed, the legislation also would impose a union on employees—regardless of whether the employees supported it—in the event that the employer engaged in violations during an NLRB election. We cannot overlook employer misconduct during an election and there must be consequences. However, the punishment for the violations should not be imposed on employees and result in workers losing their right to choose or not choose to be represented by a union.

These radical changes—abolishing secret ballot elections and issuing bargaining orders for any employer proven irregularities in an NLRB election—are a significant diminution of employees' rights. There also are a number of questions about how, in the absence of secret balloting, employees can exercise free choice without coercion or influence. PRO Act proponents do not share any of these concerns (and the legislation does not address them) because they assume that all employees should be unionized. There are other views that need to be taken into account and, given the important rights being arrogated here, more serious debate about this proposal is warranted.

Workplace Democracy—Free Speech and Open Dialogue

The PRO Act would substantially reduce important aspects of workplace democracy enjoyed under the NLRA. Specifically, the legislation seeks to eliminate free speech and open dialog during a union organizing drive. Proponents argue that there should be no role or voice for employer's in organizing campaigns, and the PRO Act would eliminate employers' right to express opinions and provide information to employees regarding union representational issues. S. 567 seeks to further restrain employer free speech by reinstating the Obama-era Department of Labor reporting requirements for entities that provide assistance to employers in union campaigns.

Additionally, to reduce open dialog, the PRO Act seeks to minimize the opportunity employees have to discuss and debate during an organizing campaign, including hearing from their employer and others that might have a contrary view about unionization. Indeed, one of the justifications for the PRO Act advancing card check and other proposed changes such as a return to the Board's 2014 so-called "quickie election" rules, is to reduce the time employees are given to weigh the pros and cons of union representation.

The cumulative effect of these changes would mean less democratic free speech and exchange of ideas in the workplace. It also would mean less informed decision-making by employees about whether to unionize. These are major changes that require more serious and more balanced deliberation.

Imposition of Initial Collective Bargaining Agreements

The PRO Act would upend another central tenet of Federal labor law by imposing on both employees and employers a first contract if an arbitrary time deadline is not met. This proposed change not only takes away employees' right to vote on the terms of their own labor agreements, it removes the parties' ability to exercise their relative economic strength to determine the terms of their contract.

Under current Federal labor law, collective bargaining is based on the relative strength of the parties. A union believing it has the economic strength and backing of its members will seek to extract maximum terms in bargaining by applying its leverage. This may include economic pressure through a work stoppage or other job actions to force the employer to meet its demands. Likewise, an employer believing it has the stronger relative position vis-&-vis the union will assert its strength. For example, an employer that does not believe it can remain competitive or in business if it accedes to the union's demands may be willing to withstand damage done to its business from a strike, a lockout or other job action.

This system of collective bargaining, in place since the outset of the Act, puts the terms of the labor contract in the hands of those best able to know the current economic condition of their businesses. Shifting the outcome of a collective bargaining agreement to a third-party arbitrator, as the PRO Act proposes, means that the future of the business and the jobs that depend on that business rest on terms that may not meet the economic realities of the employer. In addition, the agreement may not align with the interests of either party.

Before making such a significant and far-reaching change, one that could affect the operations and viability of many businesses, there should be significant study and analysis of the impact.

Business Structures

Proponents of the PRO Act point to the changing role of workers in today's economy to justify the legislation's redefinition of "employee" and "employer." Among other things, they point to the increased use of so-called gig workers, temporary employees, and independent contractors. While the roles of various types of workers is undoubtedly changing, these challenges require a thoughtful approach.

The PRO Act's solution to this problem, however, is a one-size-fits-all answer: change the law to create more employer-employee relationships so unions can organize more employees. It is not hard to see why labor unions support this, but the approach fails to consider that many workers prefer the flexibility and entrepreneurial opportunities of non-employee status. It also overlooks the important role these workers play in a changing economy. It is not at all clear that the answer to these challenges is simply to create more employer-employee relationships to facilitate greater unionization.

Whole segments of the economy have been developed under a well-established definition of independent contractors. If adopted, the PRO Act would invalidate decades of legal precedent defining independent contractors and would make it far more difficult for workers to establish independent status.

The one-size-fits-all approach of creating more employer-employee relationships will only lead to more difficulties, evidenced by California's struggle to codify such a standard into law without creating multiple carve outs. Simply because an individual performs a service for a business that is within the scope of the services customarily provided by such entity should not—and has not automatically established an employer-employee relationship. In light of the evolving nature of the type of work that many individuals do on an independent basis in the evolving "gig" economy, this proposed change could have a devastating impact on such workers and the segments of the economy in which they operate.

Similarly, the PRO Act proposes major changes to the joint-employer standard that would fundamentally change business structuring throughout the economy. The standard calls for joint-employer status under the NLRA based solely on "indirect or reserved control." This standard could potentially destroy the franchisor and franchisee model which has created millions of jobs and established hundreds of thousands of successful small business entities.[22]

The proposed changes to the independent contractor and joint-employer standards would have a significant impact on all segments of the economy. No changes in this area should be undertaken without a study of the many complex issues and a full understanding of their impacts.

Industrial Peace

The PRO Act would make several major changes to core areas of current Federal law that have provided decades of industrial peace, a primary objective of the NLRA. First, it would make lawful intermittent strikes, which would allow employees to engage in frequent and on-and-off work stoppages and strikes. It also would allow secondary boycott activities by unions. This would extend lawful strikes, boycotts and picketing beyond the primary employer involved in a particular dispute, and permit picketing, boycotts and strikes at all "neutral" employers. Secondary boycott activity would embroil neutral employers that have nothing to do with the dispute other than doing business with the primary employer.

In addition to potentially having a devastating effect on the supply chain and other aspects of the economy, changes to intermittent strike and secondary boycott law would dramatically change the balance of competing interests that had been carefully constructed by Congress over almost nine decades. These types of radical legislative changes need to be fully understood before being adopted.

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[22] For a comprehensive analysis detailing the negative economic consequences of an overly expansive joint employer standard, see International Franchise Association, Comment Letter on Proposed Rule on the Standard for Determining Joint Employer Status (Jan. 28, 2019).

Dual-Track Enforcement

Perhaps out of frustration with the NLRB's historically slow case processing discussed earlier, the PRO Act would create a two-track enforcement process allowing employees to circumvent the NLRB. As proposed, employees would be able to pursue a separate civil action in Federal district court if the Board failed to initiate an injunction proceeding in Federal court within 60 days following the filing of unfair labor practice charges.

Perhaps a quick work-around to a systemic (but fixable) delay problem, establishing this type of dual track enforcement would undermine—not strengthen—the NLRB's ability to establish a consistent labor policy and effectively remedy labor law violations. Federal district courts have had little involvement with labor law matters, and the details of how such a enforcement scheme would work and be coordinated are unclear. Once again, before Congress undermines the NLRB with such a significant change, efforts first should be made to address the underlying problem—delay.

Employer Role in Representation Matters

The PRO Act proposes to eliminate the right of employers to participate as a "party" in Board proceedings in representational cases. Under this approach, only the union would have "party" status, even though representation cases require determinations about whether a particular unit is "appropriate," whether particular individuals are "supervisors" (excluded from the unit as a matter of law), and what individuals are eligible to vote.

It appears that no consideration has been given to the fact that, as to these important issues, the employer is the party most familiar with these types of facts. Before making such a change, Congress should give serious consideration to how these important issues will be resolved without employer participation in a representation hearing.

Conclusion

While the focus has been on the PRO Act and rewriting Federal labor law, the current statutory scheme under the NLRA is not perfect, but it has succeeded in establishing robust workplace democracy and necessary industrial peace. Congress should consider several modifications to the NLRB's current enforcement approach that could address many of the criticisms levied against the NLRA. In considering the PRO Act, it is important to seriously consider the sweeping and far-reaching changes that will affect every segment of our economy. There continue to be many unanswered questions that deserve input and debate from all stakeholders, not just those promoting the PRO Act.

This concludes my testimony. I look forward to answering questions from Members of the Committee.

[SUMMARY STATEMENT OF JOHN F. RING]

The Protecting the Right to Organize Act ("PRO Act"), S. 567, has failed to be enacted repeatedly because it advances the objectives of a small interest group—labor unions. While no one can fault organized labor's desire to pursue legislation that would advance its own self-interest, there are several reasons to step back and take a more serious approach. This is particularly true today where the country faces the challenges of a changing workforce, unprecedented global economic forces, and a highly integrated market economy where we do not have the luxury of approaching issues in isolation.

In debating the PRO Act, I believe the Committee should consider three points. First, while not perfect, the National Labor Relations Act ("NLRA" or "Act") is a unique and carefully crafted law that has done an admirable job of balancing labor and management interest to accomplish its central objectives: promoting workplace democracy and ensuring industrial peace. It affords employees the right to form, join or assist a union, or not do so, based on the circumstances of their individual workplace. The Act provides for robust American-style democratic debate, one that has always encompassed all voices including that of the employer. The NLRA also offers employees the important right to a secret vote. It grants rights and related protections for employees to act on a concerted basis for their mutual benefit and establishes a system of collective bargaining based on the relative economic strengths of

the parties. Congress further ensured that there would be compliance with the Act, creating the NLRB and unique enforcement procedures and remedies.

Second, many of the criticisms levied against the NLRA, which the PRO Act is supposed to address, can be fixed through certain relatively easy modifications to the NLRB's enforcement approach. To start, the NLRB should process its cases more quickly, and there are proven ways to do so. The Board also should stop embarking on ill-fated efforts to test the boundaries of its statutory authority. This wastes countless Board resources, floods its docket and diverts the Agency's attention from its core mission. Unfortunately, both the Board and General Counsel are once again pursuing issues that either are outside the core mission or involve dubious statutory interpretations that will result in litigation. Additionally, the NLRB needs to end the destructive practice of policy and case precedent oscillation. These swings in precedent make it difficult for everyone to know the rules, and it undermines confidence in the Board.

Finally, the PRO Acts' sweeping and far-reaching changes will affect every segment of our economy. The legislation detrimentally affects employee free choice and stifles basic democratic rights to a secret ballot and free debate, imposes collective bargaining agreements on parties, wholly changes how employers structure their business operations, and incentivizes more strikes, picketing and secondary boycotts. There are many unanswered questions that deserve input and debate from all stakeholders, and there needs to be a more serious approach to the consideration of this legislation.

Senator CASSIDY. Mr. Mix, I get to introduce you, sir. Mark Mix is the President of the Right to Work Committee and the National Right to Work Legal Defense Foundation, a position he has held since 2003.

For decades, Mr. Mix has been a stalwart defender of workers' rights and independence, providing legal assistance and protection for workers against abuses of forced unionization.

Mr. Mix holds a B.A. from James Madison University. Thank you for being here and I look forward to your testimony.

STATEMENT OF MARK MIX, PRESIDENT OF THE NATIONAL RIGHT TO WORK COMMITTEE, PRESIDENT OF THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, SPRINGFIELD, VA

Mr. MIX. Thank you, Senator. And thank you, Senator Sanders, for the opportunity to appear, Senator Cassidy, and other Members of the Senate. I am Mark Mix. Have been the President of the National Right to Work Legal Defense Foundation for 20 years, and the National Right to Work Committee for 20 years.

Have been working in the right to work movement for 36 years. Grew up in a small town with more cows than people with. My stepfather was an international association machinist member for 32 years. Grew up in a union household, in a union environment in America.

It wasn't until I understood what labor law looks like, as it compels workers going back to the 1930's to join and associate with an organization. Senator Sanders, who talked about Constitutional rights and the Constitutional right to organize.

I mean, surely you are talking about the NAACP v. Alabama case in 1958 where the First Amendment was basically defined as being the right to associate, but also the right not to associate.

Labor law, written back in 1935, talks about all of these flowery things, but in Section 7 of the Act, it says that workers have all

these rights and they have the right to refrain, and if there had been a period at that moment, we probably wouldn't be here today because that would have given workers the choice under the National Labor Relations Act to refrain from union activity.

But it didn't. It went on, except to the extent that a worker can be compelled to pay dues or fees or join a union at that time in order to work or get or keep a job. So, the Constitutional right comes with the right to associate versus—and so it presupposes the right not to associate.

But yet labor policy and the policies that are pushed by unfortunately the National Labor Relations Board and legislative bodies across the country continue to rely on force as opposed to volunteerism. And it is an interesting story when you think about the origins of the union, Samuel Gompers, the founder of the AFL.

In his final speech in El Paso, Texas, in 1924, when you were getting ready to come to Congress in 1926 for the Railway Labor Act and imposing the Federal imposition of unionization on railway employees across the country, Gompers gave his final speech saying, the workers of America adhere to voluntary institutions.

Anything else using force will destroy that which, together through volunteers, is invincible. Well, Gompers' message was very clear, and it is to the union officials down the row here on the table, that you have a great product. Go sell that product. Don't rely on Government to give you the force to compel people to join unions.

That is exactly what happens in the American workplace today, whether it be at the National Labor Relations Board, ignoring the ideas and the views of literally tens of thousands, hundreds of thousands of employees. At the National Right to Work Legal Defense Foundation, we have had the privilege of representing hundreds of thousands of employees in litigation against employers and unions.

When employers violate workers' rights, we go after them. When unions violate workers' rights, we go after them. The idea of individual freedom and choice is a fundamental principle of who we are as a country, yet labor law destroys that fundamental voluntarism and independence that most workers enjoy.

I am, here today—you know, Senator Sanders, you talked about one way to realize the American dream is to join a union. There are lots of other ways and there are lots of other examples of that. And frankly, today, 94 percent of the workers in the private sector in America today are not part of a union and not members of unions.

Many of them would like to be. And you have heard President O'Brien talk about the high rate of favorability of labor unions. Absolutely, labor unions are being considered as favorable by the American public.

But other question in that Gallup poll that he cites was not referenced in the media, and that asked those nonunion employees that were surveyed whether they had any interest in joining a union.

58 percent said they had no interest in joining a union. 11 percent said, yes, they are very interested. And in the medium, in the middle, there were piece of it, well, I don't really know or I don't care.

The idea of giving a private organization the ability to compel someone to pay union dues or fees as a condition of getting or keeping a job is the wrong policy, not only for organized labor, but the wrong policy for America.

Giving workers a choice whether or not they want to associate, but yet the labor policy this country wants a majority of those voting in a workplace ca combined and compel people to associate with a labor union.

You know, in regular business law, we know the elements of a contract include a meeting of the minds. It means no duress. It means it must be legal and there must be consideration.

Labor law in America today and since 1935 has stood that basic agency relationship on its head by allowing a private organization to compel workers to associate with them and accept their representation, even though they didn't ask for it, didn't want it, and may not even be interested in it because it hurts them.

You know, there are lots of opportunities to explain how a union collective bargaining agreement can hurt the very worker that it claims to represent, and union officials here don't ever recognize that. Somehow, they know better than any individual worker in the workplace about what is right or wrong for them.

I disagree with that. The right to work principle is a very simple principle. I would encourage you to support Senator Paul's bill, Senate Bill 532, that doesn't add a single word to Federal law, not one.

It simply goes back into that antiquated labor policy in the 1930's and removes compulsion and makes the bias of this Government in favor of voluntary unionism. I think that is a good policy for America, and I think most American workers do as well.

[The prepared statement of Mr. Mix follows:]

PREPARED STATEMENT OF MARK MIX

Chairman Sanders, Ranking Member Cassidy, and Distinguished Committee Members:

Thank you for the opportunity to appear before you today. I've been involved in the Right to Work movement for 36 years, and for the last 20, I've had the privilege of serving as the President of the National Right to Work Committee, a grassroots organization with over 2 million members and supporters who are dedicated to the principle that unionization should be a voluntary choice for all Americans.

We believe that workers should have the right to join a union, but they should never be forced to join and pay dues to a union as a condition of employment. Unfortunately, compulsory unionism—where you can be fired for refusing to give union bosses a portion of your paycheck—is the reality for nearly half of American workers because their states lack Right to Work laws.

Right to Work laws do one thing: They make the payment of union dues voluntary, not forced. They don't restrict union organizers or workers who want to join a union in any way; they simply allow individual workers to make up their own mind about whether union dues are right for them. So far, 27 states have passed Right to Work protections for their workers, and I urge all of you to support passage of the National Right to Work Act (S. 532), introduced last week by Senators Paul and Cassidy, which would extend these protections to all 50 states.

The announced subject of this hearing is "Defending the Right of Workers to Organize Unions Free from Illegal Corporate Union-Busting."

We do need to defend workers' rights, but not in the way that the leaders of the union movement propose to do it through the so-called "Protecting the Right to Organize Act."

The "PRO Act," if it's "pro" anything, favors increased coercive powers for union officials at the expense of rank-and-file workers. It outlaws Right to Work, subjecting workers in all 50 states to forced union dues. It also subjects independent contractors to monopoly union bargaining and forced dues, depriving them of the one thing they like most about their work arrangements: Independence. It gives the National Labor Relations Board (NLRB) the authority to unilaterally overturn a workplace election, handing union organizers a victory merely for having coerced or otherwise fraudulently obtained a majority of union "cards," which cannot possibly be trusted to reflect the true level of worker support for the union.

There are far too many provisions to list here, but in total they represent the largest Big Labor power grab attempted since the Great Depression.

To justify these radical proposals, union officials claim we're in a crisis. Fewer Americans in the private sector are union members than we've ever seen, yet Gallup pollsters have found Americans' approval rating of unions is at record highs. It's clear that Big Labor has been able to clean up its public image despite the fact that corruption, financial mismanagement, violent strikes, and attacks on non-union workers continue.

But that same Gallup poll of Americans' attitudes toward unions asked non-union workers whether they'd be interested in joining a union, and 65 percent said they had little or no interest. Only 11 percent said they were "extremely interested."

That overwhelming disinterest is what has caused a drop in union organizing, not restrictive laws and employer meddling, and certainly not Right to Work.

But union officials' solution is to come here demanding even more power and privilege to force workers involuntarily into paying union fees for their so-called representation, rather than to do a better job attracting workers to join their ranks voluntarily.

As someone who's spent decades defending the rights of individual workers, I vehemently oppose illegal actions taken by corporations against their own employees. When Charlene Carter was fired from her job as a Southwest Airlines flight attendant for standing up for her Christian faith and criticizing political stances taken by the Transport Workers Union officials she was forced to pay money to, it wasn't a union boss who signed her pink slip. A jury found that Charlene's firing was an illegal corporate action by Southwest Airlines: She had been fired by her employer (at the request of union officials), because of her religious views.

I have the honor of also serving as President of the National Right to Work Legal Defense Foundation, which litigated Charlene's case, and so I've gotten an up-close view of how labor law is enforced in this country. And I have to say, the title of this hearing makes a common but critical error. It wrongly assumes that labor litigation is an endless struggle between two groups, corporations and unions, when in fact there is a third group that often gets overlooked: workers themselves.

It's not always company vs. union: When workers are trapped in a corrupt, ineffective union that they don't want, their employer often can't do anything to help them. When workers are illegally fired by their employer, union officials who advocated the firing in the first place certainly won't do anything to help. Worker victimization at the hands of union bosses is a real problem, but workers don't have the armies of highly paid lawyers that corporations and union bosses have.

So while we can be sure that any employer slip-up during a union drive will be pounced on by union lawyers, violations of workers' rights by their so-called union "representatives" are rarely exposed. Workers are pressured into silence, knowing that union militants take great pleasure in harassing union critics. They often don't know their rights, or how to bring legal action to enforce them, and even if they knew, they'd never be able to afford a prolonged court battle.

Even if they retain free legal counsel from a group like the Right to Work Foundation, labor law is stacked against independent workers, and it is enforced by NLRB bureaucrats who are often former union activists themselves.

Consider the case of Foundation client Kerry Hunsberger. Last July, she and her coworkers at Latrobe Specialty Metals in Pennsylvania voted down a United Steelworkers union contract, and circulated a petition to remove the USW bosses from their workplace altogether. Upon hearing of the petition, a USW official secretly ratified the rejected contract anyway, hoping to trigger the NLRB's "contract bar."

The contract bar doesn't exist anywhere in Federal law. The NLRB created and imposed it on American workers. And the Board only allows union decertification votes when the union's contract is expired or is within 30 and 60 days of expiring. If the USW had successfully triggered its trap and ratified the contract that the workers at Latrobe Metals didn't want, Kerry and her colleagues would have been stuck paying dues to the USW for up to three more years. They avoided that fate only because their Right to Work Foundation attorneys found errors in the union's hastily ratified contract. Policies like the contract bar, which, again, the NLRB invented out of whole cloth and could repeal at any time, serve only to make it harder for workers to decertify a union.

The contract bar isn't the only hurdle to decertification. The "voluntary recognition bar" prevents workers from removing a union for up to a year after a union is installed by the corrupt "Card Check" system.

The "settlement bar" blocks decertifications after an NLRB settlement to which the workers weren't a party.

The "successor bar" blocks a vote for up to a year after a company is acquired by another company, something workers have no say in.

To decertify a union, workers must wait up to 3 years for their 30-day "contract bar" window to arrive, then hope that none of the other bars apply. They must collect signatures from more than 30 percent of their colleagues on a decertification petition, and complete the following steps:

(1) Fill out NLRB Form 502RD (which has over 50 boxes);

(2) Send Form 502RD to the employer and union officials, along with "Statement of Position" and "Description of Procedures" documents;

(3) E-file a "Certificate of Service" proving the above documents were sent; and

(4) Mail or deliver the original petition to the appropriate NLRB regional office.

Failure to properly complete these steps will result in the NLRB throwing out the workers' decertification petition, leaving them saddled with union bosses they don't want. Most of the time, workers must navigate this entire process on their own. It's clear that these daunting procedures are meant to discourage workers from taking action. They're effectively told to stay out of it, leave the legal filings and petitions to the union lawyers, and accept the lie that union bosses know what's in their best interests.

But union bosses clearly don't always have workers' interests in mind. They didn't have Charlene Carter's interests in mind when they encouraged Southwest to fire her.

They didn't have Kerry Hunsberger's interests in mind when they tried to spring a contract bar trap on her.

When Amalgamated Transit Union Local 689 President Raymond Jackson told union officers to "slap" employees who opposed the union agenda, he didn't have Thomas McLamb's best interests in mind. In November 2021, McLamb was assaulted by a shop steward after he campaigned against incumbent officers to serve on local 689's board.

A UFCW official did not have Jessica Haefner's best interests in mind when he falsely told her last August that the way to opt-out of union dues in Right to Work Texas was to write "$0" in the dues deduction field on her union membership form. Jessica later discovered her form had been altered to induce dues deductions.

Operating Engineers union bosses did not have Rayalan Kent's best interests in mind when they filed spurious NLRB "blocking charges" to halt the count of a decertification vote Rayalan and his coworkers had taken at Reith Riley Construction Company. And by the way, the NLRB never even had a hearing to see whether those "blocking charges" justified stopping the election. The already-cast ballots were simply destroyed.

These are just a few examples of the thousands of cases the Right to Work Foundation has litigated on behalf of the workers who've been victimized by union bosses, who force workers to accept so-called representation they do not want, and then demand that they pay for this "representation" that they didn't ask for and believe they'd be better off without.

The reforms we need are not in the "PRO Act":

- We need to end monopoly union bargaining, so that every worker can decide for themselves whether union representation is right for them.

- We need to allow workers to hear from their employers as well as their union, so they can make an informed choice without being subjected to a one-sided propaganda campaign from union organizers.
- We need to make unionization a voluntary choice for every worker, so that corrupt union bosses can be held accountable, and workers' freedom of association is protected.
- And most of all, we need to ban forced union dues across the country with a National Right to Work law.

Thank you for your time. I look forward to answering any questions the Committee Members may have.

[SUMMARY STATEMENT OF MARK MIX]

For 20 years, Mark Mix has served as the President of the Right to Work Committee, which works to ensure that union dues are a voluntary choice for all Americans.

Today, in the 23 non-Right to Work states, a worker can be fired for refusing to give a portion of his or her paycheck to union bosses, even if those union bosses are corrupt and ineffective.

The announced subject of this hearing is "Defending the Right of Workers to Organize Unions Free from Illegal Corporate Union-Busting." Workers' rights must be defended, but not in the way that the leaders of the union movement propose to do it through the so-called "Protecting the Right to Organize Act."

The "PRO Act," if it's "pro" anything, favors increased coercive powers for union officials at the expense of rank-and-file workers. It outlaws Right to Work, subjecting workers in all 50 states to forced union dues. It subjects independent contractors to monopoly union bargaining and forced dues, depriving them of the one thing they like most about their work arrangements: Independence. It gives the National Labor Relations Board (NLRB) the authority to unilaterally overturn a workplace election, handing union organizers a victory merely for having coerced or otherwise fraudulently obtained a majority of union "cards," which cannot possibly be trusted to reflect the true level of worker support for the union.

Illegal corporate actions should be condemned, but the title of this hearing wrongly assumes that labor litigation is an endless struggle between two groups, corporations and unions, when in fact there is a third group that often gets overlooked: workers themselves.

Mr. Mix also serves as President of the National Right to Work Legal Defense Foundation and has seen first-hand the difficulty workers face when they try to bring legal challenges against the union officials who purport to represent them. The law favors union officials and is enforced by partisan NLRB bureaucrats who impose arbitrary "bars" that make it difficult for workers to remove unwanted unions from their workplaces.

The difficulties faced by the Foundation's clients demonstrate that the reforms needed to protect workers are not those in the "PRO Act." Instead, we must end monopoly bargaining, allow workers to hear all sides during a unionization campaign, make unionization a voluntary choice for every individual worker, and, most of all, end forced union dues across the country.

That final goal can be accomplished by passing the National Right to Work Act (S. 532), introduced by Senators Paul and Cassidy. It would extend Right to Work protections to workers in all 50 states and would address the most immediate threat to Americans' workplace rights: forced union dues.

The CHAIR. Mr. Mix, thank you very much. In America today we are seeing large corporations and their consultants spend hundreds of billions of dollars trying to prevent workers from, in fact, joining unions.

Let me ask Ms. Shuler, Ms. Henry, or Mr. O'Brien, why do you think these large corporations, often with CEOs like Schultz who are billionaires, are spending so much money trying to make it impossible for workers to join a union? Sean, do you want to respond to that?

Mr. O'BRIEN. [Technical problems]—it is a $350 million per year business. Look, I think it is clear, especially when you are dealing with the CEO of Amazon and Starbucks, that these CEOs and these corporations, all they care about is the bottom line of a balance sheet.

If there is any threat to their bottom line of a balance sheet or accountability, meaning that workers are being represented, workers are being compensated and represented clearly by unions, that is why they are such a big threat.

You know, my colleague on the end, Mr. Ring, makes a point saying everybody has got a right to choose whether they want to belong to a union. Let's look at Starbucks. You have 300 locations that voted to join a union. And yet you have these union busting firms for a $350 million a year.

Look, we did exactly what you fight for, right. We voted. Those workers voted to join a union. The companies should be held accountable and sat down and made to negotiate an agreement.

The CHAIR. Why—let me just jump in and ask Ms. Shuler or Ms. Henry, why would workers want to join a union? I mean, do they do better? Give me some statistics here about how union workers are doing compared to nonunion workers.

Ms. SHULER. It relates to your last question, too, that workers fundamentally want a voice. They want a seat at the table. I think that someone like Howard Schultz misunderstands what unions are.

There is this idea of, oh, this is going to hurt my business and, oh, this is going to restrain me from making decisions that I want to make. It is absolutely not the case. What it does do is increase productivity.

It increases longevity and predictability for your business, because when workers are satisfied and they feel like they have a seat at the table, they are heard, they make better wages and have health care benefits, they are going to be more productive employees and make your business do better.

We all want to win here, right. I think there is a misunderstanding that unions want to see businesses fail. That is absolutely not the case, because when businesses fail, we don't have jobs, right.

But yes, the statistics are very clear, Senator, that working people have I think it is almost 15 percent more wages when you join a union, particularly for women and people of color. That adds up over to a lifetime, not to mention that using health care, having health care benefits, retirement security.

The CHAIR. Let me ask this, Ms. Henry, SEIU, I know, has been very active in trying to organize low wage workers in the fast-food industry, the service industry. What does it mean to a worker who is making starvation wages when they were able to join a union?

Ms. HENRY. It means a shot at a better life for themselves and their children. It means that I don't have to be subjected to sexual harassment or race discrimination on the job because I need this job in order to pay my rent or pay my groceries.

It means that I might be able to dream that it is possible for my child to do better than I have done, if I am able to join together in a union and end the starvation wages that you talked about at the beginning of this hearing, and get on a path to living wages with benefits that create some stability in people's lives where they can make plans for the future.

The CHAIR. Let me ask, go back to Sean. Your members, workers all over this country see billionaires becoming much richer. While they often want cutbacks in health care or wages, wage increases are not keeping up with inflation. How do workers feel about this huge increase in income and wealth inequality, and the greed that we are seeing on the part of corporate America?

Mr. O'BRIEN. Well, I can tell you, my members, 1.3 million members nationwide, they provided goods and services to this country probably in the toughest times through the pandemic, with total disregard for their safety and the safety of their families.

They were going home, they were going out, providing parcel delivery, providing food distribution, providing rubbish pickup, providing every essential service that we may take for granted at times.

All the while, all these big corporations like UPS, Republic Waste Kroger's grocery warehouses, they were making record profits while our members in some cases were losing their jobs and losing their lives, and not gaining in some of these profits that these businesses and these corporations—which my members feel today, that they were taking advantage of.

I think there is a lot of workers, not only the unionized workers, but nonunionized workers that feel the same way. You know, especially in light of what we just came out of.

The CHAIR. Let me—I have gone over my time and I will give Senator Cassidy equal time. But my last question, do we have any statistics about how many thousands of workers died during the pandemic, keeping the economy going while the billionaire class became richer? Do we have any numbers on that?

Ms. HENRY. I can tell you that in the health care sector in this country, we are still trying to get the data, Senator, but it is criminal what happened in our Nation's nursing homes and hospitals in the beginning of the pandemic when we were not getting personal protective equipment that we needed in our Nation's nursing homes for both the caregivers and for the residents.

The CHAIR. It is fair to say thousands of workers died.

Ms. HENRY. Oh, yes.

The CHAIR. Many thousands.

Ms. HENRY. Yes.

The CHAIR. Okay. I have gone over my time.

Senator Cassidy.

Senator CASSIDY. I am going to defer to Senator Markwayne Mullin.

Senator MULLIN. Thank you, Ranking Member. Thank you, everybody, for being here. I want to make it very clear, I am not

against unions. I am not at all. Some of my very good friends work for unions. They work hard and they do a good job.

My statements, please don't make assumption that I am anti-union. But I also want to set the record straight. All three of you guys have talked about employers being intimidated, intimidating their employees. But you guys have been ever spoke about when the unions try to unionize, the intimidation they have to other people that aren't wanting to unionize.

You guys don't mention that. Because see, I started with nothing. Absolutely nothing. In fact, I started below nothing. I started growing this little plumbing company with six employees to now we have over 300 employees. And back in 2009, you guys tried to unionize me.

My guys were making money. They were being paid more than the union halls were paying their plumbers. Our benefits were better. But because we started bidding jobs that were union jobs and winning those, the union of pipefitters decided they were going to come after us. They would show up at my house. They would be leaning up against my trucks. I am not afraid of a physical confrontation.

In fact, sometimes I look forward to it. And that is not my problem. But when you are doing that to my employees, and then when they—when that didn't work, they started picketing our job site, saying, shame on Mullin. Shame on Mullin.

For what? For what? Because we are paying higher wages? Because we had better benefits and we weren't requiring them to pay your guys as absorbent salaries? You talk about CEOs that are making all this money. And what do you make, Mr. O'Brien?

Mr. O'BRIEN. Well, I am glad you asked that question——

Senator MULLIN. Yes, I know what you make because in 2019, your salary was, what is this, $193,000? I am sure you got some pay raises since then.

Mr. O'BRIEN. Yes, when I was——

Senator MULLIN. An average UPS driver, the feeder driver makes $35,000 a year. And what do you bring to the table?

Mr. O'BRIEN. That is inaccurate.

Senator MULLIN. Hold on a second.

Mr. O'BRIEN. That is inaccurate.

Senator MULLIN. No, I just read it right here.

Mr. O'BRIEN. State facts. That is inaccurate.

Senator MULLIN. The average UPS feeder driver makes $35,000. If you don't know your facts, the maybe you——

Mr. O'BRIEN. I know because I negotiate the contract.

Senator MULLIN. I say one thing to you, what do you bring for that salary?

Mr. O'BRIEN. What do I bring?

Senator MULLIN. Yes, what job have you committed or have you started—what job have you created, one job, other than sucking the paycheck out of somebody else that would you want to say that you are trying to provide because you are forcing them to pay dues——

Mr. O'BRIEN. No, we don't force——

The CHAIR. Senator, you have asked the question.

Mr. O'BRIEN. You are out of line——

The CHAIR. Let him answer the question.

Senator MULLIN. Actually, I haven't. Don't tell me I am——

Mr. O'BRIEN. You are out of line.

Senator MULLIN. Don't tell me I am out of line.

Mr. O'BRIEN. Well, you frame——

Senator MULLIN. Yes, don't tell me——

Mr. O'BRIEN. You frame——

Senator MULLIN. You need to shut your mouth, because you don't know——

Mr. O'BRIEN. Oh, tough guy—yes—are you going to tell me to shut my mouth?

Senator MULLIN. Yes, I did——

[Chairman gavel.]

Mr. O'BRIEN. Oh, very tough guy. I am not afraid of physical——

Senator MULLIN [continuing]. but don't sit there and tell me I am out of line.

[Chairman gavel.]

The CHAIR. Senator, you made a statement, you asked the question.

Senator MULLIN. I didn't ask a question.

The CHAIR. You did.

Senator MULLIN. I answered the question.

The CHAIR. You asked the question. Let him answer.

Senator MULLIN. It was a rhetorical question.

The CHAIR. Well, you may think it is rhetorical. Sounded to me like a question. Let him answer the question.

Senator MULLIN. I am not yielding my time to him. So, if you are going to let me keep my time, that is fine.

The CHAIR. You will have your time. Let him—you asked a question. He has a right to answer that.

Mr. O'BRIEN. As far as my salary goes, my salary, if you follow me around, I walk—I actually look at this building. I bet you I work more hours than you do. Twice as many hours.

Senator MULLIN. That is impossible, but I will——

Mr. O'BRIEN. That is true.

Senator MULLIN. Sir, you don't know what hard work is. You want to follow my schedule——

Mr. O'BRIEN. Second—second—I will do in a minute. Second, UPS feeder drivers, and you can quote Carol Tome, who quoted this. They make $93,000 on the lower end. Some of them making $150,000.

Senator MULLIN. I said feeder drivers.

Mr. O'BRIEN. Feeder drivers, tractor trailer drivers. Some of them making $150,000 per year.

Senator MULLIN. Some of them do. I don't disagree with that——

Mr. O'BRIEN. Most of them make——

Senator MULLIN [continuing]. actually, been there for years.

Mr. O'BRIEN. Most of them make over a $100,000 a year.

Senator MULLIN. Okay. I will reclaim my time. I go back to the whole fact that, sir, you haven't created a job.

Mr. O'BRIEN. We haven't?

Senator MULLIN. You haven't been there. You haven't.

Mr. O'BRIEN. Sure, we have.

Senator MULLIN. You haven't.

Mr. O'BRIEN. Sure, we have.

Senator MULLIN. Tell me one job that you have created.

Mr. O'BRIEN. What are you talking—be specific——

Senator MULLIN. You are an employer?

Mr. O'BRIEN. No, not employer.

Senator MULLIN. You employee people?

Mr. O'BRIEN. No, but it is funny, we——

Senator MULLIN. No, hold on a second—that is not creating jobs.

Mr. O'BRIEN. We create opportunity.

Senator MULLIN. That is not creating jobs.

Mr. O'BRIEN. We create opportunity because we hold——

Senator MULLIN. That is not——

Mr. O'BRIEN. We hold greedy CEOs like yourself accountable.

Senator MULLIN. You call me a greedy CEO?

Mr. O'BRIEN. Oh, yes, you are. You want to attack my salary? I will attack yours. What did you make? What did you make when you owned your company?

Senator MULLIN. When I made my company? I kept my salary down at about $50,000 a year because I invested every penny into it.

Mr. O'BRIEN. Okay, all right. You mean you hid money?

Senator MULLIN. No, I didn't hide—oh, hold on a second. Okay, he said that is out of line.

Mr. O'BRIEN. We are even. We are even.

Senator MULLIN. We are not even. We are not even close to being even. Do you think it is smart? Do you think you are funny?

Mr. O'BRIEN. No——

Senator MULLIN. You are not.

Mr. O'BRIEN. You think you are funny.

Senator MULLIN. No, I never said—did I smile?

Senator MULLIN. You said in your opening—you framed your statements——

[Chairman gavel.].

The CHAIR. Senator continue—Senator, please continue your statement.

Senator MULLIN. Sir, this is—I think it is great that you are doing this because——

Mr. O'BRIEN. Me too.

Senator MULLIN [continuing]. this shows their behavior on how they try to come in and unionize a shop. And they say about intimidation, and it is not about intimidation——

The CHAIR [continuing]. show your behavior here. Stay on the issue, please.

Senator MULLIN. The issue is, if you are really for the employee, then why are you against right to work? Why are you against private ballots? If you are really about the employee, let the employee make the choice. I am not anti-union, but when you don't want to have a private ballot, that is not intimidating. That is not intimidating? Why wouldn't you want a private ballot?

That is intimidating the employee. If you don't want a right to work state, don't force somebody to make for pay dues to an organization they may not agree with. Don't force somebody to do something they don't want to do. That is called employee choice.

If you want to be part of a union, God bless you, be part of a union. I have no issue with that. But don't sit up here and say that an employee is the one that intimidates—or the employers are intimidating their employees by not becoming a union. That is not accurate.

The CHAIR. Thank you very much. Senator Murray.

Senator MURRAY. Well, thank you very much, Mr. Chairman. I actually would like to start by recognizing how much progress that we have made as a country in recovering from the pandemic and building a stronger and fairer economy. But there is still a lot of work left to do to make our economy work for everyone.

Which is why I was proud to introduce the Richard Trumka Protecting the Right to Organize Act again this year, along with Chair Sanders, because this bill will really help hold employers accountable when they violate labor law.

I wanted to ask President Shuler, President Henry, President O'Brien, can each of you give me an example of how the PRO Act would help workers organize? President Shuler, I will start with you.

Ms. SHULER. Thank you, Senator Murray. And thank you for the question, because I think what we are talking about, if we can all refocus, is, yes, the ability for workers to freely choose to form a union in their workplace, and when they do, to have the law on their side.

The PRO Act actually would create real penalties for employers who violate the law, because I think that is what we are seeing now, is once workers stand up and take the risk, and there is a lot of risk involved—takes an act of courage to form a union these days because of the retaliation, the harassment, and the firing.

But when they do and they form a union successfully, if employers break the law along the way, they should be penalized with real financial penalties instead of just a slap on the wrist. Because right now companies are just, it is a cost of doing business.

You know, they hire the union busting consultants and they just bake it into their business model, you know. So, there is no deterrent for them to break the law. So, the PRO Act would change that.

The PRO Act also would have—give workers access to the backpay, the reinstatement of the notice, and posting requirements to show other workers that taking the risk is worth it, that they are not going to be penalized in a way that is going to hurt their livelihoods, which is what is happening right now.

Right now, you actually get a bigger fine for violating fishing laws in many states than you do for busting unions, so.

Senator MURRAY. President Henry.

Ms. HENRY. Thank you so much, Senator Murray. In the case of Starbucks, if you take what President Schuler just outlined, the hundreds of unfair labor practices that have been filed against Starbucks for closing stores, firing workers, changing schedules, targeting union leaders, and pulling them into the trash alley behind the store and raking him over the coals about why they are public.

For the union, there would be penalties for all of those behaviors that we wouldn't have to wait over 14 months to have a ruling on. And even as Starbucks had the most egregious violations issued from the NLRB just last week, the next morning, CEO Howard Schultz was on CNN saying the judge got it wrong and they intend to appeal.

The PRO Act will help speed up the process, as we heard from Mr. Ring, is needing a quicker process. And then the other thing the PRO Act does is for Crystal Orozco, the fast-food worker who I told the story about it, holds the joint employer accountable, which is a huge step forward for the 4 million fast food workers in this country.

That McDonald's, Wendy's and Burger King would be held accountable for what happens to workers just like they are for meat and potatoes and ketchup and napkins of the franchisees.

Senator MURRAY. Thank you. President O'Brien.

Mr. O'BRIEN. I think my colleagues in labor makes some great points, but the one most important thing regarding organizing in the PRO Act, that it would mandate that a collective bargaining agreement would happen sooner than later.

I think right now it takes about 406 days from the initial start of the election to conclusion to get a first contract. And a lot of times the stall tactics that are utilized at the NLRB, the egregious violations, along with some fines. But having teeth in a bill that would allow the workers who made the choice to be unionized to get a collective bargaining agreement, I think that is just as equally as important as well.

Senator MURRAY. Thank you very much. I just have a few seconds left. I just want to say that despite enacting the Equal Pay Act more than five decades ago, on average, women, including those who are working part time or part of the year, earn only $0.77 for every $1 paid to men, resulting in a pay gap of $11,782 a year.

Mr. Chairman, I just want to say for the record, I will be introducing the Paycheck Fairness Act again soon, because I think as unions have been really helping lift women, this is something that is really important for all of us. Thank you very much, Mr. Chairman.

The CHAIR. Thank you.

Senator Cassidy.

Senator CASSIDY. I am going to defer to Senator Murkowski, and she—I am going to go vote as she asks her questions.

Senator MURKOWSKI. Mr. Chair, Ranking Member, thank you. Interesting conversation here this morning. I just wish that—I wish that we could have conversations about union versus nonunion in a way and a manner that is not so acrimonious, not so hard, not so charged. I absolutely believe that it is important that we have unions.

Alaska is a very strong union state, great workers, great contributors to our economy and bringing good paying jobs. We are in a tough place right now as a state. We have had 10 years of net outmigration. We are at the bottom of the stack when it comes to recovering from the pandemic.

We are lowest or almost at the very bottom of GDP among states. And so, we are looking to make sure that we have an economy that is attractive to workers right now. I think we know that private sector unions thrive when the economy is growing, when the labor market is strong.

I look at it and say, unions exist because there are jobs to do. And for there to be jobs, we need industry to be building things, producing things, providing services all across the country. I want to recognize that not all union jobs are shaped by the private sector.

At times some of these jobs come down to decisions that are made back here, particularly in a state like Alaska, where thousands of really good paying jobs are hanging in the balance as we are waiting for a Federal decision that could come later this week on the Willow Project.

It is not something that I am going to ask those of you on the panel here to opine about, but just note for the record that every single union in the State of Alaska is supportive of this Willow project and what it will provide.

Recognizing that some of what we are talking about here is enforcement, but also just how do we find the workers with the skill sets necessary to be doing the jobs that we are talking about.

I would ask in an open-ended question here, what the unions are doing to respond to the challenges of workforce shortages like we are having here. Are there specific Federal programs? And then I am going to use my time to move to a second question.

This is just to note, we have got good strong representation in the state from AFL–CIO, from Teamsters. I have always said, we have got a role for union, we have got a role for nonunion workforce across our state.

Workers should have the right to choose if they want to, to join a union. Alaska is not a right to work state. But I would note that the PRO Act, which you all have mentioned frequently, would provide Federal preemption for the 28 states with these laws.

How do we reframe this discussion so that it is not an us versus them dynamic between union and nonunion? That is truly open in its statement or question there, and I am not going to pick anybody to start, but I have given you two important things, I think, and you have 1 minute, 20 seconds.

Ms. SHULER. Well, I will take a stab at it. Liz Shuler, AFL–CIO. And you are right. I, too, wish it didn't have to be so acrimonious. And it doesn't have to be. You know, you think back to the National Labor Relations Act when it was passed in the 30's and the conditions, there were wildcat strikes.

There were workers up in arms. Business actually wanted the National Labor Relations Act. They wanted unions back in the 30's to sort of calm things down, to provide predictability and certainty in a process where we could talk to each other and work things out. Fast forward to today. Things are very much out of whack.

In terms of your first question, I would say we too are very interested in figuring out how all of this, all these new jobs that are going to be coming in the clean energy economy, and in chips, and science, and manufacturing can be good high wage jobs with dignity and respect. And we are used to dealing with this, right, in the labor movement.

We have been training workers for over 100 years in partnership with our employers to provide predictability and certainty and a talent pipeline, no pun intended, with Alaska. But it is essentially the labor movement can be the bridge and the center of gravity for making sure we have that workforce that we need to tackle the projects of the future.

Senator Murkowski, we are working with you in trying to transform home care jobs all throughout the State of Alaska. These are poverty wage jobs done primarily by women of color in every zip code in Alaska.

Joining together in unions have allowed those jobs to become living wage jobs, that an $18 an hour wage with health care and the beginning of a retirement for the first time, and just across in Washington State.

Tat is a very concrete way, I think, that we can come together as working people and Government together with employers to raise wages and create good jobs all across the economy.

The CHAIR. Thank you.

Senator Baldwin.

Senator BALDWIN. Thank you, Chairman Sanders, and thank you for holding this hearing. This topic is so important to me and people that I represent in the State of Wisconsin.

As President Biden implements programs authorized by the infrastructure law, the Chips and Science Act, the Inflation Reduction Act, I have been pleased that he is following the will of Congress and ensuring that the money spent on those programs will support high quality American jobs.

President Biden is delivering the message that we intend to make things in America again. In Wisconsin, we have prided ourselves not just on the quality of the products we make, like ships, engines, beer, and batteries, but also the quality of the jobs themselves, which often pay good wages and offer generous benefits, and that were hard won through collective bargaining.

However, I am disturbed by a trend that I am seeing. This trend is illustrated by two battery production facilities in Fennimore and Portage, Wisconsin. The facilities are now owned by Energizer after the company acquired them in 2018 merger with Spectrum that consolidated the battery market.

The 600 workers at these facilities are Teamsters. They are President O'Brien's Teamster members. In October, Energizer requested that the Department of Energy use funding from the infrastructure law to support R&D into micro batteries so that American companies like Energizer can maintain a leadership position in battery manufacturing against foreign rivals in China.

Just a few weeks later, Energizer notified the Teamsters at the two Wisconsin facilities of its plans to move these jobs to nonunion facilities in the U.S. and foreign facilities in Asia. It seems to me that when seeking support from the Government, these billion-dollar corporations talk up their American facilities and workers, all the while some of these corporations like Energizer, are making plans to move a union facility to a nonunion state or a foreign country.

I often hear from executives that these decisions are—they are just business, right, and that the company, or perhaps its well-compensated consultants, have calculated that closing a union facility will add value over the long term.

After seeing the impact during the pandemic of our long supply chains and the costs associated with moving work to low wage foreign countries, I am certain that these consultants have their math wrong. We need to change these corporate calculations, and it begins with increasing oversight of our Federal labor and antitrust laws and our Federal contracts.

I hope that Chairman Sanders will join me in that oversight, because the greatest value that a company generates comes from the labor and the ingenuity of its workers. And unions provide the job security and wages necessary for workers to develop the skills and the institutional knowledge that are the bedrock of innovation.

The American people should not have to subsidize billion-dollar corporations that ship jobs overseas or close union facilities just to add pennies to next quarter's earnings per share. President O'Brien, I know that this issue is very important to you and your Members, and I would like to ask you to share a bit about the impact that these closures would have on your members, and what we can do to prevent companies from making such devastating miscalculations.

Mr. O'BRIEN. Thank you, Senator. I appreciate that. And it is not just 600 members losing their job. It is 600 members with families losing their jobs, which is important. And you mentioned longevity, right.

Some of these folks, and we have had the opportunity to talk to them, and we are trying to find solutions, working with the employer and their attorneys from the other side to say, what can we do to keep these middle-class jobs here? So, some of the horror stories are people are going to lose their health care.

They have been there so long, they don't have any other skills, and their pension. You know, there is a lot of jobs out there that don't provide pensions. You will hear a lot of people say, well, we have a retirement program, a 401k.

I think if we looked for one case over the last 6 months, I think 33 percent of your net worth was lost due to the market. So that is not an attainable goal when you are 50 years old or 60 years old and you can't get your pension anymore. What can we do?

I think we have to revamp some of these laws, especially where companies like Energizer are closing down a union facility seeking lower wages, lower conditions in nonunion facilities in the United States, but also sending some of that spending that work to India, where we could actually do and reinvest in these workers in this country.

I think there has got to be some sort of checks and balances that don't allow corporations to do such things. I don't have the answer to that. You know, unfortunately, I don't pay attention to the bottom line of balance sheets at this point with Energizer.

I am more concerned what is going to happen to those 600 workers and their families moving forward. I think we have got to collectively work together to try and find a solution to keep those jobs here.

The CHAIR. Thank you, Senator Baldwin.

Senator Marshall.

Senator MARSHALL. Well, thank you, Chairman, and I am honored to be here today. Welcome to all of our panel. Believe it or not, I grew up in a union town. I remember the local union sponsoring a baseball team.

By the time I was old enough, probably 17, I was working out at the oil refinery, a high school college student, beside those union workers and have nothing but good things to say about them. I was making $6 an hour, a great wage for a 17-year-old. The union workers were probably making $30. I was doing the same job they were.

I got some of the dirtier jobs. Certainly, I understand the health needs. I mean, I figured out I understood why they needed that union. My hometown, El Dorado, was in the suburbs, basically, of Wichita, where two-thirds of the small airplanes are built in this country, built with union labor.

I didn't know any different. I just thought unions were—that they were figuring it out. That it was it was all working out just fine. Yesterday met with the firefighters union. My dad was a firefighter. These folks are—firefighters are getting cancer at a young age. I understand that role, the union out there fighting to help them get proper compensation for that.

I totally get it. I was proud to stand up and fight for my unions when there was the irresponsible vaccine mandates and my union

workers—that is the only time the union workers ever complained to me was over this vaccine mandate.

Otherwise, the process in Kansas seems to have a good relationship between management and unions. At the same time, franchises are home to Wichita as well. Wichita, Kansas, home of Pizza Hut, home of Freddy's, two very successful franchises as well. I can think of no other model that has helped minorities, women, and veterans have an opportunity to become small businesspeople.

It is this balance that we are trying to find. I think of my model as a position, above all, do no harm. And my question about the PRO Act is, does it do harm? Does it hurt one more than the other? I am going to turn to Mr. Ring and ask that, look, franchises are a huge part of our Kansas economy and have a very different employer model than other businesses.

Can you elaborate exactly what would happen to the franchise or franchisees, franchisee relationship if the PRO Act were enacted? Same with franchises and their workers.

Mr. RING. Sure, Senator. The issue raised really comes to this question of the joint employer standard, something that has been debated in labor law for a long time. The standard was in place for decades.

In most of the United States, the franchise, franchiser model grew up under that standard. Before the Obama era Board changed that standard and made it much easier to hold two employers responsible for the same workforce. The—when we were—when I was chairman, we issued a rule through rulemaking to return the standard to what it had been.

We thought that was the right way to do it through a rule, we were able to solicit comments and get input from all facets of all industries. And currently, the current NLRB is now looking at changing that back again.

The PRO Act would do even more harm as far as I am concerned, in terms of the joint employer standard. It would essentially remove any impediments to joint employer relationship and simply say that if you do business with another employer, and you have any kind of reserve or contractual interest and control over that other business, you are a joint employer.

Senator MARSHALL. Okay. I need to move on, I am sorry. Mr. Mix, I wanted you to answer the question, or I am going to run out time. Very briefly, would this harm the franchise model?

Mr. MIX. Well, I think so. But more importantly, it would harm the status of the right to work status of Kansas. I mean, I was briefed before the hearing today to say that the PRO Act doesn't repeal right to work laws, it just allows for negotiation over union security agreements, which are basically the compulsion to pay dues or fees or lose your job. So, it would make a radical difference.

Then the idea of the joint employer, I mean, let's say that you have, you are a company that uses a landscaping company to mow your yard and you have control over when they show up. How do we determine whether or not they are now a joint employer as it relates to unionization?

Lots of questions about that. And to your franchise model, you are absolutely right about that. That has created more millionaires in America than anything else, probably.

Senator MARSHALL. Well, I appreciate the testimony. And, Mr. Chairman, again, I would just conclude by saying in Kansas, we have a pretty good relationship going on that allows the franchise model. It allows the unions. I am concerned when the Federal Government gets too involved, if it ain't broke, don't fix it.

I don't think it has to be one way or the other. I think my union workers, what they are most concerned about today is inflation and the safety and security of their families. And that is what my focus is going to be to help the union workers in America. So, thank you.

The CHAIR. Thank you, Senator Marshall. Senator Hassan.

Senator HASSAN. Thank you, Mr. Chairman, Ranking Member Cassidy, for having this hearing. Thank you to our witnesses for joining us today. It is really great to have the presidents of three of the Nation's largest unions together to discuss the important role that unions play in our economy.

I am looking forward to working in this Committee to advance priorities for working families in New Hampshire, and this hearing is a really important part of that effort. One big step we could take to help workers would be to pass the Protecting the Right to Organize Act, and I look forward to working with you and your members to get that done.

I want to start with a question to you, Ms. Shuler. According to a recent report from the U.S. Government Accountability Office, women earn about $0.82 for every $1.00 that men earn. The Paycheck Fairness Act, led by Senator Murray, aims to eliminate this gender pay gap. Your written testimony highlights the fact that wages for women who are represented by a union are higher than their nonunion counterparts. How have unions been successful in narrowing the gender pay gap?

Ms. SHULER. I always say if you want equal pay, join a union because it is. The data shows women do better with collective bargaining. Pay is transparent because that is one of the biggest issues, right, is that often we don't know. We make less.

With a collective bargaining agreement, everyone knows what everybody makes. And you make the same for depending on your skills and experience. We also know that women have health care and retirement security, which is such a big deal for women particularly.

We know they live longer, right. And so, we know that when women come together with collective bargaining, they also have a mechanism to face down harassment and discrimination, and to fight back without fear, because you can stand up and have your voice heard and not fear that you will be fired because you have your union there to protect you.

I think overall, we can fairly say that women do better when they are in unions.

Senator HASSAN. Well, I appreciate that. I still remember talking with a constituent in a union hall. She had just finished her training to become, I think it was an electrician. And she was talking

about how being supported by the union, trained by the union enabled her to actually support her family on 40 hours a week and how proud she was of that.

Thank you for the work you do. Mr. O'Brien, in New Hampshire, I frequently hear from small businesses that they struggle with workforce shortages and that they need more skilled workers.

Last year, following advocacy from me and my colleagues, the Administration announced additional funding for programs that give high school students real work experience and help them make progress toward industry credentials. So, can you discuss the impact of programs like these and the important role that unions play in them?

Mr. O'BRIEN. Well, I think it is important that—not everybody gets an opportunity to go to a 4-year college. I think what we have been promoting, and I think collectively with yourself and many other legislators like yourself around the country is promoting in-school trainings for apprenticeship programs, going to the high schools, talking to these folks, because I think we all have a concern that there is going to be a worker shortage with all this work coming up.

But more importantly, when we get into these schools and create these programs, we are able to educate the prospective union members on what it is to be in a union, what it means, so they are getting a perspective on why they have the wages, why they have the conditions, why they are going to be able to have a career and a middle class lifestyle. But not only are we doing that on a high school level.

Last week alone, and I wish Senator Mullin didn't run out of here, we created 1,000 jobs partnering up with United Airlines, where we are taking low wage earners that are entry level, giving them an opportunity through an apprenticeship program to better their wages, their benefits, but also to give them a career path to a higher middle class living.

It is not just focusing on the apprenticeship programs out of high school, but it is also partnering up with the employers to facilitate their needs, their employees to create these programs, to give our members that much more opportunity at a better life.

Senator HASSAN. Well, thank you for that. I want to follow-up with Ms. Shuler on a theme you just hit, and it is a theme that you discussed with Chair Sanders, too, as I understand it, Ms. Shuler. Companies can work collaboratively with unions to be more responsive to employer needs and spur innovation and workforce operations.

In your written testimony, you say that there are employers who recognize that workers having a voice through a union is an asset, not a liability. What positive outcomes have these companies seen because of this collaboration? Positive outcomes, just like the ones Mr. O'Brien talked about.

Ms. SHULER. Absolutely. It is stability, predictability, and having labor relations that are stable, make perfect business sense. And we have seen it over and over again. When a company brings a union into the workplace, that they have a mechanism to resolve

disputes, they have less disruptions in the flow of work, and workers feel confident to raise issues and not feel intimidated.

You think about the pandemic. When nurses were in hospitals without PPE, they walked into the hospital with garbage bags, and through their union and their voice, walked out with PPE, right. I think there is example after example that we have predictable schedules, we have better wages and benefits, when workers have a seat at the table and they can actually bargain for their fair share.

Senator HASSAN. Thank you very much. Thank you, Mr. Chair.

The CHAIR. Thank you, Senator Hassan.

Senator Cassidy.

Senator CASSIDY. Thank you both. Thank you, Senator—I am sorry. Chairman Ring, I am concerned that NLRB seems to be putting their thumb on the side of the scale that is headed toward employees seeking to unionize, not all employees, just those seeking to unionize, as opposed to being a neutral arbiter, if you will. I would refer to this as a weaponization of their skills. Any comment upon that?

Mr. RING. Well, I would just say the NLRB should be a neutral arbiter of labor disputes. We currently have, I think, a Board that is very pro-union and a General Counsel that is unabashedly pro-union and is pursuing a number of initiatives that I think are putting the thumb, yes——

Senator CASSIDY. Despite their legal—no one should be above the law, despite their mandate under the law to be a neutral arbiter, you are describing a Board and a General Counsel who are not neutral arbiters. Is that a correct characterization?

Mr. RING. Well, I wouldn't say that they are being impartial to their particular facts, but I think they have a very, very strong view of and a leaning toward unions, yes.

Senator CASSIDY. Scripture says, out of the overflow of the heart, the mouth does speak. Is their heart overflowing so that it is speaking in a certain fashion?

Mr. RING. I think so, yes.

Senator CASSIDY. Okay. Thank you. You also, in your testimony, mentioned, or in your written testimony, speak about the impact of the PRO Act upon independent contractors. The guy who is working for me and he has got a Lyft and an Uber, and whichever one gives him the best fee, he is going to be on a Lyft or an Uber from 15 minutes to 15 minutes.

The guy tells me he is clearing $500 a day. I say like, you are clearing it. He goes, yes, I am clearing it after expenses. The guy is doing fantastic. But theoretically, this would have a negative impact upon that. Is that too much of a statement?

Mr. RING. It would have—yes, it would have an impact on that, negative impact.

Senator CASSIDY. The guy making $500 bucks a day doing what he wishes would now be under a more stringent set of guidelines because of the PRO Act.

Mr. RING. Correct.

Senator CASSIDY. Mr. Mix.

Mr. MIX. Yes, absolutely. I think if you eliminate the designation of independent contractors—you see under the National Labor Relations Act, independent contractors can't be unionized, but employees can.

If you force everyone to be an employee, whether it be a truck driver at the Port of Los Angeles or Long Beach, or whether it is an Uber driver or a Lyft driver, you make them, "employees," then there is a revenue side of that, which is you force union dues.

Senator CASSIDY. Mr. Ring, in your testimony, you also speak that current law precedent establishes that you can't do intermittent stoppages or secondary strikes, but the PRO Act allows that to occur once more. Why were these originally outlawed, if you will?

Mr. RING. Well, they were part of the, I think, congressional debate about where the balance of labor power should be between employers and unions. I think that the balance was that those types of job actions are really destructive to businesses.

Our law in this country has always been that if you are going to strike, you are going to strike once, and you have to stay out and strike, and not have the intermittent types of strikes.

Senator CASSIDY. But it strikes me that doing intermittent and a secondary would be a very a highly effective tool to bring a company to its knees. But if there is going to be collateral benefits, from as being described, clearly, that would be collateral damages, right. That could affect the whole ripple effect. Mr. Mix, comments on that?

Mr. MIX. Yes, absolutely. That would open up a whole new avenue of labor protests and strikes, potential strike where you go—you don't target the original target of the operation, you target their customers, and you go to their place and shut them down. And the obligation ?

Senator CASSIDY. The employees of those companies would be adversely affected and their businesses could be brought to their knees even though they had nothing to do with the primary.

Mr. MIX. Absolutely. That was the intention of outlawing a secondary boycott. That is pretty clear.

Mr. RING. I would just say, in this economy with this supply chain issues, that could be devastating.

Senator CASSIDY. Ms. Henry, let me ask you, there is a picket line, Amazon, where somebody was using a bullhorn to harass workers going in. Would you condemn that?

Ms. HENRY. Senator, are you speaking of an imaginary example or do things that you know about?

Senator CASSIDY. No, real example where a person picketing outside an Amazon facility used a bullhorn to harass a woman as she walked in. And we have spoken about the consequences, we don't want employers harassing employees, period, end of story. But nor should it go the other way. Good for Goose, Good for Gander. Would you agree with that?

Ms. HENRY. Well, I need to know specifics——

Senator CASSIDY. He was using a bullhorn to scream at her.

Ms. HENRY. Yes. And there is—I have been on many picket line Senators and we use bullhorns in order to communicate with the picketer.

Senator CASSIDY. But if you are screaming at a particular person, I mean, that is a fairly straightforward and it is a real-life example. Do you condemn that?

Ms. HENRY. But what if the——

Senator CASSIDY. I think you are going to dodge until we get there, so I will let that go. Okay. Last, Mr. Ring, and my Chair will like this question, one of the things being raised is that it can take up to 400 days for a new union to be certified.

You speak about NRLB could be improved just by having them focus more and streamlining processes. Is that an issue that can be addressed by streamlining it? Doesn't bother me. What would—how would you comment on that?

Mr. RING. Yes, no I think that was a point my testimony. I think while the board is off chasing various shiny objects that have nothing to do with collective bargaining or unionization, a lot of the nuts and bolts of what the NLRB should be doing, like processing election petitions, languish, and the employees that are seeking to unionize are adversely affected by that.

Senator CASSIDY. They vote for a union and it takes 400 days, but because the board is chasing a shiny object and not enforcing this order, that 400 days is allowed to occur, which is not, if you will, an indictment of the employer per se, as much as an indictment of the NLRB's enforcement of that. Again, is that a correct characterization?

Mr. RING. Yes, it is.

Senator CASSIDY. Thank you.

The CHAIR. Senator Smith.

Senator SMITH. Thank you, Mr. Chairman, Ranking Member. Let me just, before I get to my questions, I just want to, maybe I will turn to Ms. Schuler. Is there anything in that back and forth that we just had about some of the impacts of the PRO Act, especially around independent contractors. I am curious if you would like to add to that, particularly with regard to how employers use this independent contractor situation to get out of their obligations and responsibilities to their employees.

Ms. SHULER. Exactly. I think it is a scare tactic. The PRO Act would do nothing to inhibit independent contracting when they are in it—when it is legitimate independent contracting, right. We are talking more about when workers are misclassified, right.

Employers want to abscond responsibility and treat a worker as a contractor when really, they are an employee. And this PRO Act only applies to the NLRB. So, we are talking about labor law.

We are not talking about any other kinds of protections and laws that are—so it doesn't affect those. And misclassification is running rampant in our economy, and especially as we are looking toward the future of work where people have to work two and three jobs

now to make a living because they are piecing together independent kind of contracting gig work.

Senator SMITH. Thank you very much. Mr. O'Brien, I want to ask you about job site safety.

Union members understand that their union makes their job site safer, and knowing that they are safe at work, that their workplace is following best practices and has high standards, give people a sense of security that they are going to be safe on the job. So, let's take the situation of Amazon warehouses.

A few years ago, the National Employment Law Project and the Atwood Center in Minnesota, this is a community organization that works to build economic power amongst workers in the East African community in Minnesota, they put together a joint report on the human costs at Amazon warehouses in Minnesota, and they found that employees at the Amazon Minnesota warehouses stand a one in nine chance of being injured in a year and are more than twice as likely to get injured than those at non-Amazon warehouses.

Mr. O'Brien, could you describe what you have seen as the differences in worker safety and unionized versus non-unionized warehouses, and what the effect of unions are in terms of improving workplace safety?

Mr. O'BRIEN. Thank you very much. I appreciate that, Senator. So we represent UPS, which is 360,000 Teamster members nationwide, and they do the same exact job as the Amazon workers do every single day, with the exception that Amazon drivers are independent contractors, UPS drivers are direct employees.

But we have mechanisms within the collective bargaining agreement that mandate both the union and the company to work together on safety committees within those facilities to address safety concerns on a daily basis on each and every shift.

If there is no resolution, there is a grievance procedure that will allow these workers and the company to solve any worker safety issues or any issues that may occur that could be a threat to our members getting home safe to their families at night.

Conversely, when you go to Amazon, you do not have a mechanism, you do not have a safety committee, you do not have a grievance procedure, you do not have any platform to air your concerns on.

In some instances—and there are many charges at the NLRB where people have voiced their concerns in their safety, they have been terminated and let go. So not only the unionized workforce—there are checks and balances on both sides, but we are a pure example that in many, many situations we work collectively with the employers to ensure that their investment of their employee and our health and safety of our member are running parallel with the same goals and objectives.

Senator SMITH. Part of what is happening is that you have got. I mean, who is going to know better than the employees that are there in the warehouse how to keep themselves safe? They are going to be able to make suggestions to the management, and man-

agement and workers together come up with a solution that makes that workplace safer. That is what you are describing.

Mr. O'BRIEN. Exactly.

Senator SMITH. Did you happen to know the data about what you see in terms of safety record in UPS warehouses or——

Mr. O'BRIEN. Yes, I know UPS has a very clean record. I mean, look, like every workplace that is productivity driven, there is going to be issues, there is going to be injuries. But as long as those issues and injuries are dealt with and fixed. I know that Amazon has the highest rate of violations in OSHA. I don't have the exact number, but they are in first place, so to speak, in a bad situation.

Senator SMITH. As we found in Minnesota, I mean, one in nine people being injured in a year I mean that is a lot. And it goes to show, I think, that when you have good—when you have workers represented, you are going to have that good back and forth that allows people to be safer. And that is good for business and that is good for the employees.

Mr. O'BRIEN. Well, I think it is important to notice that when you are training collectively, training workers to work safe, that is a benefit for the company as well, because there is longevity that is associated with working safe and showing up every day. So that is an added plus as well.

Senator SMITH. Thank you, Mr. Chair.

The CHAIR. Thank you, Senator Smith.

Senator Braun.

Senator BRAUN. Thank you, Mr. Chairman. Enjoyed our conversation from the other day, Mr. O'Brien.

Mr. O'BRIEN. Same here, sir.

Senator BRAUN. Yes. I have been clear that when it comes to large corporations and the ability to effectively bargain with them, there is no replacement for a union. It is important.

We also had the conversation knowing that I built my business up from a very grassroots level, and I think I made the statement, I never could tell the difference between blue collar and white collar because we worked together that well. That is why I have never had trouble hiring people into the business that three of my four kids now run along, with the good young executive team.

These issues, this tug of war, especially as many industries have gotten very concentrated even to the issue that was the biggest deal to me was the high cost of health care. And Senator Sanders and I have talked about that. It is a broken industry. Larger and larger companies control it.

Even the practitioners, nurses and doctors are having second thoughts about whether they want to invest all that time, especially doctors where your post-undergrad, you are spending a minimum of 4 to 5 years, especially up to 9.

Many think that they should still have their own business and increasingly are having to work for corporations that keep depressing their fees. I understand that dynamic, but I don't know that we talked about, and I would like anyone to weigh in on, would be that

other end of the economy, the gig economy, the independent contractor.

I know that gets to be a more difficult discussion. Most small businesses, my wife has had one for nearly over 40 years and she has been an entrepreneur longer than I have, they make their living out of it, so that is their wage.

I would just like you to weigh in on where I am at when it comes to collective bargaining with large corporations. But then when you try to maybe collectively put individuals together and take that same philosophy, I don't know that need is there. I also would like your opinion of when it comes to that individual earning a living, that is about like the blue-collar worker in the sense that they are both trying to accomplish the same thing, pay the bills, not necessarily return on investment. Mr. O'Brien, do you want to start with that?

Mr. O'BRIEN. Yes, sir. Thank you very much. I appreciate you taking the time on the schedule last week to meet.

I just want to note for the record that you were very supportive of our teams, the rail workers and their plight to get sick time. I believe because of people like yourself, we were able to achieve some of that stuff.

Look, your—I know your history pretty well and you are an employer that does right by his people from what I have heard, and that is commendable. Unfortunately, there are a lot of more employers that don't take that same philosophy.

The one good thing that I have learned from you and you just stated here that it is going to be a generational business, right, and it is going to provide opportunity and you are going to provide those core values and direction, too, to the next generation, which is great.

Look, I don't think anybody is trying to impede on anybody's right to be an entrepreneur or to have their own business. You know that Lyft, Uber model that Senator Cassidy described, the $500 a day, $500 day does seem like a lot of money. But when you factor in expenses, no health care and no benefits—these workers are coming to us, we are not soliciting them.

But as far as the entrepreneurial stuff goes, I don't think we are looking at to impede anybody's ability to be an entrepreneur or to have a small business. Most of the people that come to our organizations come to us for a reason or a violation or a grievance that they can't deal with their employer one on one.

We are not out there seeking to destroy anybody's business. Look, I work with billion-dollar corporations like UPS and many others, the airline industry, and we collectively work together. Why? To create jobs, but also to make their business as successful as possible.

Because if their business is successful, our members are going to be successful. I don't want anybody to think that we are targeting a certain individual. Senator Mullin and I got into it pretty hard today.

I don't condone going to someone's personal home. If you have got an issue in the workplace, we don't condone that. We won't do

it, okay. But on the same hand, if members—if people come to us and want to be members of our union because their employers are not providing the health care, or stealing wages from them, not allowing them to have a voice in the workplace and not protecting their safety, then we are extremely relevant in that process.

Senator BRAUN. Thank you. About out of time. Does anyone else want to briefly weigh in on that topic?

Ms. SHULER. I would just say for small business, I think it is just like doctors come together in a medical association. You know, independent entrepreneurs coming together to get access to benefits at scale. That is what we are talking about here is collectively improving our lot.

Whether you are in a union, working in a hospital or if you are a small businessperson, but the PRO Act would not, as Sean said, discourage independent contractors who are truly independent. I think what we are trying to get at is employers who are misclassifying their workers.

Senator BRAUN. Thank you.

The CHAIR. Thank you, Senator Braun.

Senator Casey.

Senator CASEY. Mr. Chairman, thanks very much. President Shuler, President Henry, President O'Brien, and Mr. Ring and Mr. Mix, thank you all for testifying today. I hope I could get to this today, but I may not.

If I am not able to, I wanted to thank President Henry for her great work on home and community-based services for people with disabilities and seniors, and lifting up that workforce, many of whom are trapped in low wage work doing the most important work that we could ask anyone to do.

I wanted to state that for the record. I am a strong supporter of the PRO Act for a lot of reasons, but I was thinking as you all were testifying and taking questions and some references to our history.

President Shuler, you made reference to the National Labor Relations Act and what the understanding was then. And as you know, as well as I do, most everybody in this room knows that the findings spoke directly to the free flow of commerce. That a determination was made by the U.S. Congress that if you have organizing, organizing and strengthened, you are going to enhance the free flow of commerce.

Better for workers, obviously, but better for business, too. We have gotten away from that. But it is still the law. It hasn't been repealed yet, despite efforts, I think, to do that. I also think it is important to point out for the record that a lot of your unions, all of your unions on a regular basis advocate for all workers.

When you stand up for the minimum wage, you are workers don't need an increase in the minimum wage directly for them because you have already bargained and negotiated for that. But you are standing up for other workers who don't have raised the minimum wage.

When you advocated to protect health care, the Affordable Care Act and other health care fights, you have that because you bar-

gained for it. A lot of people didn't have it and you stood up for that. I think unions do a hell of a lot more than just stand up for their own workers, as important as that is.

I wanted to address an issue which hasn't been raised. I was glad that Chairman Sanders raised this question of the tax treatment of activities by employers against unions to, in my judgment, union bust and then get a tax break for it, which is the state of American tax law right now.

In the same country where you can get a tax break for that, you can't—a corporation can't get a tax break for giving a campaign contribution, nor should they. But they can get a tax break if they hire a consultant to bust a union.

That is perverse and wrong. But I wanted to move to another issue which is employers using invasive technology and other practices to monitor what their workers are doing. Here are some the examples of that.

Employers are using these kinds of technologies to violate, monitor, and preempt workers' right to organize. Amazon workers are being fired by bots, not by people, fired by bots. And those same workers are left with few options to dispute employment decisions and to speak to a human manager to understand how that decision was reached.

Here is administrative law judge in Buffalo with regard to Starbucks. This a judge. These aren't my words, these are the words of an administrative law judge. Starbucks use headsets to, "closely supervise, monitor, and create the impression that employees' union activities are under surveillance".

Not just what workers are doing on the job, but even their union activities become the subject of that invasive and exploitive surveillance. I have a bill to do that. It is the Stop Spying Bosses Act and I can walk through the provisions of it, but I think it is more important to ask either President Shuler, President O'Brien, or both,' do employers invasive workplace surveillance tactics, some which itemize there, does that impact do those efforts impact workers' rights to organize?

Mr. O'BRIEN. I would say absolutely it impacts the right to organize because like in the Starbucks example—look most American workers' right now due to technology, especially the UPS, Amazons of the world, they are basically held hostage by what they call a device like a dyad or a scanner which monitors everything they do, not just scanning the products, but also keeping track of what they are doing, conversations, everything else.

It is a very, very invasive process and it is intrusive to say the least. And knowing that someone is listening to your conversation, knowing that someone is watching everything you do, especially in a non-unionized, I mean, a nonunion facility.

You know, that is impeding your right to talk to your coworkers who also, you know—and then they can utilize whatever lingo that you say and make their own determination and say, look, they are they are trying to form a union here we are going to get rid of them. So, it is very invasive. It is intrusive.

Even in the unionized workforce which is important, like UPS for instance, we are going into bargaining one of our biggest issues, and we know that technology plays a factor in those jobs where they are monitored, told where to deliver a package, and everything else. Now they want inward facing cameras.

It is not just being evasive in an organizing drive. It is what we do to protect all workers from intrusion of their employer.

Senator CASEY. President Shuler, I know we are out of time, but anything quickly?

Ms. SHULER. Yes, and just that this is a bipartisan issue. The surveillance of people in the workplace and privacy is a bipartisan issue. And we should be all afraid of predictive analytics and how the data is going to be used for all things.

Senator CASEY. Thank you. Thank you, Mr. Chair.

The CHAIR. Thank you.

Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman, very much. This hearing is personal for me today. Workers across the country, across my home State of Massachusetts, are standing up for their rights as workers.

My father, John Markey, was a union leader. He served as Vice President of the United Electrical Radio and Machine Workers of America, Local 272 in South Boston, Massachusetts. He worked hard. He used to tell me, Eddie, you can't beg for your rights, you have to fight for them.

Which is why I am so proud today because I recognize my staff's efforts to organize a union in my office. We are the first office in the U.S. Senate to do so. I applaud these passionate, dedicated workers who are exercising their rights to organize through this fundamental critical exercise in democracy.

I am proud of my staff for embodying the commitment not to agonize, but to organize, and to set an example. I recognize their effort to unionize, and I look forward to engaging with them and with the Congressional Workers Union.

Ms. Henry, airport workers, they are unsung heroes. They are overworked, they are underpaid. They are the hidden figures in our aviation history. They don't get to wear glamorous uniforms walking through the airport.

They're concession workers, they're wheelchair attendants, they're ramp agents, they're baggage handlers, they do their job. And if they didn't, the airport would just have to shut down. They are essential. So could you talk about them and the need to have greater protections for them, more rights, better wages, and better health care?

Ms. HENRY. Yes, Senator Markey, thank you so much. There is a million of those workers. They clean cabins, too, and they have 7 minutes to get into the airplane and clean the cabin for the turnaround before they have to get out.

Workers all across this country are trying to join together in unions in order to have a voice on the job, to protect themselves, and to raise wages. Because in the 70's, every major airline con-

tracted out these service jobs to contractors who employ them at minimum wage, no guaranteed hours, no health care benefits.

We have slowly but surely started to organize in the Midwest, along the two coasts, East and West, but we need every airport in this country for workers to be able to join together. And that is why the Good Jobs for Good Airports Act is so essential, and is why we were fighting in the FAA reauthorization to establish a service contract act standard for wages and conditions for all these workers, because they—it should not be that contracted out jobs can't have the same wages and benefits with airlines that are earning record profits after having received Federal tax dollars to invest in their getting through the pandemic. I appreciate you leading on that legislation.

Senator MARKEY. I appreciate the SEIU and the work that you are doing. We just have to repay their sacrifices, you know. So many of just Zoomed to work——

Ms. HENRY. Yes.

Senator MARKEY [continuing]. for years. They were considered essential workers. Had to show up every single day so that the system worked for the people who did go to airports. And they took that COVID home to their families. They saw it in disproportionate percentages. And they were increasingly Black, brown, immigrant, female. We know who they are.

Ms. HENRY. That's right.

Senator MARKEY. They took the risk for all the rest of our families, and they just don't get rewarded in the system. I am looking forward to working with you. Mr. O'Brien, the problem of companies skirting their pension obligations through bankruptcy is an important trend occurring in our Nation right now.

I would be interested to hear your perspective, any personal experiences you may know of, of how workers just are ultimately left behind when the bankruptcy is used as an exit route for a corporation.

Mr. O'BRIEN. So many people don't know that when these corporations claim bankruptcy and they have a collective bargaining, they get an obligation on the pension funds to pay, withdraw, or liability. Pension funds are the last line in the creditors to capture any money.

If there is any left at the end of the day—and the most recent one was the Boston Herald. I think you are familiar with that, where you had three private equity companies coming in to bid on the bankruptcy of the Herald. And at the end of the day, the pension fund ended up with like $0.03 on the dollar.

We are still obligated as a pension fund to make our payments regardless of the contributions. I think we need to reform bankruptcy laws. I think under the American Recovery Act of the Biden Administration, we fixed a lot of those wrongs, bad behavior by corporations who claimed bankruptcy and then pointed the fingers at union pension funds saying they were mismanaged.

They weren't mismanaged. They were just last in line to get anything, if anything. I think we need to work collectively to make

sure that we have—everybody gets their fair share, unfortunately, when a company goes in bankruptcy.

Senator MARKEY. Okay. Thank you. And thank you, Mr. Chairman.

The CHAIR. Thank you, Senator Markey. I believe Senator Lujàn is on his way. But in the meantime, Senator Cassidy, you had some additional question?

Senator CASSIDY. Yes. So really quickly, by the way, there is common ground here. Ms. Shuler, I totally agree with you on the issue of privacy, totally. Ms. Henry, I didn't—wasn't able to give you detail regarding that which I asked you if you had problems with it.

But there is a video of an April 2020 episode in which those striking outside of an Amazon warehouse were using a bullhorn, and a gentleman who was, "arguing with a female employee called her a gutter bitch, crackhead, and stupid." Do you condemn those remarks?

Ms. SHULER. You know, Senator, I would like to see the video and comment on this specific——

Senator CASSIDY. Sure. Mr. O'Brien, do you condemn those remarks?

Mr. O'BRIEN. If someone is speaking out of turn, it doesn't represent the organization as a whole. Would I call a woman those names personally? No, I would not.

Senator CASSIDY. Is it appropriate for someone—we are concerned about harassment of employees seeking to unionize. This suggests that there should be—it is valid to be concerned about harassment of employees who seek not to unionize.

I think I heard from you that it is inappropriate. That is more than I have heard, inappropriate and that it represents the union effort poorly. I would agree with that.

Mr. O'BRIEN. I have organized many companies, been on many picket lines myself, and there has been hostile situations, and they work both ways. So, to——

Senator CASSIDY. We can condemn it both ways.

Mr. O'BRIEN. You can condemn it both ways, yes.

Senator CASSIDY. Thank you. I agree with that. And, Ms. Shuler, would you find that offensive and should be condemned?

Ms. SHULER. I think what we are talking about is workers frustration and workers are looking for a voice——

Senator CASSIDY. No, we are talking about somebody calling someone a gutter bitch, crackhead, and stupid.

Ms. SHULER. I don't use that language. I wouldn't encourage anyone else to.

Senator CASSIDY. It is wrong.

Ms. SHULER. I think name calling is not what we are about in the labor movement. We are about giving workers a voice.

Senator CASSIDY. Is it wrong?

Ms. SHULER. To call people names? Of course.

Senator CASSIDY. Thank you. I yield. Now, by the way, I am sorry. My staff will shoot me if I don't get this right. I ask unanimous consent to enter into the record letters from stakeholders opposing the PRO Act, and to insert a Reuters article which references the video regarding the striker's harassment of those continuing to work, of which I just referred to.

The CHAIR. Without objection.

[The following information can be found on pages 72-95 and page 96 in Additional Material:]

The CHAIR. Let me just say a few words. First of all, thank all of our panelists for what I thought was a good discussion. Senator Cassidy talks about an incident that took place where profane words were used.

I think most of us would think that's unacceptable. But I would hope at the same time, we would also consider it to be unacceptable that heads of corporations go up to workers and say, you vote for this union, we are going to take your job to China or to Mexico, or we are going to shut down.

I would hope that Senator Cassidy and others would understand that is not only unacceptable behavior, but illegal behavior. I think at the end of the day, what are we talking about really?

We are talking about an America today where there is more income and wealth inequality than any time in history, where a few people on top have extraordinary power, while so many millions of people are struggling to put food on the table, struggling to keep their families alive economically.

What common sense suggests, you don't have to be the president of a union or the former head of the NLRB to understand this, is that if a worker alone is in trouble, he or she does not have a lot of power to ask for better wages.

If a worker, and this goes on all over America, has a terrible schedule and the employer says you have got to come in on Sunday, that is my daughter's birthday. Sorry, that is what you got to do. What power does an individual worker say, no, you destroying my family life?

All that unions are about is not complicated. It is people coming together to fight for a contract which guarantees them certain basic rights. Mr. Employer, you can't have me come in on Sunday. That is not in the contract. Mr. Employer, you will have to pay me the wage that we agreed to. Mr. Employer, you can't fire me arbitrarily because your cousin wants to take the job.

That is all that unions do. They bring working people together in an extremely difficult moment in our history to fight for decent wages, and union wages are higher than nonunion wages, fight for better benefits.

No question about it, union benefits far better than nonunion worker benefits. Fight for things like pensions, which are almost unheard of now in nonunion companies. So, we got a struggle. There is a class war going on, whether we want to recognize it or not.

People on top have the money. They have the power. They are spending hundreds of millions of dollars to try to prevent ordinary workers from coming together to fight for dignity.

I want to applaud, thank all of our panelists for being here. Applaud our trade union leaders for fighting for American workers.

With that, let me state that this is the end of our hearing today. And for any Senators who wish to ask additional questions, questions for the record will be due in 10 business days, March 22d at 5.00 p.m.

Finally, I ask unanimous consent to enter into the record a statement from the National Education Association. So, ordered.

[The following information can be found on page 72 in Additional Material:]

The CHAIR. The Committee stands adjourned.

Thank you all very much.

ADDITIONAL MATERIAL

NATIONAL EDUCATION ASSOCIATION (NEA),
WASHINGTON, DC 20510,
March 7, 2023.

Senator BERNARD SANDERS, Chairman,
U.S. Senate Committee on Health, Education, Labor, and Pensions,
Washington, DC 20510.

DEAR SENATOR:

On behalf of the 3 million members of the National Education Association—educators who know that their working conditions impact students' learning conditions—thank you for holding the Committee's March 8 hearing on defending the right of workers to organize unions, free from illegal union-busting by employers. We submit these comments for the record.

NEA members are fiercely protective of their right to come together to organize and advocate for the resources and support they need to do their jobs well. This right acknowledges that they are trusted professionals with the expertise to make decisions leading to student success. Because NEA members appreciate what having a voice in the workplace means for them, they believe that this right, fundamental to the liberties we treasure as Americans, must be afforded to all working people.

Unfortunately, workers who attempt to exercise the right to organize often face retaliation from their employers merely for wanting a say in their pay, benefits, and working conditions. Employers harass, ostracize, demote, and even fire them for seeking respect on the job. The goal is not only to punish the targeted employee; it is to quash any hope employees may have of ever organizing. Employers and their law firms euphemistically refer to their efforts as "union avoidance strategies." These so-called strategies are aimed at suppressing workers' freedoms of speech and association, and, worst of all, breaking their spirit. Organizing a union is a legally protected activity, and union-busting employers must face appropriate penalties and repercussions for breaking the law.

Supporting workers' right to organize, free from union-busting, is not only the morally and ethically sound choice; it has practical benefits for employers. The right to collectively bargain may reduce employee turnover and improve retention of employees who feel invested in an organization's success. Furthermore, unionized workers tend to earn more than workers who are not represented by unions, and are better able to invest in their communities by purchasing homes, goods, and services. A 2021 study by the Economic Policy Institute found that in the 17 states where unionization is highest, state minimum wages are, on average, 19 percent higher than the national average—and 40 percent higher than the state minimum wage in states with low union density.

The right to stand together in unions means working people can do the things that matter to us all: advocate for what they need to do their jobs efficiently and safely, and take care of their families. Congress must affirm that union-busting is illegal and take the steps necessary to ensure that working people can freely exercise their right to organize and collectively bargain.

Sincerely,

MARC EGAN,
Director of Government Relations,
National Education Association.

ASSOCIATED BUILDERS AND CONTRACTORS,
March 7, 2023.

Senator BERNIE SANDERS, Chairman,
Senator BILL CASSIDY, Ranking Member,
U.S. Senate Committee on Health, Education, Labor, and Pensions,
Washington, DC 20510.

DEAR CHAIRMAN SANDERS, RANKING MEMBER CASSIDY AND MEMBERS OF THE U.S. SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS:

On behalf of Associated Builders and Contractors, a national trade association with 68 chapters representing more than 22,000 members, I am writing to express our opposition to the Protecting the Right to Organize Act. Before the Committee considers testimony at the hearing titled "Defending the Right of Workers to Organize Unions Free from Illegal Corporate Union-Busting," ABC would like to under-

score the most dangerous provisions of the bill and the negative effects they would have on the construction industry and the economy.

While for years proponents of this bill have claimed it will simply protect the ability of workers to join a union if they so choose, the PRO Act would instead strip workers of their privacy, freedom and choice. Additionally, the PRO Act would impose undue costs on our Nation's small businesses at a time when they are faced with inflationary prices, supply chain delays, workforce shortages and an increasingly hostile regulatory agenda.

Tipping the scales against workers and small businesses in union elections

The PRO Act would fundamentally change the process and rules of a union election, enacting a "card check" system where votes are made public. This provision removes a critical requirement for employees on both sides of the election to have their say on whether to join a union. It would make employees fear retribution for voting their conscience, exposing them to harassment and intimidation unless they back unionization efforts.

The bill would also mandate that employers provide employees' personal contact information, such as cell phone numbers, home addresses and even assigned shifts, to union organizers, all without prior approval from the employees themselves. Employees would not have a say in which information was provided, exposing them to potential harassment and intimidation. These provisions violate basic employee privacy rights, forcing employers to turn over employees' information to union organizers without consent and exposing them to harassment and intimidation unless they back unionization efforts.

The PRO Act would allow secondary boycotting, which could bring commerce to a halt and make neutral businesses and private citizens vulnerable to threats and intimidation. This provision would rescind all National Labor Relations Act restrictions that currently make it unlawful for unions to impose economic injury on neutral third parties that are not involved in an underlying labor dispute, including consumers, companies or other unions that do business with the company involved in the dispute.

The elimination of neutral status will expose all consumers, unions and businesses to coercion, picketing and boycotts, as well as excessive and abusive tactics used decades ago. With the effect of harming the economic interests of as many businesses as can possibly be linked to the primary target, this tactic would be used to essentially blackmail businesses into recognizing a labor union or face severe costs and harm to their daily operations. This would have a devastating impact on the construction industry and would result in stoppage or delays of critical construction projects throughout the country. This is at a time when the Federal Government seeks to fully implement the bipartisan Infrastructure Investment and Jobs Act and other legislation with significant funds for construction, including the CHIPS and Science Act and the Inflation Reduction Act.

The bill would also interfere with attorney-client confidentiality, making it harder for businesses, particularly small businesses, to secure legal advice on complex labor law matters. Like the Obama-era Persuader Rule, the PRO Act would force a breach of attorney-client confidentiality and make it more difficult for employers to access legal counsel or other expert advice on complex labor and employee relations issues during union-organizing drives.

Eliminating Employee Rights and Freedoms

Since 1943, a total of 27 states have passed right-to-work laws prohibiting employers from requiring employees to join unions as a condition of employment, incentivizing competition and producing a better work environment for businesses and workers. The PRO Act would completely reject this choice by eliminating these independent, state-passed laws, forcing individuals to join a specific union and forfeit a portion of their hard-earned paychecks to support the activities and influence of unions if they want a job at a unionized factory, jobsite, school or company.

The PRO Act would also curb opportunities for individuals to work independently through gig economy platforms or more traditional independent contractors. The provision would codify the "ABC test," the standard adopted by California's disastrous Assembly Bill 5 to forcibly reclassify many independent contractors as employees. A national version of AB 5 could put up to 8.5 percent of gross domestic product at risk, while diminishing the freedoms of countless potential entrepreneurs.

The PRO Act demotes front-line leaders, who would no longer be part of management, by restricting the definition of "supervisor." This legislation redefines "supervisor" as only those individuals who perform such "supervisory" duties "for a majority of the individual's worktime." This would prevent employers from treating many front-line leaders as members of their management team. Moreover, the PRO Act deletes the supervisory status of "assigning" work and having the "responsibility to direct" work of employees, thus eliminating the two factors that most commonly confer supervisory status on traditional front-line leaders.

The PRO Act imposes government control over private contracts by mandating compulsory binding arbitration on employers and employees if they cannot reach a collective bargaining agreement within the first 120 days of negotiations. This intrusion into private sector labor relations would strip both employers and workers of their rights and ability to negotiate a fair agreement.

Imposing Ubearable Brdens on Small Businesses and Job Creators:

The PRO Act would codify the National Labor Relations Board's controversial Browning-Ferris Industries joint-employer standard that threatens our Country's small and local businesses. If implemented, the standard would affect 44 percent of private sector employees and profoundly damage many business-to-business contracts and arrangements, causing particular harm to small businesses in the construction industry.

The PRO Act greatly expands small businesses liability for "unfair labor practices" by expanding both the scope of remedies and the avenues to challenge allegedly impermissible conduct under the law. This legislation adds significant monetary obligations, including back pay without reduction for interim earnings (e.g., unemployment or earnings from a new job), front pay and liquidated damages equal to twice the amount of other damages awarded.

The PRO Act would also expand the types of available remedies, to include civil penalties for noncompliance with NLRB orders, enforceable by civil action in Federal district court. These penalties begin at $50,000 for each failure to comply with a Board order and could be doubled when the employer committed a similar unfair labor practice in the prior 5 years. It could apply to individual directors and officers of the employer.

The harmful provisions included in the PRO Act would have a devastating impact on construction in the United States and cause significant harm to our Nation's economy at this critical junction. We urge the Committee to reject this legislation and enact commonsense policies that strengthen our economy and support well-paying jobs for all of America's workers.

Sincerely,

KRISTEN SWEARINGEN,
Vice President,
Legislative and Political Affairs.

COALITION FOR A DEMOCRATIC WORKPLACE (CDW),
March 7, 2023.

Senator BERNIE SANDERS, Chairman,
Senator BILL CASSIDY, Ranking Member,
U.S. Senate Committee on Health, Education, Labor, and Pensions,
Washington, DC 20510.

DEAR CHAIRMAN SANDERS, RANKING MEMBER CASSIDY AND MEMBERS OF THE U.S. SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS:

In light of the Senate Health, Education, Labor, and Pensions Committee's upcoming hearing, "Defending the Right of Workers to Organize Unions Free from Illegal Corporate Union-Busting," the Coalition for a Democratic Workplace ("CDW") would like to draw to your attention several letters we sent to the Committee in the 117th Session of Congress opposing the Protecting the Right to Organize ("PRO") Act, which was recently reintroduced.

CDW is a broad-based coalition of hundreds of organizations representing hundreds of thousands of employers and millions of employees in various industries across the country focused on legislative and regulatory changes that impact national labor policy. This includes possible legislative changes to the National Labor Relations Act ("NLRA"), regulatory actions by the National Labor Relations Board ("NLRB"), and Federal court decisions implementing the NLRA.

The PRO Act is a radical bill that includes numerous provisions that would violate workers' rights to free choice and privacy, infringe on employers' due process and free speech rights, cost millions of American jobs, and threaten American small businesses and vital supply chains. The PRO Act would drastically restructure America's labor laws in an attempt to increase union density and union leverage at the bargaining table and does so without regard for the negative impacts the legislation would have on workers, businesses, and the economy.

CDW has repeatedly raised our concerns with the PRO Act to the Committee. On two separate occasions—March 4, 2021 [1], and July 21, 2021 [2]—hundreds of employer organizations joined CDW in pointing out the most dangerous provisions of the bill, demonstrating their potential consequences, and highlighting the public's broad disapproval of the proposed changes. These organizations represent nearly every industry in the economy and are based in nearly every congressional district.

As we explain in our letters, some of the more dangerous provisions of the bill would threaten fundamental rights, including:

- limiting the right of employees to vote for or against union representation via secret ballots and instead forcing them to vote in front of union organizers or colleagues, needlessly exposing them to harassment, intimidation, or coercion;
- limiting employers' free speech rights, which effectively silences debate on the pros and cons of union representation generally or a particular union at issue, despite the Supreme Court, circuit courts, and the NLRB itself protecting this fundamental right;
- allowing unions to choose a bargaining unit that maximizes its chances of winning a representation election rather than having the NLRB choose a unit that would promote a functional and stable bargaining relationship, effectively allowing unions to gerrymander the bargaining unit and disenfranchise other workers of their right to vote;
- requiring employers to give union organizers employees' personal information without approval from the employees themselves, including home addresses, phone numbers, email addresses, work shifts and locations, and job classifications, violating workers' privacy;
- drastically shortening representation election timeframes, ensuring workers do not have an opportunity to hear from all sides on unionization and potentially forcing them to vote on union representation without knowing all the facts; and
- eliminating right-to-work protections across the country, including in the twenty-seven states whose populations and representatives voted for and implemented such laws. (Right-to-work laws allow workers to choose not to pay union dues to a labor organization whose policies and advocacy efforts do not align with their own beliefs and ensure workers can continue to work without being forced to join a union.)

The bill also jeopardizes business models and entrepreneurial opportunities by:

- drastically limiting who can work as an independent contractor by imposing California's failed ABC test nationwide;
- codifying the controversial Browning-Ferris Industries joint-employer standard into law, despite that standard having devastating consequences on nearly all contractual relationships, from the franchise model to those between contractors and subcontractors and suppliers and vendors, and hampering businesses' efforts to implement "corporate responsibility" throughout their supply chains and operations; and
- reversing bans on intermittent strikes and secondary boycotts on neutral third parties, allowing unions to disrupt the economy and critical supply chains with constant threats of work stoppages against unionized and nonunionized businesses alike.

The PRO Act attempts to implement policies that have been rejected on a bipartisan basis in Congress, overturned by the judicial system, and withdrawn by the Federal agencies this and previous administrations have attempted to use to implement the policies unilaterally.

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[1] Letter available at *https://myprivateballot.com/wp-content/uploads/2021/03/CDW-PRO-Act-Opposition-Letter—March–4—Update–1.pdf.*

[2] Letter available at *https://myprivateballot.com/wp-content/uploads/2021/07/CDW-PRO-Act-Senate-Hearing-Letter-July–2021.pdf.*

If passed, this bill would have devastating consequences for the entire economy, every worker, and every business and entrepreneur. The Committee should reject this bill, protect the rights of workers, and safeguard the economy from such disastrous policies.

Sincerely,

KRISTEN SWEARINGEN,
Chair,
Coalition for a Democratic Workplace

COALITION FOR A DEMOCRATIC WORKPLACE (CDW)
March 4, 2021

DEAR CHAIRMAN SANDERS

On behalf of the millions of American businesses concerned with the rights of their employees, the current economic situation, and the need for balance in Federal regulation, the following 248 organizations write to express our opposition to the Protecting the Right to Organize (PRO) Act (H.R. 842/S. 420).

The PRO Act would drastically restructure America's labor laws resulting in economic upheaval that would cost millions of American jobs, threaten vital supply chains, and greatly diminish opportunities for entrepreneurs and small businesses. The bill's attempts to achieve its primary objectives of increasing union density and union leverage at the bargaining table without regard for the negative impacts the legislation would have on workers, businesses, and the economy. As a result, the bill threatens fundamental rights and vital aspects of our economy, including but not limited to:

- workers' right to choose whether or not to be represented by a union through secret ballot elections;
- workers' right to remove a union that has failed to adequately represent them;
- businesses and individuals' ability to contract with independent contractors and other businesses;
- workers' right to choose not to contribute to a union they do not support;
- Americans' opportunity to own a franchise business or work independently; and
- the government's ability to prevent unions from expanding a labor dispute with one employer to other businesses and consumers—a change that threatens to disrupt supply chains and/or projects that are vital to our national pandemic response.

Many of the bill's provisions would implement policies that have previously been rejected on a bipartisan basis in Congress, overturned by the judicial system, and withdrawn by the Federal agencies.

The undersigned organizations remain committed to creating and supplying all Americans with the jobs, goods and services that are critical to our health and economic recovery from COVID-19. This legislation will only hinder our ability to meet that commitment.

For these reasons, we urge Congress to reject the PRO Act.

Sincerely,

THE COALITION FOR A DEMOCRATIC WORKPLACE
AGC COLORADO
AGC FLORIDA EAST COAST CHAPTER
AGC MISSISSIPPI
AGC OF ALASKA
AGC OF CALIFORNIA
AGC OF KANSAS
AGC OF OHIO
AGC OF SD BUILDING CHAPTER
AGC OF SOUTH DAKOTA, HIGHWAY-HEAVY-UTILITY CHAPTER
AGC OF TEXAS
AGC OF VIRGINIA
AGC OF WESTERN KENTUCKY
AGC OF WYOMING
AGC OREGON-COLUMBIA CHAPTER
AGC SAN DIEGO
AIR CONDITIONING CONTRACTORS OF AMERICA
ALABAMA ASSOCIATED GENERAL CONTRACTORS
AMERICAN BAKERS ASSOCIATION
AMERICAN FOUNDRY SOCIETY
AMERICAN HOME FURNISHINGS ALLIANCE
AMERICAN HOTEL & LODGING ASSOCIATION
AMERICAN LIGHTING ASSOCIATION
AMERICAN MOLD BUILDERS ASSOCIATION
AMERICAN PIPELINE CONTRACTORS ASSOCIATION
AMERICAN RENTAL ASSOCIATION
AMERICAN SENIORS HOUSING ASSOCIATION
AMERICAN SOCIETY OF EMPLOYERS
AMERICAN STAFFING ASSOCIATION
AMERICAN SUPPLY ASSOCIATION
AMERICAN TRUCKING ASSOCIATIONS
AMERICANS FOR TAX REFORM
ARGENTUM
ARIZONA BUILDERS ALLIANCE
ARIZONA CHAPTER, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.
ARKANSAS READY MIXED CONCRETE ASSOCIATION
ARKANSAS STATE CHAMBER OF COMMERCE
ASSOCIATED BUILDERS AND CONTRACTORS
ASSOCIATED BUILDERS AND CONTRACTORS, ALABAMA CHAPTER
ASSOCIATED BUILDERS AND CONTRACTORS. ARKANSAS CHAPTER
ASSOCIATED BUILDERS AND CONTRACTORS CAROLINAS CHAPTER
ASSOCIATED BUILDERS AND CONTRACTORS CENTRAL CALIFORNIA CHAPTER
ASSOCIATED BUILDERS AND CONTRACTORS CENTRAL OHIO CHAPTER
ASSOCIATED BUILDERS AND CONTRACTORS CENTRAL PENNSYLVANIA CHAPTER
ASSOCIATED BUILDERS AND CONTRACTORS CENTRAL TEXAS CHAPTER
ASSOCIATED BUILDERS AND CONTRACTORS CHESAPEAKE SHORES CHAPTER
ASSOCIATED BUILDERS AND CONTRACTORS CONNECTICUT CHAPTER

Associated Builders and Contractors Eastern Pennsylvania Chapter
Associated Builders and Contractors Empire State Chapter
Associated Builders and Contractors Florida East Coast Chapter
Associated Builders and Contractors Florida First Coast Chapter
Associated Builders and Contractors Florida Gulf Coast Chapter
Associated Builders and Contractors Georgia Chapter
Associated Builders and Contractors Greater Baltimore Chapter
Associated Builders and Contractors Greater Houston Chapter
Associated Builders and Contractors Greater Tennessee Chapter
Associated Builders and Contractors Hawaii Chapter
Associated Builders and Contractors Illinois Chapter
Associated Builders and Contractors Indiana/Kentucky Chapter
Associated Builders and Contractors Inland Pacific Chapter
Associated Builders and Contractors Iowa Chapter
Associated Builders and Contractors Keystone Chapter
Associated Builders and Contractors Massachusetts Chapter
Associated Builders and Contractors Metro Washington Chapter
Associated Builders and Contractors Minnesota/North Dakota Chapter
Associated Builders and Contractors Nevada Chapter
Associated Builders and Contractors New Hampshire/Vermont Chapter
Associated Builders and Contractors New Mexico Chapter
Associated Builders and Contractors New Orleans/Bayou Chapter
Associated Builders and Contractors North Alabama Chapter
Associated Builders and Contractors Northern California Chapter
Associated Builders and Contractors Northern Ohio Chapter
Associated Builders and Contractors of Michigan
Associated Builders and Contractors of Ohio
Associated Builders and Contractors of Pennsylvania
Associated Builders and Contractors Ohio Valley Chapter
Associated Builders and Contractors Oklahoma Chapter
Associated Builders and Contractors Pacific Northwest Chapter
Associated Builders and Contractors Pelican Chapter
Associated Builders and Contractors Rhode Island Chapter
Associated Builders and Contractors San Diego Chapter
Associated Builders and Contractors Southeast Texas Chapter
Associated Builders and Contractors Southern California Chapter
Associated Builders and Contractors Texas Gulf Coast Chapter
Associated Builders and Contractors Texas Mid Coast Chapter
Associated Builders and Contractors TEXO Chapter
Associated Builders and Contractors Utah Chapter
Associated Builders and Contractors Virginia Chapter
Associated Builders and Contractors West Tennessee Chapter
Associated Builders and Contractors Western Michigan Chapter
Associated Builders and Contractors Western Pennsylvania Chapter
Associated Builders and Contractors Western Washington Chapter
Associated Builders and Contractors Wisconsin Chapter
Associated Contractors of New Mexico
Associated Equipment Distributors
Associated General Contractors
Associated General Contractors of Georgia

Associated General Contractors of Kentucky
Associated General Contractors of Michigan
Associated General Contractors of Minnesota
Associated General Contractors of New York State
Associated General Contractors of New Hampshire
Associated General Contractors of North Dakota
Associated General Contractors of Utah
Associated General Contractors of Vermont
Auto Care Association
Brick Industry Association
Business & Industry Association
California Business Properties Association
California Delivery Association
Carolinas AGC
Carolinas Ready Mixed Concrete Association Catapult—Formerly CAI & TEA
CAWA—Representing the Automotive Parts Industry
Coalition of Franchisee Associations
Colorado Contractors Association
Colorado Ready Mixed Concrete Association
Construction Industry Round Table
Consumer Technology Association
Customized Logistics and Delivery Association
Farm Equipment Manufacturers Association
Financial Services Institute
Florida Independent Concrete and Associated Products Association
FMI—The Food Industry Association
Franchise Business Services
General Contractors Association of Hawaii
Global Cold Chain Alliance
Heating, Air-conditioning, & Refrigeration Distributors International
Hensel Phelps
HR Policy Association
Illinois Retail Merchants Association
Independent Electrical Contractors
Independent Electrical Contractors Atlanta Chapter
Independent Electrical Contractors CenTex Chapter
Independent Electrical Contractors Central Missouri Chapter
Independent Electrical Contractors Central Pennsylvania Chapter
Independent Electrical Contractors Chesapeake Chapter
Independent Electrical Contractors Florida East Coast Chapter
Independent Electrical Contractors Florida West Coast Chapter
Independent Electrical Contractors Fort Worth/Tarrant County Chapter
Independent Electrical Contractors Georgia Chapter
Independent Electrical Contractors Greater Cincinnati Chapter
Independent Electrical Contractors Greater Oregon Chapter
Independent Electrical Contractors Greater Rio Grande Valley Chapter
Independent Electrical Contractors Midwest Chapter
Independent Electrical Contractors New Jersey Chapter
Independent Electrical Contractors Northern New Mexico Chapter
Independent Electrical Contractors Northern Ohio Chapter
Independent Electrical Contractors Northwest Pennsylvania Chapter

Independent Electrical Contractors of New England
Independent Electrical Contractors of Texas
Independent Electrical Contractors San Antonio Chapter
Independent Electrical Contractors Southeast Missouri Chapter
Independent Electrical Contractors Southern New Mexico Chapter
Independent Electrical Contractors Texas Gulf Coast Chapter
Independent Electrical Contractors Texas Panhandle Chapter
Independent Electrical Contractors Western Colorado Chapter
Independent Insurance Agents & Brokers of America
Industrial Fasteners Institute
Interlocking Concrete Pavement Institute
International Council of Shopping Centers
International Foodservice Distributors Association
International Franchise Association
International Warehouse Logistics Association
Iowa Association of Business and Industry
IPSE—The Association of Independent Workers
Kentucky Concrete Association
Leading Builders of America
Littler Workplace Policy Institute
Louisiana Retailers Association Maryland AGC
Maryland Association of Chain Drug Stores
Maryland Ready Mix Concrete Association
Maryland Retailers Association
Master Builders of Iowa
Metals Service Center Institute
Mississippi Valley AGC
Missouri Retailers Association
Montana Contractors Association
Motor & Equipment Manufacturers Association
National Association of Electrical Distributors
National Association of Home Builders National Association of Manufacturers
National Association of Mutual Insurance Companies
National Association of Wholesaler-Distributors
National Club Association
National Council of Chain Restaurants
National Franchisee Association
National Grocers Association
National Lumber & Building Material Dealers Association
National Marine Distributors Association
National Multifamily Housing Council
National Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National Small Business Association
National Stone, Sand and Gravel Association
National Tooling and Machining Association
National Utility Contractors Association
Nevada Chapter AGC

Nevada Contractors Association
New Jersey Motor Truck Association
New Jersey Retail Merchants Association
NFIB
North American Die Casting Association
North Dakota Concrete Council
North Dakota Petroleum Marketers Association
North Dakota Propane Gas Association
North Dakota Retail Association
Ohio Concrete
Ohio Contractors Association
Oklahoma Municipal Contractors Association
Oklahoma Ready Mixed Concrete Association
Open Competition Center
Outdoor Power Equipment and Engine Service Association
Pennsylvania Retailers' Association
Pincus Elevator Co. Inc.
Plastics Industry Association
Power and Communication Contractors Association
Precision Machined Products Association
Precision Metalforming Association
PRINTING United Alliance
Promotional Products Association International
R&O Construction
Retail Association of Maine
Retail Industry Leaders Association
SNAC International
South Florida AGC
Southern Illinois Builders Association
Tennessee Concrete Association
The Maryland Food Industry Council
Tile Roofing Industry Alliance
Tri State Jewelers Association
Truck Renting and Leasing Association
Tucson Metro Chamber
U.S. Chamber of Commerce
Utah Ready-Mixed Concrete Association
Virginia Ready Mixed Concrete Association
Virginia Retail Federation
Virginia Trucking Association
Washington Aggregates and Concrete Association
Washington Retail Association
WCI, inc.
West Texas AGC Chapter
West Virginia Retailers Association
Western Electrical Contractors Association
Workforce Fairness Institute
World Millwork Alliance

COALITION FOR A DEMOCRATIC WORKPLACE (CDW)
July 21, 2021

DEAR CHAIR MURRAY AND RANKING MEMBER BURR AND MEMBERS OF THE U.S. SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

The Coalition for a Democratic Workplace (CDW), a broad-based coalition of hundreds of organizations representing hundreds of thousands of employers and millions of employees in various industries across the country, and the 280 undersigned organizations write in opposition to the Protecting the Right to Organize (PRO) Act, S. 420.

This radical legislation would violate workers' free choice and privacy rights, jeopardize industrial stability, cost millions of American jobs, threaten vital supply chains, and greatly hinder our economic recovery from COVID–19. The PRO Act includes dozens of provisions that would boost union membership and dues revenue streams at the expense of the rights of workers, employers, and consumers alike. Forbes Tate Partners (FTP) conducted a survey of over 1,000 registered voters and found that respondents overwhelmingly were concerned with the various policies of the bill, some of which are explained below. [1]

The PRO Act would infringe on worker privacy and freedom of choice. The bill requires employers to give union organizers employees' personal information without prior approval from the employees themselves. This includes home addresses, phone numbers, email addresses, work shifts and locations, and job classifications. Employees couldn't opt out of this requirement or choose which information is shared, exposing them to potential harassment, intimidation tactics, stalking, and online bullying. FTP's survey found that 75 percent of respondents were concerned with this policy.

The PRO Act would also destabilize U.S. industrial operations and the economy and threaten supply chains by reversing current bans on intermittent strikes and secondary boycotts. Under the PRO Act, unions would be able to conduct a series of short intermittent strikes to disrupt business operations if an employer doesn't concede to their demands, potentially disrupting the economy and critical supply chains, including those fundamental to our COVID–19 response. One of the fundamental goals of the National Labor Relations Act is to help ensure industrial peace. Intermittent strikes, however, would leave unionized and nonunionized employers alike in constant fear of work stoppages—further threatening the already fragile stability of our economy.

The PRO Act would also rescind all restrictions against "secondary boycotts," or activity used by unions to impose economic injury on neutral third parties, including consumers, companies, or other unions, that do business with a company involved in a labor dispute with the union. These activities were banned in the 1940's and 1950's after unions engaged in excessive and abusive tactics. Allowing secondary boycotts will once again expose all consumers, unions, and businesses to coercion, picketing, boycotts, and similar tactics.

Additionally, the bill drastically shortens the timeframe between union organizers petitioning for a union representation election and the holding of that election, ensuring employees do not have adequate time to hear both sides of the debate over whether union representation is right for them. The PRO Act would greatly expand the National Labor Relations Board's power to force union representation on employers and employees without an election, depriving workers of their right to a vote.

The PRO Act would also eliminate right-to-work protections across the country, including in the twenty-seven states whose populations and representatives voted for and implemented such laws. Right-to-work laws allow workers to choose not to pay union dues to a labor organization whose policies and advocacy efforts do not align with their own beliefs. These laws ensure workers can continue to work without being forced to join a union. According to the FTP survey, 57 percent of registered voters believe workers should not be forced to join a union as a condition of employment, while 67 percent were concerned with the bill's efforts to eliminate right-to-work protections and force workers to choose between paying union dues or losing their jobs.

Furthermore, the PRO Act would impose nationwide California's recently adopted and failed "ABC test" to determine whether a worker is an employee or independent contractor. The ABC test makes it very difficult to qualify as an independent con-

[1] Survey results can be viewed at *http://myprivateballot.com/wp-content/uploads/2021/06/PRO—Act-National-Survey-Summary–6.28.21.pdf.*

tractor, so nationwide application would result in many workers losing their independent contractor status. This is at odds with what independent contractors actually want. Time and again, these workers explain that they choose independent work for the flexibility and autonomy it offers. Additionally, the ABC test will force businesses that contract with such workers to no longer use them for various services out of fear of the liability such contracts could trigger. This would threaten small businesses that rely on those contracts. This policy was concerning to 70 percent of FTP's survey respondents.

Finally, the PRO Act would codify into law the NLRB's controversial 2015 Browning-Ferris Industries (BFI) decision that expanded and muddled the standard for determining when two separate entities are "joint-employers" under Federal labor law. Joint-employers are mutually responsible for labor violations committed against the jointly employed workers as well as bargaining obligations with respect to those workers, so the liability associated with joint-employer status is immense. The BFI decision overturned decades of established labor law and undermined nearly every contractual relationship, from the franchise model to those between contractors and subcontractors and suppliers and vendors. The BFI standard also hampered businesses' efforts to encourage "corporate responsibility" throughout their supply chains and business partners. In FTP's survey, 65 percent of voters were concerned about the bill upending the franchise business model, a business ownership structure that attracts first time small business owners from a diverse range of backgrounds and experiences.

These are only a few of the dangerous policies included in the PRO Act. CDW and the 280 undersigned organizations urge the Committee to reject this radical legislation and protect the rights of America's workers, small businesses, and consumers.

Sincerely,

THE COALITION FOR A DEMOCRATIC WORKPLACE
AGC FLORIDA EAST COAST
AGC MAINE
AGC OF CALIFORNIA
AGC OF KANSAS
AGC OF KENTUCKY
AGC OF METROPOLITAN WASHINGTON DC
AGC OF MINNESOTA
AGC OF OHIO
AGC OF SOUTH DAKOTA, HIGHWAY-HEAVY-UTILITY CHAPTER
AGC OF WYOMING
AIR CONDITIONING CONTRACTORS OF AMERICA
ALABAMA AGC
ALABAMA RESTAURANT & HOSPITALITY ASSOCIATION
ALASKA CABARET, HOTEL, RESTAURANT & RETAILERS ASSOCIATION
AMERICAN BAKERS ASSOCIATION
AMERICAN FOUNDRY SOCIETY
AMERICAN HOME FURNISHINGS ALLIANCE
AMERICAN HOTEL & LODGING ASSOCIATION
AMERICAN MOLD BUILDERS ASSOCIATION
AMERICAN PIPELINE CONTRACTORS ASSOCIATION
AMERICAN RENTAL ASSOCIATION
AMERICAN SENIORS HOUSING ASSOCIATION
AMERICAN SOCIETY OF EMPLOYERS
AMERICAN STAFFING ASSOCIATION
AMERICAN SUPPLY ASSOCIATION
AMERICAN TRUCKING ASSOCIATION
AMERICANS FOR TAX REFORM
ARIZONA BUILDERS ALLIANCE

Arizona Restaurant Association
Arizona Rock Products Association
Arkansas Hospitality Association
Arkansas Ready Mixed Concrete Association
Arkansas State Chamber of Commerce
Asian American Hotel Owners Association
Associated Builders and Contractors
Associated Builders and Contractors Alabama Chapter
Associated Builders and Contractors Alaska Chapter
Associated Builders and Contractors Arkansas Chapter
Associated Builders and Contractors Carolinas Chapter
Associated Builders and Contractors Central California Chapter
Associated Builders and Contractors Central Florida Chapter
Associated Builders and Contractors Central Ohio Chapter
Associated Builders and Contractors Central Pennsylvania Chapter
Associated Builders and Contractors Central Texas Chapter
Associated Builders and Contractors Chesapeake Shores Chapter
Associated Builders and Contractors Connecticut Chapter
Associated Builders and Contractors Cornhusker Chapter
Associated Builders and Contractors Cumberland Valley Chapter
Associated Builders and Contractors Delaware Chapter
Associated Builders and Contractors Eastern Pennsylvania Chapter
Associated Builders and Contractors Empire State Chapter
Associated Builders and Contractors Florida East Coast Chapter
Associated Builders and Contractors Florida First Coast Chapter
Associated Builders and Contractors Florida Gulf Coast Chapter
Associated Builders and Contractors Georgia Chapter
Associated Builders and Contractors Greater Baltimore Chapter
Associated Builders and Contractors Greater Houston Chapter
Associated Builders and Contractors Greater Michigan Chapter
Associated Builders and Contractors Greater Tennessee Chapter
Associated Builders and Contractors Hawaii Chapter
Associated Builders and Contractors Heart of America Chapter
Associated Builders and Contractors Illinois Chapter
Associated Builders and Contractors Indiana/Kentucky Chapter
Associated Builders and Contractors Inland Pacific Chapter
Associated Builders and Contractors Iowa Chapter
Associated Builders and Contractors Keystone Chapter
Associated Builders and Contractors Maine Chapter
Associated Builders and Contractors Massachusetts Chapter
Associated Builders and Contractors Metro Washington Chapter
Associated Builders and Contractors Minnesota/North Dakota Chapter
Associated Builders and Contractors Mississippi Chapter
Associated Builders and Contractors Nevada Chapter
Associated Builders and Contractors New Hampshire/Vermont Chapter
Associated Builders and Contractors New Jersey Chapter
Associated Builders and Contractors New Mexico Chapter
Associated Builders and Contractors New Orleans/Bayou Chapter
Associated Builders and Contractors North Alabama Chapter
Associated Builders and Contractors North Florida Chapter

Associated Builders and Contractors Northern California Chapter
Associated Builders and Contractors of Louisiana
Associated Builders and Contractors of Michigan
Associated Builders and Contractors Northern Ohio Chapter
Associated Builders and Contractors Ohio Valley Chapter
Associated Builders and Contractors Oklahoma Chapter
Associated Builders and Contractors Pacific Northwest Chapter
Associated Builders and Contractors Pelican Chapter
Associated Builders and Contractors Rhode Island Chapter
Associated Builders and Contractors Rocky Mountain Chapter
Associated Builders and Contractors San Diego Chapter
Associated Builders and Contractors South Texas Chapter
Associated Builders and Contractors Southeast Texas Chapter
Associated Builders and Contractors Southeastern Michigan Chapter
Associated Builders and Contractors Southern California Chapter
Associated Builders and Contractors Texas Coastal Bend Chapter
Associated Builders and Contractors Texas Gulf Coast Chapter
Associated Builders and Contractors Texas Mid-Coast Chapter
Associated Builders and Contractors Utah Chapter
Associated Builders and Contractors Virginia Chapter
Associated Builders and Contractors West Tennessee Chapter
Associated Builders and Contractors West Virginia Chapter
Associated Builders and Contractors Western Michigan Chapter
Associated Builders and Contractors Western Pennsylvania Chapter
Associated Builders and Contractors Western Washington Chapter
Associated Builders and Contractors Wisconsin Chapter
Associated Equipment Distributors
Associated General Contractors of America
Associated General Contractors of America, Nebraska Chapter
Associated General Contractors of Michigan
Associated General Contractors of NH
Associated General Contractors of Virginia
Associated General Contractors of Wisconsin
Associated General Contractors South Texas Chapter
Associated Industries of Arkansas, Inc.
Bidgesource, LLC
Brick Industry Association
California Restaurant Association Carolinas AGC
Carolinas Ready Mixed Concrete Association
Catapult, Formerly CAI & TEA
CAWA—Representing the Automotive Parts Industry
Center for the Defense of Free Enterprise
Coalition of Franchisee Associations
Colorado Restaurant Association
Connecticut Restaurant Association
Consumer Technology Association
Delaware Restaurant Association
Education Market Association
Florida Restaurant & Lodging Association
FMI—The Food Industry Association

FOODSERVICE EQUIPMENT DISTRIBUTORS ASSOCIATION
FRANCHISE BUSINESS SERVICES
GASES AND WELDING DISTRIBUTORS ASSOCIATION
GEORGIA RESTAURANT ASSOCIATION
GLOBAL COLD CHAIN ALLIANCE
GLOBAL MARKET DEVELOPMENT CENTER
HAWAII RESTAURANT ASSOCIATION
HEATING, AIR-CONDITIONING, & REFRIGERATION DISTRIBUTORS INTERNATIONAL
HOSPITALITY MAINE
HOSPITALITY MINNESOTA
HOSPITALITY TENNESSEE
H.R. POLICY ASSOCIATION
IAAPA, THE GLOBAL ASSOCIATION FOR THE ATTRACTIONS INDUSTRY
ICSC—INNOVATING COMMERCE SERVING COMMUNITIES
IDAHO LODGING & RESTAURANT ASSOCIATION
ILLINOIS RESTAURANT ASSOCIATION
INDEPENDENT ELECTRICAL CONTRACTORS
INDEPENDENT ELECTRICAL CONTRACTORS ATLANTA CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS CENTEX CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS CENTRAL OHIO CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS CENTRAL PENNSYLVANIA CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS CHESAPEAKE CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS EAST TEXAS CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS FLORIDA WEST COAST CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS FORT WORTH/TARRANT CO. CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS GEORGIA CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS GREATER CINCINNATI CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS INDY CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS KENTUCKY & SO. INDIANA CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS LUBBOCK CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS MIDWEST IEC CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS MONTANA CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS NEW ENGLAND CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS NEW JERSEY CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS NORTHERN NEW MEXICO CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS NORTHWEST PENNSYLVANIA CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS OREGON CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS TEXAS GULF COAST CHAPTER
INDEPENDENT ELECTRICAL CONTRACTORS WICHITA CHAPTER
INDEPENDENT PROFESSIONALS AND SELF EMPLOYED ASSOCIATION
INDIANA RESTAURANT & LODGING ASSOCIATION
INDUSTRIAL FASTENERS INSTITUTE
INTERLOCKING CONCRETE PAVEMENT INSTITUTE
INTERNATIONAL FOODSERVICE DISTRIBUTORS ASSOCIATION
INTERNATIONAL FRANCHISE ASSOCIATION
INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION
IOWA ASSOCIATION OF BUSINESS AND INDUSTRY
IOWA RESTAURANT ASSOCIATION
KANSAS CHAMBER OF COMMERCE
KANSAS RESTAURANT & HOSPITALITY ASSOCIATION

Kentucky Concrete Association
Kentucky Restaurant Association
Leading Builders of America
Littler Workplace Policy Institute
Louisiana AGC
Louisiana Restaurant Association
Manufactured Housing Institute
Maryland Ready Mix Concrete Association
Massachusetts Restaurant Association
Metals Service Center Institute
Michigan Concrete Association
Michigan Restaurant & Lodging Association
Mid-South Independent Electrical Contractors
Mississippi Hospitality & Restaurant Association
Missouri Restaurant Association
Modular Building Institute
Montana Contractors Association
Montana Restaurant Association
Motor & Equipment Manufacturers Association
National Apartment Association
National Association of Chain Drug Stores
National Association of Chemical Distributors
National Association of Home Builders
National Association of Manufacturers
National Association of Mutual Insurance Companies
National Association of Sporting Goods Wholesalers
National Association of Wholesaler-Distributors
National Club Association
National Council of Chain Restaurants
National Federation of Independent Business
National Franchisee Association
National Grocers Association
National Lumber & Building Material Dealers Association
National Marine Distributors Association
National Multifamily Housing Council
National Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National Small Business Association
National Stone, Sand & Gravel Association
National Tooling and Machining Association
National Utility Contractors Association
NATSO, Representing America's Travel Plazas and Truck Stops
Nebraska Restaurant Association
Nevada Chapter AGC
Nevada Restaurant Association
New Jersey Motor Truck Association
New Jersey Restaurant & Hospitality Association
New Mexico Restaurant Association

NEW YORK STATE RESTAURANT ASSOCIATION
NORTH AMERICAN DIE CASTING ASSOCIATION
NORTH CAROLINA RESTAURANT & LODGING ASSOCIATION
NORTH DAKOTA HOSPITALITY ASSOCIATION
OHIO HOTEL & LODGING ASSOCIATION
OHIO RESTAURANT ASSOCIATION
OKLAHOMA AGGREGATES ASSOCIATION
OKLAHOMA RESTAURANT ASSOCIATION
OPEN COMPETITION CENTER
OREGON RESTAURANT & LODGING ASSOCIATION
OUTDOOR POWER EQUIPMENT
PENNSYLVANIA RESTAURANT & LODGING ASSOCIATION
PET INDUSTRY DISTRIBUTORS ASSOCIATION
PETROLEUM EQUIPMENT INSTITUTE
PLASTICS INDUSTRY ASSOCIATION
PORTLAND CEMENT ASSOCIATION
POWER & COMMUNICATION CONTRACTORS ASSOCIATION
PRECISION MACHINED PRODUCTS ASSOCIATION
PRECISION METALFORMING ASSOCIATION
PRINTING UNITED ALLIANCE
PROMOTIONAL PRODUCTS ASSOCIATION INTERNATIONAL
PUERTO RICO RESTAURANT ASSOCIATION
RESTAURANT ASSOCIATION OF MARYLAND
RESTAURANT ASSOCIATION OF METROPOLITAN WASHINGTON
RETAIL INDUSTRY LEADERS ASSOCIATION
RHODE ISLAND HOSPITALITY ASSOCIATION
SNAC INTERNATIONAL
SOUTH CAROLINA RESTAURANT & LODGING ASSOCIATION
SOUTH DAKOTA RETAILERS ASSOCIATION
SOUTHERN ILLINOIS BUILDERS ASSOCIATION
TEXAS RESTAURANT ASSOCIATION
TEXO, THE CONSTRUCTION ASSOCIATION
THE ASSOCIATED GENERAL CONTRACTORS OF TEXAS
THE COALITION FOR A DEMOCRATIC WORKPLACE
TILE ROOFING INDUSTRY ALLIANCE
TRUCK RENTING AND LEASING ASSOCIATION
U.S. CHAMBER OF COMMERCE
UNITED MOTORCOACH ASSOCIATION
UTAH RESTAURANT ASSOCIATION
VIRGINIA MANUFACTURERS ASSOCIATION
VIRGINIA READY MIXED CONCRETE ASSOCIATION
VIRGINIA RESTAURANT, LODGING & TRAVEL ASSOCIATION
VIRGINIA TRUCKING ASSOCIATION
WEST VIRGINIA HOSPITALITY & TRAVEL ASSOCIATION
WESTERN CAROLINA INDUSTRIES
WESTERN ELECTRICAL CONTRACTORS ASSOCIATION
WESTERN GROWERS
WISCONSIN READY MIXED CONCRETE ASSOCIATION
WISCONSIN RESTAURANT ASSOCIATION
WORKFORCE FAIRNESS INSTITUTE
WYOMING LODGING & RESTAURANT ASSOCIATION

DIRECT SELLING ASSOCIATION,
March 1, 2023.

Senator BERNIE SANDERS, Chairman,
Senator BILL CASSIDY, Ranking Member,
U.S. Senate Committee on Health, Education, Labor, and Pensions,
Washington, DC 20510.

DEAR CHAIRMAN SANDERS, RANKING MEMBER CASSIDY AND MEMBERS OF THE U.S. SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS:

On behalf of more than 7.3 million active direct sellers who sell to 44.6 million preferred customers, discount buyers and many other consumers, we oppose re-introduction of the current version of the Protecting the Right to Organize ("PRO") Act. Direct sellers contributed $42.7 billion in estimated retail sales to the American

economy in 2021. Sales increased 6.4 percent from 2020–2021 and have grown almost 22 percent since 2019.

The Direct Selling Association (DSA), the national trade association for companies that market products and services directly to consumers through independent sellers, appreciates the intent of the PRO Act to bolster the middle class and champion the rights of workers by expanding the right to organize under the National Labor Relations Act (NLRA).

However, DSA respectfully opposes the current bill because it contains damaging changes to current law that could undermine the flexibility afforded the millions of individual direct sellers across the country who don't want the NLRA to apply to them.

Through the more than 100 years direct sellers have been active contributors to the American economy, the individuals engaged in the business have always been considered independent contractors. Most importantly, these individuals want to work independently. It is their primary motivation for joining and staying with direct selling companies.

The *2019 DSA National Salesforce Survey* showed that fifty-nine percent of direct sellers cite flexibility as a reason for joining, and 61 percent cite flexibility as a reason they're staying in direct selling. A *2020 DSA/IPSOS Consumer Attitudes and Entrepreneurship* study found that 77 percent of Americans said they are interested in flexible, entrepreneurial income-earning opportunities and 79 percent see direct selling as an attractive option for entrepreneurial opportunities.

It is also why direct sellers have had special statutory non-employee status under the Internal Revenue Code (see 26 U.S.C. 3508) since 1983. Additionally, 43 states have recognized this status through statute, and all states treat direct sellers as independent contractors under the common law test.

Unfortunately, the proposed definition of employee could dramatically narrow the attractiveness of direct selling for millions of Americans who wish to sell on their own schedules, come in and out of the business, and make a bit of extra pocket money.

Specifically, the bill would universally impose the "ABC" test of employment on all businesses and individuals, even those, like direct selling, which are based on the flexibility of independent status. The "ABC" test is often misconstrued, and its provisions frequently are not easily applied to the direct selling relationship.

Passage of the PRO Act would create the possibility of inconsistent treatment of direct sellers between various aspects of Federal law, impose unnecessary and inappropriate requirements on the direct selling relationship, and most importantly, discourage individuals from entering or continuing their direct selling. Additionally, imposing the "ABC" test on direct sellers into the NLRA could throw direct sellers' treatment under other laws such as the Fair Labor Standards Act into disarray.

We commend your efforts to revitalize the U.S. economy and support all stakeholders but also urge you to oppose the PRO Act and its current approach to independent work.

Sincerely,

JOSEPH. N MARIANO,
President,
Direct Selling Association.

INDEPENDENT ELECTRICAL CONTRACTORS,
March 8, 2023.

Senator BERNIE SANDERS, Chairman,
Senator BILL CASSIDY, Ranking Member,
U.S. Senate Committee on Health, Education, Labor, and Pensions,
Washington, DC 20510.

DEAR CHAIRMAN SANDERS, RANKING MEMBER CASSIDY AND MEMBERS OF THE U.S. SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS:

The Independent Electrical Contractors (IEC) writes to express its strong opposition to the Protecting the Right to Organize (PRO) Act, which presumably will be the focus of today's hearing. The express purpose of the PRO Act is to increase union membership through drastic changes to well-established labor law at the expense of the rights of employees and employers, like those of the merit shop electrical contracting industry.

Established in 1957, Independent Electrical Contractors is a trade association representing 3,600 members with more than 50 chapters and training centers nationwide. Headquartered in Arlington, VA., IEC is the Nation's premier trade association representing America's independent electrical and systems contractors. IEC National aggressively works with the industry to establish a competitive environment for the merit shop—a philosophy that promotes the concept of free enterprise, open competition, and economic opportunity for all.

The PRO Act contains many radical proposals. One of the most damaging would limit employees' ability to choose or reject union representation through secret ballots. Secret ballots are a vital component of a functioning democracy, but the PRO Act vastly increases the circumstances under which the government could impose union representation despite employees voting against such representation in a secret ballot election. The bill attempts to justify disregarding the election results by making the government-imposed union representation contingent on the fact that at some point in the past a majority of employees signed "authorization cards." This is known as "card check," a concept that was rightly rejected by Congress over 10 years ago during the debate on the Employee Free Choice Act (EFCA). As Members of Congress understood then, card check is no substitution for a secret ballot election. The process of collecting cards is a public one that is innately susceptible to coercion—where union organizers present employees with cards to sign in front of coworkers. Organizers are then free to share with employees who has or has not signed cards, needlessly exposing workers to intimidation and possibly harassment.

The bill would also codify into law an expansive joint-employer standard, exposing merit shop electrical contractors to liability in nearly every contractual relationship for unlawful behavior committed by another contractor with which they do business. Such a standard would insert unnecessary and additional risks into the traditional contractor-subcontractor relationship, which could eventually lead to the larger contractor imposing far more control over the smaller subcontractor, or possibly refusing to do business with a small contractor altogether and choosing to bring the function in-house. Ultimately, the small contractors seeking to grow and expand would feel the negative repercussions of this policy change.

In addition, the PRO Act contains policies that would infringe on employees' rights to privacy and association. The bill mandates employers to provide to union organizers the contact information for all employees without prior approval from the employees themselves. Employees would not be able to opt out of this requirement and would not have a say in which contact information is provided, again exposing workers to potential harassment. The bill also rejects the rights of states to implement Right-to-Work laws by eliminating Right-to-Work protections nationwide. This legislation would go against the twenty-seven states with Right-to-Work laws in place, which give employees the option not to fund union activities they do not support.

Finally, there are additional provisions in the PRO Act that completely disregard employers' due process rights, which include:

- The inability for employers to challenge union misconduct during union elections.
- Fundamentally eliminating an employer's right to outside counsel on complex labor laws.
- Allowing for secondary boycotts, which would permit unions to target neutral third parties and cause them economic injury even if those entities have no underlying labor dispute with the union.

While this statement does not outline every provision of the PRO Act, it does outline many of its radical proposals that would amend the Nation's labor laws for the sole purpose of increasing union membership without regard to the rights of employees, employers, or the impact to the overall economy. **For these reasons IEC urges the Members of the Senate HELP Committee to reject the PRO Act.**

INTERMODAL ASSOCIATION OF NORTH AMERICA (IANA),
April 5, 2023.

Senator BERNIE SANDERS, Chairman,
Senator BILL CASSIDY, Ranking Member,
U.S. Senate Committee on Health, Education, Labor, and Pensions,
Washington, DC 20510.

DEAR CHAIRMAN SANDERS, RANKING MEMBER CASSIDY AND MEMBERS OF THE U.S. SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS:

On behalf of the Intermodal Association of North America (IANA), a leading transportation trade association representing the combined interests of the intermodal freight industry, I am writing to express our opposition to the Richard L. Trumka Protecting the Right to Organize (PRO) Act, S. 567.

As the only transportation trade association that represents the combined interests of intermodal freight providers and customers, IANA represents more than 1,000 corporate members, including railroads, ocean carriers, ports, intermodal truckers and over-the-road highway carriers, intermodal marketing and logistic companies, and suppliers to the industry. IANA's associate (non-voting) members include shippers (defined as the beneficial owners of the freight to be shipped), academic institutions, government entities, and non-profit trade associations. This diverse and broad-based group of stakeholders opposes the PRO Act for a number of reasons, which are outlined below.

Motor carriers are crucial participants in the Nation's international and domestic intermodal network. For decades, the prevailing business model for intermodal trucking companies that transport freight, prior and subsequent to movements by water and rail, has involved the use of independent contractors. The independent contractor business model is indispensable to the intermodal industry, offering operational and financial flexibility to motor carriers, allowing them to adapt and respond to natural elasticity and volatility in the cargo transportation market. The PRO Act would adversely impact this business model and will have a negative effect not only on the intermodal industry, but the entire supply chain. Attached, as additional information, is a white paper which describes the relationship of Owner-Operators to the Intermodal Freight Industry.

Second, the PRO Act wrongfully eliminates important liberties enjoyed by owner-operators, many of which are small, minority-owned businesses. As proud, independent business owners, independent contractors can express their freedom of choice by personally investing in, and operating, their own company. These small business owners earn a Commercial Driver's License, invest in a tractor, and bear the associated operating costs attributable to registration, licensing, insurance, and fuel. They also invest a significant amount of time developing their knowledge of and complying with Federal and state safety regulations. In many cases, independent contractors also operate under their own U.S. Department of Transportation-approved operating authority and develop a wide customer base.

Owner-operators currently can determine the number of motor carriers they choose to work with and freely enter into multiple contractual arrangements. This permits the individual to make daily operating decisions based on his/her availability to perform drayage services. Each owner-operator makes a conscious choice to remain an independent contractor, but also has the ability to secure full-time employment in the trucking industry. The PRO Act eliminates this important freedom that so many individuals find personally fulfilling.

Finally, Congress should carefully evaluate the real-world, economic consequences of California's analogous legislation, known as Assembly Bill 5 (AB 5), before considering enacting similar provisions on a national level. Presently, AB 5 is the subject of ongoing Federal litigation. If the PRO Act proceeds without first consciously exploring whether exemptions should be included for motor carriers and owner-operators and before reviewing the outcomes of current litigation, the legislation would likely face numerous legal challenges in courts across the Nation.

In summary, IANA strongly opposes the PRO Act as it is currently drafted. The legislation essentially eliminates the independent contractor model for motor carriers involved in intermodal drayage. Disruption caused by this wholesale destruction of this existing business model will have an adverse effect upon the entire intermodal supply chain, injuring not only motor carriers, but also rail and ocean carriers, third-party logistics companies, and the customers they serve. Further, the legislation wrongfully eliminates the freedom of individuals to operate as small business owners, a pursuit that so many find fulfilling. Finally, valuable lessons can be learned by examining the effects of similar statewide legislation in California as well as the results of associated litigation. These impacts should be thoroughly assessed prior to implementing such significant changes at the Federal level.

Thank you for allowing IANA to share its views on the PRO Act. Please let me know if you or your staff would like to discuss our position in further detail.

Sincerely,

JOANNE F. CASEY,
President and CEO,
Intermodal Association of North America.

NATIONAL SMALL BUSINESS ASSOCIATION (NSBA),
April 6, 2023.

Senator BERNIE SANDERS, Chairman,
Senator BILL CASSIDY, Ranking Member,
U.S. Senate Committee on Health, Education, Labor, and Pensions,
Washington, DC 20510.

The Honorable VIRGINIA FOXX, Chair,
The Honorable BOBBY SCOTT, Ranking Member,
U.S. House Committee on Education and the Workforce,
Washington, DC 2051.

DEAR CHAIR SANDERS, RANKING MEMBER CASSIDY, CHAIR FOXX, AND RANKING MEMBER SCOTT:

I write to you on behalf of the National Small Business Association (NSBA). The NSBA advocates for the needs of millions of small businesses nationally through its network of over 65,000 small companies. Representing companies of all sectors in every corner of the country, NSBA works on a proactive and bipartisan basis to improve the economic climate for small business growth and success.

We write to you to express caution around the Protecting the Right to Organize PRO Act (H.R. 20, S. 567) which, if enacted will pose far-reaching negative impacts on workers, small businesses, employers, contractors, and unions alike.

Impact on Small Business Owners

The PRO Act would enable secondary picketing and protesting from unions at store fronts that happen to sell a brand or item affiliated with a union strike or altercation, enabling protestors to direct aggression toward small businesses on Main Street. Known as secondary boycotts, the PRO Act would make it legal for protestors to disrupt the flow of business and commerce by granting protections to protests at individual storefronts that have no legal affiliation to the boycott or union dispute at hand.

The Act also implements a slew of new and daunting regulatory changes that businesses must comply with, increasing the amount of paperwork and red tape that is associated with keeping a small business in compliance with the law. At a time in which business owners are just beginning to step out of the economic turmoil faced during the pandemic, the Act would place more barriers on small business owners who are simply trying to keep their doors open and heads above water. [1]

Impact on Independent Contractor Status

The PRO Act is especially concerning for our membership base, as many small business owners in our network utilize independent contractors or are independent contractors themselves. Coupled with the rulemaking at the NLRB on changing independent contractor classification, the PRO Act would change business as we know it today. To that end, the PRO Act would codify the strict ″ABC″ test for determining independent contractor status. [2] The ABC test makes it very difficult for workers to qualify as independent contractors, resulting in many small business owners and employees losing their status as independent contractors. Therefore, the PRO Act would make it increasingly difficult for small businesses utilizing or operating as independent contractors to retain autonomy over their business model. Under this practice, employers that currently contract for leased or temporary workers may have to reassess or change their business practices to compensate, skewing calculated growth trajectories and strategies for small businesses in our network.

Impact on Joint-Employer Standards and Franchise Ownership

The NSBA is a supporter of the franchise model as a means to small business ownership. However, the PRO Act's provisions would relegate franchisees as employees of the national brand, thus discouraging entrepreneurial individuals from choosing to own and operate a franchise in the pursuit of entrepreneurship. If the law defines these franchisee owners as employees, it will discourage them from pursuing the American Dream through franchise opportunities. As a result of this legislation, in California, national franchise brands are already considering the option to run their fully-owned stores themselves, rather than empower local entrepreneurs.

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[1] *https://nrf.com/blog/4-ways-pro-act-hurts-small-businesses*
[2] *https://myprivateballot.com/issues/pro-act/*

In the U.S., franchising currently accounts for more than 733,000 businesses that employ over 7.6 million Americans.[3] These franchises are overwhelmingly run on a small business scale, by determined local entrepreneurs. If enacted the legislation would increase the liability of franchise brands by shifting responsibility for labor violations incurred by a local owner to the national brand, which will decrease the availability of franchisee opportunities for entrepreneurs across the country for fear of litigation. Overall, the joint-employer standards created under the PRO Act are too vague, too far-reaching, and too binding. If passed, the legislation would significantly reduce the number of franchisees (and entrepreneurs) in the country as a result.

Impact on the Freedom to Choose Unionization

Not least of all, under the PRO Act, employees across the country would be required to contribute fees to a labor organization, eliminating the freedom to choose whether workers want to fund union activity despite existing state laws.[4] Business owners with employees in unions would be required to submit personal employee information such as cell phone numbers, email addresses, and physical addresses to labor unions without an employee's consent.

In removing employee input in union activity, the PRO Act also removes employer input in setting how the union employee election proceedings take place, granting the NLRB discretion to allow unions to determine the parameters of elections such as dates, mail-in versus in-person, and location. Depriving employees of voting rights will encourage unions to file charges in order to gain representation without a majority consensus among said employees, effectively disenfranchising employees who do not support unionization.[5]

While the NSBA remains an advocate for labor policy that is conducive to better business operations, employee benefits (like healthcare and retirement options), and sound employee-employer relationship building, the PRO Act is not the way to achieve any of those goals. The PRO Act goes against the independence of small business owners and their ability to conduct business operations that are beneficial to their employees, customers, and business practices. We urge Congress to reconsider the negative impacts of the Act on our nation's smallest businesses and look forward to working with Members of Congress to put forth alternative recommendations to improve labor policy for all.

We thank you for your time and consideration of our priorities and we look forward to discussing this further with your office.

If you have any questions or concerns, please do not hesitate to reach out to me directly at *tmccracken@nsba.biz.*

Yours truly,

TODD MCCRACKEN,
PRESIDENT & CEO,
National Small Business Association (NSBA).

ASSOCIATED GENERAL CONTRACTORS OF AMERICA (AGC),
February 27, 2023.

Senator BERNIE SANDERS, Chairman,
Senator BILL CASSIDY, Ranking Member,
U.S. Senate Committee on Health, Education, Labor, and Pensions,
Washington, DC 20510.

DEAR CHAIRMAN SANDERS, RANKING MEMBER CASSIDY AND MEMBERS OF THE U.S. SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS:

Reintroduction of the PRO Act proves that bad ideas never die, as Members of Congress push a measure that will harm the economy measure will disrupt an economy already struggling with inflation and supply chain challenges, increasing the risk of a recession, and forces workers to become the victims of unrelated disputes.

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[3] *https://www.forbes.com/sites/jeffbevis-2019-03-27—franchises-drive-job-and-economic—growth*

[4] *https://myprivateballot.com/issues/pro-act/*

[5] *https://www.natlawreview.com/article/labor-law-reform-horizon-ten-things-to-watch-under-pro-act*

The Associated General Contractors of America's chief executive officer, Stephen E. Sandherr, issued the following statement in reaction to the reintroduction in Congress tomorrow of the so-called PRO Act:

"Bad ideas in DC are a lot like weeds: no matter what you do, they keep coming back. A prime example of that is the pending reintroduction of the PRO Act. This anti-worker, anti-privacy and anti-growth measure will harm our economy at a time when many employers are struggling to cope with inflation, supply chain disruptions and labor shortages.

"By allowing secondary boycotts and other actions against firms that are not directly involved in labor disputes, the measure will force many workers to remain idle because of disagreements where they do not stand to benefit. The measure also makes it extremely difficult for entrepreneurial workers to establish their own businesses by discriminating against independent contractors.

"More broadly, the PRO Act will unleash a new era of labor unrest and strikes that the country has not seen since President Truman had to Federalize the steel industry during the Korean War. Worse, the PRO Act undermines the collective bargaining process that has been the central pillar of union construction for the past half century.

"Despite the many flaws of this bill, some in Congress continue to push a policy that will harm the economy, hurt workers, and make a recession far more likely. While we assume Congress will not support this measure, we taken nothing for granted and will aggressively work to again protect the American worker and economy from this harmful measure."

AMERICAN HOTEL AND LODGING ASSOCIATION (AHLA),
March 16, 2023.

Senator BERNIE SANDERS, Chairman,
Senator BILL CASSIDY, Ranking Member,
U.S. Senate Committee on Health, Education, Labor, and Pensions,
Washington, DC 20510.

DEAR CHAIRMAN SANDERS AND RANKING MEMBER CASSIDY.

The lodging industry is proud to provide a pathway for fulfilling careers and the means for employees and entrepreneurs to achieve the American Dream. If enacted, this bill's drastic restructure of the Nation's labor laws would result in economic hardship for small businesses, infringe on employees' privacy rights, undermine workplace flexibility and upward mobility, and erode relations between employees and employers.

While every worker has the right to freely join a union, the PRO Act would subvert secret ballot elections and manufacture joint employer liability in an effort to impose a union on businesses and workers. Additionally, the economic impact of the PRO Act would be catastrophic. An American Action Forum study[1] found that the bill's independent worker reclassification provision alone could cost as much as $57 billion nationwide, while the joint-employer changes would cost franchises—which accounts for most hotels in the United States—up to $33.3 billion a year, lead to over 350,000 job losses, and increase lawsuits by 93 percent.

We strongly oppose this bill, which threatens to destroy jobs and assail businesses just as our economy is beginning to return to pre-pandemic normalcy. Given the significant damage this bill would cause if enacted, AHLA urges Congress to reject this legislation and protect the rights of America's workers, small businesses, and consumers.

AHLA is grateful for your leadership, and we look forward to working with you and your colleagues to support America's hotel industry.

Sincerely,

CHIP ROGERS,
PRESIDENT AND CEO,
American Hotel and Lodging Association.

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[1] Study available at *https://www.americanactionforum.org/research/state-level-costs-of-the-protecting-the-right-to-organize-act/*.

RETAIL INDUSTRY LEADERS ASSOCIATION (RILA),
February 28, 2023.

Senator BERNIE SANDERS, Chairman,
Senator BILL CASSIDY, Ranking Member,
U.S. Senate Committee on Health, Education, Labor, and Pensions,
Washington, DC 20510.

DEAR CHAIRMAN SANDERS AND RANKING MEMBER CASSIDY.

The Retail Industry Leaders Association (RILA) urges Members of the House to oppose the Protecting the Right to Organize Act (PRO Act).In an attempt to rewrite the laws for organizing in the United States, the PRO Act would not only limit the rights of employers and workers but create substantial economic disruption by eliminating decades long checks on abusive activities by union leaders. RILA strongly opposes this legislation because it undermines the balanced relationship between workers and businesses in favor of organized labor.

RILA is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic industry by transforming the environment in which retailers operate. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

Economic peace and prosperity are created by several factors—strong consumer demand and confidence, robust investment by businesses in labor and capital as well as legal and regulatory certainty. Leading retailers are making record investments in their workforces through wage increases, new benefits, and workforce development. Consumer demand remains strong as well, but the PRO Act risks economic uncertainty by repealing decades worth of regulatory and legal precedent. Specifically, the PRO Act seeks to repeal prohibitions on certain disruptive, and at times violent, union activities that created interstate economic havoc in the 1930's and 1940's—namely strikes and secondary boycott activities. These activities are unduly burdensome not only to the neutral business but also to the broader interstate commerce of the United States. For this reason, Congress overwhelmingly passed the Taft-Hartley Act to rightly outlaw intimidation involving union "threats," "coercion," and "restraints" against neutral employers. Congress needs to keep these failed and outdated labor laws in the past because they impede innovation, disrupt communication between employers and employees, and stifle the flow of commerce.

Leading retailers urge Members of Congress to reject the PRO Act and instead work on building a 21st Century Workforce that has forward-thinking proposals that empower workers, promote innovation, and enable retailers to invest in their people and their communities. For more information, contact me at *Evan.Armstrong@rila.org* or visit *https://www.rila.org/focus-areas/human-resources/protecting-the-right-to-organize.act.*

Sincerely,

EVAN ARMSTRONG,
VICE PRESIDENT,
WORKFORCE POLICY,
Retail Industry Leaders Association (RILA).

ADDITIONAL MATERIALS:

Big Labor's Astroturfed Unionization of Starbucks

Starbucks workers attend a rally during a one-day strike outside a store in Buffalo, N.Y., November 17, 2022. *(Lindsay DeDario/Reuters)*

Share

By **MAXFORD NELSEN**

January 9, 2023 6:30 AM

Behind the scenes, the SEIU is orchestrating the Starbucks unionization campaign.

JUST over a year ago, employees at the Elmwood Avenue Starbucks in Buffalo, N.Y., became the first in the country to unionize.

Since then, employees at about 350 Starbucks locations have filed unionization petitions with the National Labor Relations Board (NLRB), over 270 of which have voted to unionize. Though only a fraction of the approximately 15,000 stores licensed and operated by the company in the U.S. have moved to unionize, and the pace of new petitions has slowed significantly in recent months, with employees in some stores already seeking to decertify the union, there's no denying that the wave of unionization has been unlike anything faced by a similar nationwide chain in recent memory.

However, while most reporting about the union drive has depicted it as an organic, worker-led groundswell, almost no attention has been paid to the role of the Service Employees International Union (SEIU) — one of the nation's largest and most militant labor unions — in orchestrating and bankrolling the nationwide campaign.

On its website, Starbucks Workers United — the entity filing the union petitions with the NLRB — describes itself as "a collective of Starbucks Partners across the United States who are organizing our workplaces with the support of Workers United Upstate, a union with experience building barista power."

***New York Times* Writer Nikole Hannah-Jones Speaks at Union Walkout**

For its part, Workers United Upstate, also known as the Workers United Rochester Regional Joint Board, is one of the 13 joint boards that comprise Workers United. According to its website, Workers United is "an affiliate of SEIU" that "represents more than 86,000 workers in the apparel, textile, industrial laundry, food service, manufacturing, warehouse distribution, and non-profit industries. . . ."

Pursuant to an affiliation agreement reached in 2009, Workers United functions as a "conference" within SEIU. Both the affiliation agreement and its own constitution require Workers United to pay a "per capita tax" to SEIU from the dues it collects from each member.

According to publicly available annual financial disclosures filed with the U.S. Department of Labor (DOL), Workers United affiliates paid more than $7.5 million in per capita taxes in 2021. Only $276,259 went to Workers United's national headquarters; presumably the rest was paid to SEIU.

And the money flows both ways. According to its 2021 DOL filing, SEIU International granted $4.3 million back to Workers United affiliates last year, mostly as "support for organizing."

Further, the president of Workers United, Lynne Fox, was paid nearly $211,000 in 2021 and also serves as an SEIU International vice president.

When workers at the Elmwood Starbucks voted to unionize on December 9, 2021, Workers United celebrated the results as "historic" and "monumental," describing itself as "the parent company that will be representing Starbucks Workers United."

While Workers United did not detail its involvement — presumably preferring that attention be focused on Starbucks employees for PR reasons — the effort would not have succeeded without it, at least according to Jaz Brisack, the most prominent Starbucks employee and organizer involved in unionizing the first Buffalo-area cafés. As reported by the *Washington Post*, Brisack — whose childhood hero was American socialist Eugene Debs and whose stated goal is to "overthrow capitalism" — participated in an unsuccessful 2017 effort by the United Auto Workers to organize a Nissan facility in Mississippi.

During her time with the campaign, Brisack met prominent union organizer Richard Bensinger. Before Brisack departed for Oxford University in 2019 on a Rhodes Scholarship, Bensinger invited her to work on a campaign to organize coffee shops in upstate New York. According to *CBS MoneyWatch*, Brisack agreed to do so after completing her studies. She returned to the U.S. and started work as a Starbucks barista in late 2020.

While she bristles at being described as a "salt" — someone who takes a job with a company with the intent to help a union organize it from the inside — the financial disclosure filed with DOL for 2021 by Workers United's Rochester Joint Board shows that the union paid Brisack $68,884 last year.

It's unclear the degree to which the Starbucks campaign has featured salts, but Brisack isn't the only one. Articles in union and socialist publications *Jacobin*, *In These Times*, and *Labor Notes* all reference the organizing role played by employees who "consciously took jobs at Starbucks to organize."

Outside the workplace, Workers United also funded an array of consultants, organizers, and attorneys to support the campaign.

When organizing her co-workers, Brisack would introduce them to professional organizers such as Bensinger "to show the baristas that she had a real union backing her," according to the *Washington Post*.

Also, in a podcast interview with *Jacobin*, Brisack credited Workers United for the Buffalo victory, stating that "Starbucks Workers United would never have been possible if Gary Bonadonna, the leader of Workers United in upstate New York, hadn't decided to back us up" and "really commit the resources to the fight."

Indeed, in addition to paying Brisack, federal records indicate that Workers United funded an array of consultants, organizers, and attorneys associated with the early Starbucks wins:

- Bensinger was paid $82,500 in "consulting fees" by Workers United in 2021, according to its DOL disclosure. The Workers United Rochester Regional Joint Board paid Bensinger another $69,622 for "consulting services." Bonadonna, the board's manager and a Workers United vice president, was paid $143,277 in 2021.
- Workers United also paid $277,000 in "consulting fees" to Cuff's Point LLC, the president of which, Christopher Chafe, was described by *Yahoo News* as "a strategic advisor to the Starbucks Workers United campaign."
- The New York City–based pro-union law firm Cohen Weiss & Simon LLP was paid $115,533 by Workers United last year. Its website noted in March that the firm was "representing Workers United in more than a half dozen pending representation petitions for Starbucks stores around the NYC metro area."

- Workers United paid $14,400 in consulting fees to Patrick Bruce, a Maine-based labor and socialist activist whose Twitter account suggests involvement in various union organizing campaigns, particularly Starbucks and Trader Joe's.

Except for the initial Buffalo stores, all the Starbucks union elections occurred in 2022, meaning these 2021 examples just scratch the surface of SEIU's involvement in the Starbucks campaign. More details about the extent of its support should become available when SEIU files its 2022 DOL disclosures later this year.

Though it can't be denied at this point that a consequential number of Starbucks employees are open to unionization, SEIU's external campaign, combined with credible and troubling allegations that NLRB officials are bending and breaking rules to assist union organizers, makes it difficult to determine just how organic the Starbucks unionization campaign really is.

MAXFORD NELSEN is the director of labor policy for the Freedom Foundation and a senior fellow at the Institute for the American Worker.

QUESTIONS FOR THE RECORD

RESPONSE BY LIZ SHULER TO QUESTION OF SENATOR CASEY, SENATOR LUJÀN, SENATOR HICKENLOOPER, AND SENATOR TUBERVILLE

SENATOR CASEY

Question 1. A recent report found that corporations spent $340 million yearly just on union-busting consultants, plus untold millions more on advertising campaigns and "captive audience" meetings around union elections. They spend that money to try to convince workers not to exercise their labor rights or to try to sway votes ahead of union elections. To add insult to injury—corporations can write off these anti-unionization efforts as run-of-the-mill business expenses.

Question 1(a). What kind of message does it send to workers that the Federal Government is subsidizing their bosses' union-busting expenses?

Answer 1. Workers see that corporations are taking in billions in profit. They also see that the National Labor Relations Act is weak, the National Labor Relations Board (NLRB) is underfunded and organizing is incredibly difficult. For workers, organizing means risking everything, because employers violate the law with impunity. When workers see that the government is effectively subsidizing union-busting activity, it suggests that the government is working for corporations and against working people. It is demoralizing and chills union activity.

Hardworking taxpayers should not be forced to subsidize employers' efforts to silence workers and deny them the opportunity to engage in collective action.

The recent wave of union organizing across the country highlights what we have known for some time: Millions of workers want a voice in the workplace. Unfortunately, employers have responded to this wave of worker organizing not by respecting their employees' right to form a union, but instead by spending millions of dollars on union-busting consultants dedicated to destroying the union organizing campaign at any cost.

The existing policy of the United States is to encourage the practice and procedure of collective bargaining by protecting workers' designation of representatives of their own choosing (29 U.S.C. § 151). The United States should not, consistent with that existing policy, subsidize employer efforts to avoid collective bargaining by allowing the costs of such efforts to be deductible.

To level the playing field and make sure workers truly have a fair shot when they seek to engage in collective action or form a union, Congress must eliminate all Federal incentives for interfering with organizing efforts. As President Biden has explained, the decision to join a union "belongs to workers, not to their employers."

Question 2. I recently introduced the Stop Spying Bosses Act to protect and empower workers against the growing trend of invasive and exploitative surveillance technologies that allow their employers to treat them like pieces of equipment. Recent reports include cases of workers who use the bathroom or pump breast milk seeing lower productivity scores due to the constant monitoring during those short breaks. Employers are also using these technologies to violate, monitor, or preempt workers' right to organize. Amazon workers are being fired by bots and are left with few options to dispute employment decisions or speak to a human manager to understand how the decision was reached. As the recent decision from the Administrative Law Judge in Buffalo notes, Starbucks used headsets to closley supervise, monitor or create the impression that employees' union activities are under surveillance." There are countless examples, and the Spying Bosses Act is a first step to level the playing field for workers by holding their bosses accountable for using invasive technology against them. American workers are the backbone of our Country, and they deserve to be treated with basic dignity at work.

Question 2(a). Do employers' invasive workplace surveillance tactics impact workers' organizing efforts?

Answer 2. Employer surveillance, monitoring and other intrusive tactics can affect organizing on multiple fronts. It is inherently intimidating to know that your employer is tracking your every move and your productivity. But common tactics such as keycard tracking, email monitoring, social media surveillance and comprehensive worker profiling (often in the guise of safety and productivity) chill organizing activity and allow companies to circumvent labor law.

Using these tactics, employers are profiling workers and gaining insights into employees' personal sentiments—including which workers support the union or are undecided. Information about workers' personal lives is inherently recorded as well. Consider the example of the mailbox at the Amazon plant in Bessemer, Alabama.

By placing the mailbox in front of the plant and creating the impression of surveillance, Amazon made employees feel like their employer knew whether they were voting for the union. We need to regulate employer use of surveillance technologies and ensure workers have knowledge of and access to whatever information is being collected.

SENATOR LUJÀN

Seventy-one percent of Americans now approve of labor unions—the highest Gallup has recorded on this measure since 1965—and this sentiment is expanding to new industries. Workers in the tech industry have increasingly shown an interest in unionizing. Unfortunately, many tech companies are using the same union-busting tactics that are all too common across the economy.

For example, Kirsten Civick, an employee at Apple, said at an event last week about a successful organizing drive that she helped to lead with the Communications Workers of America that, "At one point, we had 14 managers in our store, which allowed our management more time to berate us in groups and individually about how bad the union was. Some of my coworkers were so upset that they cried after those meetings."

Question 1. President Shuler, given how hard companies work to prevent workers from organizing, do you believe that Congress needs to act to stop those companies from preventing workers who have successfully organized from securing a first contract?

Answer 1. Too often, when workers choose to form a union, employers refuse to even sit down and bargain, or they drag out the bargaining process for as long as possible to avoid reaching a first collective bargaining agreement.

Employers engage in this kind of behavior because the lack of progress in reaching a first contract undermines worker support for the union and because employers face no monetary penalties for such bad-faith bargaining.

As a result, more than half of all newly formed private sector unions still do not have a first contract after 1 year, and 37 percent lack a first contract after 2 years. Countless workers vote to form a union but never get to enjoy the benefits of a union contract because of employer resistance.

Congress can fix this by passing the Protecting the Right to Organize (PRO) Act. The PRO Act creates a road map for workers and management to reach a first contract through mediation and arbitration. This way, workers will know that a contract is not far off after they win an election. Employers will no longer be able to stall for years to avoid an agreement.

If Congress passes the Protecting the Right to Organize Act, workers everywhere also will not have to face the type of union-busting campaign that doctors in Gallup, New Mexico did. When they started organizing, their hospital hired outside consultants to lead captive audience meetings. One consultant at this hospital told employees he was paid $425 an hour to organize these meetings. It seems to me if companies can afford to fight union organizing, they may be able to give workers a raise, or make schedules more predictable.

Despite an intense union-busting campaign, these New Mexico doctors successfully voted to create the first physicians' union in the state in October 2021. But if Congress passed the Protecting the Right to Organize Act, we would ban these anti-union scare tactics and require employers to reveal when they bring in anti-union consultants.

Question 2. President Shuler, why is it so critical that workers know when their employer is using anti-union consultants to influence their fight for a union?

Answer 2. I find it interesting that one of union busters' most prevalent and most misleading attacks is that a union is a "third party" and that the employer prefers "direct communication" with employees.

First, unions are not a third party—unions are the workers themselves at the job who come together collectively for a stronger voice on the job. Workers on the job negotiate the contract and decide what to bargain for, and those same workers must ratify the collective bargaining agreement.

Second, these union-busting consultants are an actual third party. These are highly paid operatives whom employers bring in to design the union-busting campaign, intimidate workers and develop anti-union propaganda. If the employer is paying more than $2,500 per day for union busters, it shows employees what the employer cares about. Why are they paying a third party when they can pay the people performing the actual work?

Question 3. President Shuler, you explained that employers are not required to oppose union organizing efforts in their workplaces. You detailed numerous examples of unions and employers working together to improve outcomes for everyone involved. Can you talk a little about how unions and collective bargaining can add value and be a positive force for workers, businesses, and the customers they may serve?

Answer 3. When workers act collectively in a union they feel heard, respected and protected, and they are able to bargain more effectively for better pay, benefits and access to health care. Corporate CEOs fight unions by any means necessary because they wrongly believe that collective bargaining and shared decisionmaking hurt business. But corporate bosses are missing the forest for the trees. Collective bargaining improves outcomes for everyone. When workers have a say in their workplace, turnover decreases, productivity increases and worker satisfaction improves.

Workers don't form unions because they want their employers to do poorly. That doesn't make sense and is against their best interest. Workers form unions to ensure that their voice—the voice of the people performing the work—is heard, respected and incorporated. Corporations perceive worker organizing as a problem when in reality it is a great opportunity.

I have seen the recent polling on worker support for unions. It seems there is a discrepancy between worker interest in unions and workers able to join a union. You mentioned that the AFL–CIO is working to meet worker demand for unions.

Question 4. President Shuler, what steps is the AFL–CIO and its member union taking to address this uptick in interest?

Answer 4. The AFL–CIO and our affiliated unions have invested in a new approach to multi-union organizing through our Center for Transformational Organizing (CTO). The CTO is a strategic hub for cross-union organizing that is focused on building worker power in emerging industries and sectors of the economy—especially in new manufacturing and clean energy. But simply creating new jobs in manufacturing, clean energy or elsewhere is not enough—we must make sure these jobs pay high wages and offer good benefits, which is not always the case. Most manufacturing jobs, for example, pay less than $20 per hour, and a quarter of the jobs pay less than $15 per hour. We continue to see increased use of staffing agencies with typically lower standards, and even child labor. Manufacturing jobs can be good jobs if workers have the opportunity to bargain collectively. Manufacturing in the United States is changing as we drive toward a more sustainable future.

The labor movement is using new, innovative approaches to reach workers who are disconnected with unions. We are working with community partners on the ground to raise awareness about rights; we're increasing our use of online engagement tools to connect workers to one another so they can build shop floor power together; we're connecting them to their peers who have unions in similar industries so they can learn from one another; and we're increasing access to union apprenticeships and training as a pathway to better jobs for those historically excluded.

Question 5. President Shuler, can you speak to the difference in organizing success under a neutrality agreement vs. an anti-union campaign?

Answer 5. There are plenty of examples of employers who voluntarily choose to remain neutral during an organizing campaign, and the benefits are tangible. For workers, withstanding an anti-union campaign is harrowing. Every day, workers must be prepared for relentless employer meetings, intimidation and propaganda on the union. Consider Amazon, a company that went so far as to place anti-union posters inside bathroom stalls. There is no place within the workplace for employees to hide.

Neutrality agreements allow the debate to take place between the workers themselves—the people who are making the decision on whether to bargain collectively. This leads to less conflict in the workplace, more secure and open discussions, and a stable environment where workplace democracy can play out.

Companies under the law today have the ability to voluntarily recognize a union. If workers come together and ask for recognition from the company, the company can voluntarily recognize them, but most companies don't. We have some examples of employers who have taken the high road. The University of Vermont Medical Center remained neutral when 2,000 hospital staff organized just a few months ago.

Similarly, the Rooted School, a charter school in New Orleans, decided to voluntarily recognize their employees' union after a majority requested representation. Now, they are building on that to engage in a collaborative bargaining process. There are employers like Microsoft that said: "You know what? If our workers want to join a union, we should let that happen." So the company pledged neutrality with

the Communications Workers of America (CWA). Microsoft recognized the trend of workers seeking to organize, and sought to work with the union because the company acknowledged the benefits of stable labor relations and collective bargaining.

I understand that workers who want to form a union often cannot talk with or meet with union representatives at their jobs. However, employers can talk to employees about their views on union membership at any moment during the workday—including in captive, anti-union meetings.

Question 6. President Shuler, how do the NLRB rules, which require that an employer share employee contact information with the union before an election, make the process fairer?

Answer 6. For the past 55 years, when workers came together to form a union, employers were required to turn over a voter list with the names and addresses of employees to make sure workers had access to information both for and against unionization, and the Supreme Court upheld this requirement in 1969.

Employers have nearly constant access to workers. Not only at work, but through email, text, phone, mail, etc. There is an inherent disadvantage for workers seeking to organize because they are prohibited from doing so during much of the time at work. In contrast, employers have carte blanche on their ability to bombard employees with anti-union propaganda wherever they are. Ensuring that workers who are organizing have access to their co-workers' contact information simply levels the playing field and ensures the free flow of information.

Question 7. President Shuler, how can we ensure that employees get critical information regarding the organizing campaign in a timely fashion during the election process?

Answer 7. In 2014, the NLRB issued a regulation to update the voter list requirement to include email addresses and cellphone numbers, and the PRO Act would codify the NLRB's 2014 regulation. Ensuring that workers have critical information regarding the organizing campaign in a timely fashion is just one way that the PRO Act would protect workers and strengthen the right to organize.

SENATOR HICKENLOOPER

According to a study conducted by the Pew Research Center, the share of adults who live in middle-class households fell by more than 10 percent over the last 50 years.[1] This comes at the same time that union membership has decreased amid intense pressure against efforts to organize.

Question 1. How do your unions communicate with workers who are not members to explain the benefits of union membership?

Answer 1. The AFL–CIO works tirelessly to improve the lives of all working people—union and nonunion. We are the democratic, voluntary federation of 60 national and international labor unions that represent 12.5 million working people. We strive to ensure that all working people are treated fairly, with decent paychecks and benefits, safe jobs, dignity and equal opportunities.

We help people acquire valuable skills and job readiness for the 21st-century economy. In fact, we operate the largest training network outside the U.S. military. Our work is anchored in making sure everyone who works for a living has family supporting wages and benefits and the ability to retire with dignity.

We advance legislation to create good jobs by investing tax dollars in schools, roads, bridges, ports and airports, and improving workers' lives through education, job training and a livable minimum wage. We advocate for strengthening Social Security and private pensions, ensuring fair tax policies and making high-quality, affordable health care available to all. We fight for keeping good jobs at home by reforming trade rules, reindustrializing the U.S. economy and providing worker protections in the global economy.

We stand firm in holding corporations accountable for their actions. We help make safe, equitable workplaces and give working people a collective voice to address workplace injustices without the fear of retaliation. We fight for social and economic justice and strive to vanquish oppression in all its forms.

The AFL–CIO's state federations and central labor councils are the heart of the movement. These local organizations partner with state and community organiza-

[1] Kochhar, R., & Sechopoulos, S. (2022, April 21). How the American Middle Class has changed in the past five decades. Pew Research Center. Retrieved from *https://www.pewresearch.org/fact-tank/2022/04/20/how-the-american-middle-class-has-changed-in-the-past-five-decades/*

tions and conduct local, state and national campaigns to improve the lives of working families—regardless of union membership. They stretch from Anchorage, AL, to Miami Springs, FL, from Brewer, ME, to Honolulu, HI, and everywhere in between. Our network represents the broadest, most diverse avenue for educating and engaging working people in America around the issues that can make their lives better.

We conduct education programming, like our Common Sense Economics training, that is available to working people in every part of the country. Through our education programming we are able to connect working people across demographic and geographic lines around the common challenges they face, the solutions to those challenges, and concrete action steps they can take to make the country a better place for themselves and their families.

We strive to make sure all workers understand and enjoy the benefits of collective action. Working people who come together in a union can bargain for higher wages, and union members also are more likely to have employer-provided health insurance, access to paid sick days, and retirement benefits and guaranteed pensions through private employers.

Question 2. Please discuss the broader benefits of unionization to our economy as a whole and workers throughout the country?

Answer 2. Workplaces with unions provide more predictable schedules, safer workplaces and better benefits. Not only do union members receive higher wages than workers without a union, but research shows that even nonunion workers benefit from the mere presence of unions in their community. Unions effectively set higher labor standards—including higher wages—that drive nonunion employers in the community to raise their standards in order to hire and retain workers. According to the Economic Policy Institute, had union density not declined over the past few decades, the typical worker today would earn $3,250 more per year.

The union difference is even higher for women and workers of color. Wages for women represented by a union are 4.7 percent higher than their nonunion counterparts. Black union members earn 13.1 percent more than nonunion Black workers, and Latino union members earn 18.8 percent more than their nonunion Latino peers.

Everyone wins when workers have a voice. The benefits of unions and collective bargaining extend far beyond the workplace. Communities do better when unions are present. Unions increase civic engagement, reduce racial resentment among White workers and increase legislative responsiveness toward the poor.

The 17 U.S. states with the highest union densities have state minimum wages that are on average 19 percent higher than the national average and 40 percent higher than those in low-union-density states; have median annual incomes that are $6,000 higher than the national average; have a higher share of those who are unemployed who actually receive unemployment insurance; have an uninsured (without health insurance) population 4.5 percentage points lower, on average, than that of low-union-density states; have all elected to expand Medicaid, protecting their residents from falling into the "coverage gap"; have significantly fewer restrictive voting laws; and are more likely to have passed paid sick leave laws and paid family and medical leave laws than states with lower union densities.

As we work to advance the Richard L. Trumka Protecting the Right to Organize (PRO) Act, I want to make sure that we are communicating clearly and often with those who will be impacted by it. We want to set small businesses up to success and follow the rules. Most small businesses care about their workers and want to take care of them, but are pulled in so many directions that they can't always keep track of all of the rules they are supposed to follow.

Question 3. How can we better educate and equip small businesses to comply with the PRO Act and generally understand proper Federal labor law compliance?

Answer 3. A significant deficiency in the National Labor Relations Act (NLRA) is that, unlike other workplace laws, employers are not required to inform employees of their rights under the NLRA. Pursuant to the Fair Labor Standards Act, the Occupational Safety and Health Act, the Family and Medical Leave Act, and other workplace laws, employers must post or inform workers of the rights that correspond with the law. These posting requirements inform employees but also serve as a fantastic resource for businesses to familiarize themselves with the law. Because the NLRA lacks a notice-posting requirement, many employers may be less familiar with the law or not know about it at all.

The PRO Act would bring the NLRA into alignment with other workplace laws by requiring employers to post notices informing employees of their rights under the NLRA, giving the NLRA the same visibility as other laws. This would ensure that

small businesses are familiar with the NLRA and have the contact information of the National Labor Relations Board.

Question 4. How can we help small businesses help their workers?

Answer 4. Workers are the best resource for information on what they need and what would improve their lives. Small businesses that sit at the bargaining table with their workers will learn exactly what aspects of the business are working and where new opportunities are. Bargaining allows small businesses and their workers to listen and solve problems together, because workers are the ones who know how to do their jobs the best and make the company more successful.

SENATOR CASSIDY

Question 1. At a recent press conference, you talked about the "fight," the "incredible organizing effort going on in Bessemer, Alabama" at the Amazon facility there. The only fight there is the union fighting the employees who have voted clearly twice in opposition of forming a union.

Question 1(a). Do you know how much money the union has spent there over the last two-and-a-half years in order to lose two elections?

Answer 1. The AFL–CIO is a federation of 60 national and international labor unions that represent 12.5 million working people. Our affiliates are self-sustaining, independent labor organizations, and thus the specific budgetary details of any single affiliate are not within my purview. I am aware, however, that Amazon spent nearly $4.3 million in 2021 on union-busting consultants to stomp out its employees' organizing efforts. In fact, Amazon paid those consultants more than $3,000 per day, plus expenses—more than Amazon warehouse workers earn in a month.

Question 2. You criticize employers and say employers delay the voting process and the collective bargaining negotiation process. That hasn't happened in Bessemer. It's the union that is refusing to let employee ballots be opened.

Question 2(a). Shouldn't the union allow every ballot to be counted?

Answer 2. All validly cast votes should be counted in every union election.

Question 2(b). Does the union think the employees don't know what they voted against?

Answer 2(b). I cannot speak to what any individual "union thinks." Union elections, like all elections, should be free from harassment, intimidation, and fear tactics that often suppress worker voice and deter voter turnout. Both the employer and the union have filed objections to the most recent election at the Amazon facility in Bessemer. The National Labor Relations Board is currently investigating the parties' objections.

Question 2(c). Why doesn't the union respect those two votes?

Answer 2(c). I cannot speak to what any individual "union thinks." Union elections, like all elections, should be free from harassment, intimidation, and fear tactics that often suppress worker voice and deter voter turnout. Both the employer and the union have filed objections to the most recent election at the Amazon facility in Bessemer. The National Labor Relations Board is currently investigating the parties' objections.

Question 3. At the same press conference mentioned above, you mentioned an employee by name—who you say Amazon fired because he was a union supporter.

Question 3(a). Are you aware that he filed a charge with the NLRB challenging his termination?

Answer 3. As the president of the AFL–CIO, the largest federation of unions in the United States, representing over 12.5 million workers, I speak at press conferences to uplift workers' organizing efforts very often. I tell the stories of many workers across the country—including multiple union supporters at the Bessemer facility—who were terminated during an organizing campaign. Amazon has been charged with violating workers' right to organize dozens of times, in Bessemer and elsewhere. As of last month, there were more than 150 open unfair labor practice cases involving Amazon. I cannot speak to an unspecified unfair labor practice charge at Amazon due to the volume (there have been more than 25 unfair labor practice charges filed at Amazon alone since February 2021).

Question 3(b). Are you aware that the NLRB concluded after an investigation that he falsified his time for work hours?

Answer 3(b). I cannot speak to the details of the NLRB's findings in an unspecified case.

Question 3(c). Are you aware that other employees were discharged for the same thing?

Answer 3(c). Response: I cannot speak to the details of the NLRB's findings in an unspecified case.

Question 3(d). Are you aware that the NLRB dismissed his charge?

Answer 3(d). I cannot speak to the details of the NLRB's findings in an unspecified case.

SENATOR TUBERVILLE

Question 1. At a recent press conference, you talked about the "fight," the "incredible organizing effort going on in Bessemer, Alabama" at the Amazon facility there. The only fight there is the union fighting the employees who have voted clearly twice in opposition of forming a union.

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Answer 3(c). I cannot speak to the details of the NLRB's findings in an unspecified case.

Question 3(d). Are you aware that the NLRB dismissed his charge?

Answer 3(a). I cannot speak to the details of the NLRB's findings in an unspecified case.

RESPONSE BY MARY KAY HENRY TO QUESTIONS OF SENATOR CASEY, SENATOR LUJÀN, AND SENATOR HICKENLOOPER

SENATOR CASEY

Question 1. A recent report found that corporations spent $340 million yearly just on union-busting consultants, plus untold millions more on advertising campaigns and "captive audience" meetings around union elections. They spend that money to try to convince workers not to exercise their labor rights or to try to sway votes ahead of union elections. To add insult to injury—corporations can write off these anti-unionization efforts as run-of-the-mill business expenses.

Question 1(a). What kind of message does it send to workers that the Federal Government is subsidizing their bosses' union-busting expenses?

Answer 1. This broken system sends the wrong message about our Country's values. When corporations like Starbucks and McDonald's are allowed to abuse their power and influence to silence the voices of working people, drive down wages, and maintain the status quo, it sends a message that it is acceptable to put profits over the lives of people in our society. That's why the growing movement of working people joining together all across the economy, going on strike in historic numbers, and demanding a voice on the job through a union is critical to putting our Country on the right track. Through these actions, we can build a better future for every family and community.

Question 2. You have been a huge supporter of expanding and enhancing home and community-based services, services that help millions of Americans with disabilities and older adults. There is an enormous need for additional home care workers, but the pipeline is almost dry. A recent report indicated that vacancy rates for home care work are at least 20 percent and turn over can be as high as 60 percent annually.

Question 2(a). How can organizing help address the lack of home care workers and the quality of home care provided to older adults and people with disabilities?

Answer 2. When homecare workers come together in unions, we see industry improvements for workers and consumers. Unions have played an important role in helping address these issues by raising wages through the collective bargaining process and advocacy to increase Medicaid funding and payment rates, as well as providing opportunities for home care workers to share their experiences with each other, expand training opportunities and create a mechanism for participation in decisions that affect them. States with higher wages for home care workers have had more success in rebalancing their Long Term Services and Supports programs and increasing the availability of home and community-based services for consumers, and many of the states that score highest for measures of rebalancing and consumer direction are the same states—such as Washington, Oregon, California, Massachusetts—where individual provider home care workers have organized with SEIU.[2]2

In states like Pennsylvania, SEIU Healthcare Pennsylvania members like Jacinta Burgess successfully pushed Pennsylvania's Department of Human Services to increase reimbursement rates for home care by 8 percent statewide, leading to a $1 an hour increase in all participant-directed caregivers' wages. They also won funding for paid training programs—the first of their kind in Pennsylvania which rolled out earlier this year. Caregivers who had never received any substantive healthcare training are now getting certified in everything from CPR to dementia capable care and nonviolent crisis intervention. Jacinta recently said with her union, Pennsylvania's homecare workers are professionalizing their workforce to deliver higher quality care to their clients and demonstrate to decisionmakers that they can no longer deny real workers the wages and benefits they deserve.

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[2] Long Term Services & Supports State Scorecard, AARP, *http://www.longtermscorecard.org/*
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SENATOR LUJÀN

Despite historic worker organizing over the past 2 years and clear evidence that workers want to join unions, employers continue to put insurmountable obstacles in their way. Without the Protecting the Right to Organize Act, employers can continue to act as if violating workers' legal rights is just a part of doing business.

Question 1. President Henry, I just want to make this point so every American can hear this. Is it true that when companies illegally fire workers or close workplaces to punish workers for unionizing, they face no fines or civil penalties under current law?

Answer 1. That is true. Unlike many other Federal laws, the National Labor Relations Act imposes no civil penalties on corporations that violate the law, no matter how egregious the violation. Even a corporation that intentionally fires a worker to punish them for supporting a union or to punish them for cooperating with a government investigation will face zero penalties under current law. Congress must change the law to include penalties so that corporations think twice before violating workers' rights.

Seventy-one percent of Americans now approve of labor unions—the highest Gallup has recorded on this measure since 1965—but January 2023 BLS data revealed that the union membership rate was 10.1 percent in 2022, down from 10.3 percent in 2021—the lowest on record since comparable data began to be collected by BLS in 1983.

Question 2. President Henry, how can this be? If so many working people would join a union if they had the chance, why is it so difficult to join a union?

Answer 2. Union-busting is big business: Corporations are spending millions on consultants, lawyers and deceptive anti-union campaigns. It shouldn't be this hard to form a union, and when workers boldly win their unions, they should be able to negotiate a fair contract in a timely manner with employers. Right now, that's not the reality.

Labor rules are broken in two key ways: 1) Corporations, with impunity, are able to exploit the inherent power differential they have with their employees by bullying and intimidating those who choose to organize; and 2) Workers who want to unionize are generally forced to organize and bargain worksite-by-worksite rather than across an industry or geography. Together, these two problematic features of existing law make forming a union slow, cumbersome, and highly risky, and puts employers that choose to treat their workers with respect and fairness at a competitive disadvantage.

On top of this, as the third question below explicitly names, corporations too-often structure their businesses in such a way as to evade responsibilities to their employees and to prevent or undermine unionization efforts.

One of the ways corporations often try to evade their responsibility to their employees under the law is by structuring their businesses to shield themselves from liability, prevent their employees from being able to form unions, and deny employees the benefits they deserve. This can take the form of intentionally misclassifying employees as independent contractors, hiring temporary workers or subcontractors when what businesses really need are more employees, fighting tooth and nail against the reality that a franchisor could be a joint employer of a franchisee—and more. This is an epidemic, really, of corporations using business structures to cut working people off from the protections of the law, including from being able to organize into unions. It is a huge part of why it is so difficult to organize wide swaths of workers across the economy.

Question 3. President Henry, can you talk about the ways in which SEIU sees this problem, and some of the opportunities you see to fix it?

Answer 3. SEIU believes that as a country we need to leapfrog beyond the current, broken system by writing new rules by which workers are able to organize and bargain collectively. The Protecting the Right to Organize (PRO) Act is a critical piece of this: it would make it possible for workers to freely join unions without being bullied and intimidated by their employers, and make it more difficult for corporations to use "fissured" business structures in order to evade responsibility and liability for working conditions.

In addition, we must create ways for workers to negotiate wages, benefits, and other standards that apply to ALL workers and employers in an industry. This form of bargaining, often called sectoral bargaining or broad-based bargaining, has long been the norm in most of northern and western Europe; countries like New Zealand and Australia are in the process of re-establishing such systems. In the United

States, innovative state-level breakthroughs are pointing the way toward reforms that allow for sector-wide standard setting. California's recently passed FAST Recovery Act, for example, creates an industry-wide council by which 500,000 fast food workers, largely women and people of color, will have a seat at the table with corporations and state government to set minimum wages and working conditions.

While we often talk about the ways that the NLRA has been eroded over the years, we too-seldom raise the inequities that were baked in from the start. From the beginning, the NLRA excluded agricultural and domestic workers from its protections. Both at the time of original passage and now, these workforces are made up largely of Brown, Black and immigrant workers—and for domestic workers, the workforce is overwhelmingly women.

Question 4. President Henry, as someone who represents a union that is majority women of color, many of whom are immigrants, can you talk about the importance of unions for all workers, and also specifically for workers of color, women workers, and immigrant workers?

Answer 4. SEIU firmly believes that there can be no economic justice without racial justice. As we look for opportunities to make it easier for workers to exercise their right to organize and negotiate good wages and benefits, we must center these excluded workers and the industries they work in.

Working people are stronger when all of us are empowered with a voice on the job and the ability to join together in unions to bargain for a better future. But too often, corporations and unscrupulous employers try to harass and intimidate the most vulnerable among us and try to divide us.

Women who work in the domestic realm of home care were left out of our Nation's sexist and racist labor laws decades ago, and the majority still work for poverty wages and lack basic benefits such as paid time off. They have been mobilizing over the past 2 years for a major Federal investment in home care that would create hundreds of thousands of good-paying union jobs in home care. Such an investment would boost entire families and communities of color that have been left behind for too long.

Airport service workers—including cabin cleaners, wheelchair attendants and baggage handlers—are overwhelmingly workers of color. Their wages have been near poverty level for the past 20 years, and they often lack benefits like paid time off or affordable healthcare. Major airlines receive billions in Federal dollars, but instead of using funds to shore up the air travel industry, they're raking in record profits off the backs of these lowest-paid workers who help make air travel safe, clean and accessible for all passengers. Workers are calling on Congress to pass the Good Jobs for Good Airports Act (S. 4419/H.R. 8105) that was recently re-introduced by Senator Markey and Representative Jesùs "Chuy" Garcia, which would establish minimum wage and benefit standards for all airport workers.

Immigrants across the service and care economy can be particularly vulnerable to unscrupulous employers who misuse immigration laws to gain leverage over their workforces by, for example, illegally threatening to retaliate against immigrants who join together with others in their workplaces to form a union or make a workplace complaint about harassment or unsafe conditions. We are grateful to the U.S. Departments of Labor and Homeland Security for issuing new guidance that smooths the process for workers to obtain protection from immigration-related retaliation, and to Representative Judy Chu for introducing the POWER Act (H.R. 1828) which would go further, so that workers can feel free to enforce their legal rights—and those of their co-workers—without fear of immigration consequences.

SENATOR HICKENLOOPER

According to a study conducted by the Pew Research Center, the share of adults who live in middle-class households fell by more than 10 percent over the last 50 years. This comes at the same time that union membership has decreased amid intense pressure against efforts to organize.

Question 1. How do your unions communicate with workers who are not members to explain the benefits of union membership?

Answer 1. The strongest advocates for the benefits of unions continue to be union members. Not-yet union workers have seen firsthand, especially during the height of the COVID–19 pandemic, how having the support of a strong union made a difference in the lives of working people across every industry. They also are able to look at history and see how the labor movement helped to build a middle class and improved the lives of their parents, grandparents and other retired union members. That's why we're seeing union popularity is at a 50-year high—especially among

younger people. Those workers are in many cases doing their research and initiating conversations with union members and organizers about how to form unions in their workplaces. Workers are also coming up with new, creative, bold ways to organize together across industries, sectors and geographies because they know the only way to counter corporate control is through collective worker power.

Question 2. Please discuss the broader benefits of unionization to our economy as a whole and workers throughout the country?

Answer 2. Unions are good for us, for our coworkers, workplaces and industries, for our families and communities, and for our Country. Working people build, and hold, economic and political power in our unions. We use our collective power to challenge the predatory corporations that feed off our communities and our labor, and to fuel an inclusive, multi-racial democracy to win for working people of every race.

The opportunity to join a union, no matter where you work, is the best way to raise wages, improve working conditions, create family sustaining jobs, and build a just, resilient economy. Every working person, no matter our race or where we're from, must have the opportunity to join unions across industries and regions to improve working conditions.

RESPONSE BY SEAN O'BRIEN TO QUESTIONS OF SENATOR LUJÀN, SENATOR HICKENLOOPER, SENATOR MARKEY, AND SENATOR CASSIDY

SENATOR LUJÀN

Question 1. President O'Brien, what share of organizing efforts see companies illegally violating workers' Federal labor rights?

Answer 1. The National Labor Relations Board received up to 30,000 unfair labor practice charges filed by workers or on behalf of workers by labor unions in 2022, according to the most recently available data provided from the bureau. With a more than 50 percent increase in union representation filings with the NLRB last year to an annual average of 2,500 elections, median data suggests the average union organizing campaign results in at least 11 unfair labor practice charges being filed against companies seeking to suppress, combat, or disrupts workers' collective action to form or join a union. No worker at no company in no industry should have to suffer such an extreme scale of unfair labor practices committed by employers.

Question 2. President O'Brien, would passing the Protecting the Right to Organize Act finally create fines and civil penalties for companies, and what impact would doing so have on American workers freedom to unionize?

Answer 2. Yes, the Protecting the Right to Organize Act, H.R. 20/S. 567 (PRO Act) creates fines and civil penalties for companies who violate the NLRA. Under current law, employers who violate workers' rights under the NLRA face no civil penalties. Under the PRO Act, employers who commit violations under the NLRA face civil penalties, and corporate officials can be held personally liable for violation of the law. These are meaningful deterrents to violating the NLRA that will have significant positive impact on a workers' ability to exercise their rights at work.

Despite clear evidence that workers support unions, need unions, and are taking action to form their unions—and despite having the most pro-union President of our time in office—the Bureau of Labor Statistics (BLS) reported in January that the percent of workers who are union members had once again declined over the prior year. This is because, when workers take action to form their union, they often face insurmountable obstacles. The law is not on their side. Where the law is balanced or favorable to workers, there is a lack of resources to allow for impactful enforcement. And, at the first sign of worker collaboration, employers, armed with seemingly limitless funds, will immediately engage in a campaign of threats and intimidation tactics. In fact, these anti-union campaigns have become so formulaic and commonplace that employers spend $340 million per year on "union avoidance" consultants who teach them how to exploit weakness in Federal labor law to effectively scare workers out of exercising their legal right to collective bargaining.[3] And when workers do win an election, employers use the same tactics to extend first contract negotiations for years.[4]

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[3] *https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/*

[4] *https://files.epi.org/page/-/pdf/bp235.pdf*

A December 2019 EPI report concludes that in 2016—2017, employers were charged with illegally firing workers in at least one-fifth of elections. In nearly a third of all elections, employers were charged with illegally coercing, threatening, or retaliating against workers for union support. [5]

The PRO Act will address a number of weaknesses in current labor law that permit this imbalance between employers and workers and that give anti-union employers significant advantage to block union organizing efforts.

The outcome of your upcoming negotiations with UPS will be life-changing for hundreds of thousands of Teamster members, their families, and the communities they live in. I wonder if you could speak as well to the broader significance of these negotiations.

Question 3. President O'Brien, what do these negotiations mean for workers throughout the warehousing and logistics industry, for the broader labor movement, and for working people across America?

Answer 3. The Teamsters represent more than 360,000 workers at UPS, who are protected under a national master agreement. This contract is the largest private-sector collective bargaining agreement in North America. The achievements of the Teamsters during regional supplemental agreements and in the national contract will establish new and stronger standards for wages, benefits, workplace safety, retirement, and job security for millions of workers throughout the packaging, distribution, transportation, and logistics industries in the United States. At a time when more workers feel more empowered to pursue union representation than at any point in decades, the Teamsters' success at the negotiating table sends a reassuring signal to workers in every industry that the equitable and democratic process of collective bargaining can and does meaningfully improve workers' lives. Much needs to be achieved by the labor movement overall to regain lost wages that have funneled to the C-suites of giant and increasingly consolidated corporations. The Teamsters are in a unique position to negotiate with a corporation as large, successful, and culturally established as UPS and secure legally binding gains for the hundreds of thousands of workers who make it successful. The long-term benefits of an average worker seeing the working people who make up the Teamsters Union achieve true economic empowerment is impossible to quantify.

We have seen sweeping attacks on labor rights in recent years by an increasingly activist court, including attacks on the constitutionally protected right to organize.

Question 4. President O'Brien, in addition to better wages and safety conditions, in your experience, what does being in a union do for workers as a matter of self-respect and dignity on the job?

Answer 4. Being in a union means you are no longer an at-will employee. It means you no longer have to fear going into work and losing your job because your supervisor is in a bad mood. Union membership, by and large, guarantees your wages, health care benefits, and retirement security. When workers are relieved of the stress of economic uncertainty at work, they are more empowered to perform better, return to work, engage with their co-workers, and make additional investments that benefit the whole. Union contracts help establish grievance procedures to fairly settle workplace issues, provide workers with representation during disciplinary proceedings, and afford workers the opportunity to participate in democratic processes in and out of the workplace. These guarantees, standards, safeguards, and benefits breed self-respect and empowerment and tangibly reassure workers in all classifications and industries that they are active participants and not bystanders in their jobs and careers.

SENATOR HICKENLOOPER

According to a study conducted by the Pew Research Center, the share of adults who live in middle-class households fell by more than 10 percent over the last 50 years1. This comes at the same time that union membership has decreased amid intense pressure against efforts to organize.

Question 1. How do your unions communicate with workers who are not members to explain the benefits of union membership?

Answer 1. The Teamsters Union is home to more than 1.2 million people in the United States, Canada, and Puerto Rico, creating an international network capable of reaching out to and communicating with as many workers as possible who do not yet have the protections of a union contract. The Teamsters' Organizing Department

[5] *https://www.epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns/*

maintains a presence on the ground in all 50 U.S. states and works in partnership with our 360 local union affiliates and more than 30 Joint Councils to make information available to workers about the union difference. Organizing campaigns are actively run to expand union density in industries well-represented by the Teamsters, including but not limited to logistics and transportation, warehousing, foodservice distribution, waste removal, and public services. Internal organizing efforts are critical to bring more workplace protections to people fighting for good-paying jobs in states with harmful "right to work" legislation. And an army of Teamster organizers, representatives, and member volunteers are always available across North America to build, educate, and expand worker power at any employer where workers have self-mobilized to secure a union contract. Dedicated Teamster organizers work in concert with an international team of legislative and legal professionals, strategic communicators, educators, historians, and external partners to provide resources to workers seeking to form a union, promote the benefits of collective bargaining, interact with the media, support labor-friendly laws, and make lasting progress in the labor movement.

Question 2. Please discuss the broader benefits of unionization to our economy as a whole and workers throughout the country?

Answer 2. The socioeconomic benefits of a union contract—in particular, a Teamster contract—cannot be overstated. Especially in 2023, when the cost-of-living negatively impacts workers across the economic divide, the Federal minimum wage has flatlined, rising inflation persists, and corporate CEOs like Carol Tome of UPS disproportionately receive wages more than 300 times the average worker, a union contract remains a time-tested shield for workers to withstand punishing inequality, eroded benefits, and willful abuse. The security of unionization is just that—legal protection from being unlawfully terminated and a legally mandated opportunity for workers to come together and bargain for higher wages, stronger benefits like employer-paid health care and paid time off, and guaranteed income in retirement that is not at the mercy of unknown investors. Union halls stand as an increasingly rare institution for workers of all races, ethnicities, religions, and lifestyles to congregate, converse, share information, make democratic decisions, and receive the resources they need to improve their lives and their families. People going to work with the protections of a union contract are more incentivized to commit to longer careers with fewer employers, reducing turnover, stabilizing industry, strengthening local economies, and building trust and accountability within their communities. Labor unions like the Teamsters historically and actively offer workers supplemental benefits and resources to further their education and that of their dependents, learn new skills externally or participate in on-the-job training to advance within their careers, and participate in volunteer opportunities to expand the reach of organized labor, engage in local and national politics, and enjoy the myriad benefits of fraternity and camaraderie in and outside the workplace.

SENATOR MARKEY

Question 1. Mr. O'Brien, can you please state for the official record what UPS Feeder Drivers make annually? Please feel free to expound on this with any additional information that might be helpful to set the record straight and inform Committee activity around this issue.

Answer 1. UPS Feeder Drivers, who are paid hourly, currently make $41.59 per hour with most making time and a half, paid at over 8 hours per day. At 2080 hours (typical 40-hour work week x 52 weeks) that's $86,507 per year. When you add 10 hours of overtime per week (which is on the very low end) that puts the average Feeder Driver at around $119,000 per year. However, most Feeder Drivers work something closer to 18 to 20 hours of overtime per week, putting them at around $145,000 per year. Mileage Drivers and Sleeper Teams make even more. On their own website, UPS asserts that Feeder Drivers make an average of $162,000 per year.[6]

SENATOR CASSIDY

Question 1. I understand the Teamsters passed a motion to set up a specific focused Amazon Organizing project last year. Have you ever done that before? Set up

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[6] *https://about.ups.com/sg/en/our-company/great-employer—text=Our percent20local percent20tractor percent2Dtrailer percent20 percentE2 percent80 percent9Cfeeder,sick percent20leave percent20and percent20option percent20days;* See Article 53 and note addition of $1.15/hr COLA increase *https://teamster.org/wp-content/uploads/2018/12/ups18atlanticareasupp.pdf*

a specific department aimed at just one employer? Why did you call Amazon an "existential threat" to your members? The resolution said "the Union commits to fully fund and support the Amazon Project, to supply all resources necessary' How much money is budgeted for that project?

Answer 1. The International Brotherhood of Teamsters was founded 120 years ago. With just a few local affiliates in cities like Chicago, Detroit, and New York at its onset, the union has evolved into a dynamic, coordinated, and responsive international network that eternally adapts to meet the needs of workers in nearly every industry. Despite the size of our globalized economy and the diversity of employment that exists in the United States alone, Amazon has exploded to become the second largest employer in this country in less than three decades. Ending 2022 with more than 1.5 million American workers, Amazon is an existential threat not only to workers in industries predominantly represented by the Teamsters but to the very notion of gainful employment in America at all. While occupying the top of the list of domestic employers, Amazon recorded a shocking turnover rate last year of more than 150 percent—double the industry average. Without the guarantees of secure employment, safety from employer harassment, accountable wage growth, insured retirement benefits, and relief from workplace hazards, Amazon has negligently failed to establish a sustainable employment model, a reliable or respectful culture of work, or positive, long-term contributions to the success of the American economy. Moreover, Amazon's model erodes industry and area standards in cities and states home to its processing and distribution centers and offers no avenue for workers to cement meaningful and financially rewarding careers. For more than a century, the Teamsters Union has remained committed to improving workers' wages and benefits, safeguarding retirement security, setting higher standards for basic earnings, reasonable work hours, and safer working conditions, and demanding workers have the opportunity to share in the success of the companies they make profitable. Likewise, the Teamsters are committed to invest as many resources as possible to bring accountability to Amazon as an employer and support the empowerment of its workforce.

RESPONSE BY JOHN F. RING TO QUESTIONS OF SENATOR HICKENLOOPER AND SENATOR TUBERVILLE

SENATOR HICKENLOOPER

The National Labor Relations Board (NLRB) has seen a 15 percent increase in Unfair Labor Practice cases and a 9 percent increase in representation cases, all while its field staff has shrunk in half. These cuts have occurred because NLRB's budget has not grown adequately with inflation, even as it has seen their workload grow significantly.

Question 1. In your experience at NLRB, what does the agency need to meet the demands and ensure that both workers and companies have fair and timely consideration of their labor complaints?

Answer 1. While the NLRB's budget has been flat for a number of years until the increase in this fiscal year's budget, the decrease in the Agency's workload over the last decade more than makes up for any lack of additional funding. Based on publicly available data (NLRB's Annual Reports), the NLRB's overall case intake has declined 43 percent from fiscal year 2002 to fiscal year 2022. And this decrease in the Agency's workload continues a trend in declining case intake that extends back several decades. As you note, the Agency claims that there has been a recent 15 percent increase in unfair labor practice cases and a 9 percent increase in representational cases. However, these figures are based on comparisons from fiscal year 2020 or fiscal year 2021 statistics which were abnormally low because of the pandemic. In reality, again based on review of the NLRB's Annual Report, the number of unfair labor practice cases and representation matters filed in fiscal year 2022 was slightly down from pre-pandemic levels in fiscal year 2019 (20,514 in 2022; 20,647 in 2019).

To ensure that the NLRB meets its statutory demands and ensure that both workers and companies have fair and timely consideration of their labor complaints, the NLRB should focus its available resources on matters that are core to the Agency's mission—unionization and collective bargaining—rather than pursuing novel legal theories many of which are beyond its statutory jurisdiction. Over the years, the Agency's attempts to expand its jurisdiction and application to areas outside its core mission have taken away necessary focus and resources from resolving matters core to the Agency's mission. The NLRB also should look for ways to reorganize and

right-size the Agency's operations to focus on these core mission cases as well as implement process management changes to ensure that cases are decided on a timely basis.

SENATOR TUBERVILLE

Question 1. You've discussed the current actions and caseload of the NLRB. It's my understanding that once the NLRB launches an investigation into a complaint, it can take a long time for an ultimate decision to be made.

Instead of focusing on open cases, the NLRB is opting to test the boundaries of its statutory authority.

Question 1(a). How can the NLRB better focus its time and energy investigating real complaints instead of looking for new ones that may or may not be within its jurisdiction?

Answer 1. There are two primary ways the NLRB can better focus its resources on investigating complaints that allege violations core to the Agency's mission—unionization and collective bargaining—rather than pursuing novel legal theories for charges that may or may not be within its statutory jurisdiction. First, the General Counsel should exercise better prosecutorial discretion in determining what cases to pursue. Focusing the Agency's investigatory and litigation resources on the charges that allege core violations of the Act would allow the Agency to better effectuate the purposes Congress intended for the Act. Second, the Board should adhere to decades-old precedent that focused on core violations rather than attempting to extend the reach and protections of the Act. For example, changing precedent to police all union and non-union employers' handbook provisions. outlawing ordinary severance agreement provision and mandatory arbitration agreements or restricting confidentiality in workplace investigation, in the absence of any other unfair labor conduct, fills the Board's docket with these extraneous matters and prevents the Board from addressing core violations in a reasonably timely fashion. The Board also could take steps to implement process improvements in the manner in which it decides cases to ensure their timely issuance, particularly representational matters involving organizing and charges involving core violations of the Act.

Question 2. The subject of this hearing was focused on "illegal corporate union-busting." It's my understanding that the PRO Act would supposedly stop this problem from happening if Congress passes it. If corporations preventing their employees from unionizing is an illegal action, what is the recourse?

Question 2(a). Isn't the entire purpose of the NLRB to sort these disputes out?

Question 2(b). What jurisdiction does Congress have here?

Answer 2. It is not illegal—in fact it is expressly permitted in the National Labor Relations Act and supported by the First Amendment—for an employer to express views opposing the unionization efforts of its employees. That is, so long as the employer does not engage in threats or other illegal conduct while doing so. In those cases where an employer does engage in illegal action during a union organizing campaign, the NLRA has a robust enforcement scheme to stop such activity, remedy the wrongdoing and ensure there is compliance with the Act. To ensure there is recourse in the event of a violation, the Act established the NLRB and a unique enforcement procedures and remedies that advance the public interests underlying the statute. Under the NLRA, parties can pursue a charge or petition for a union election without the need for an attorney or legal representation. As I explained in my written testimony, this is a rare system when compared to most other Federal and state employment statutes. Operated properly, this enforcement mechanism under the Act should provide recourse for any so-called "illegal corporate union-busting."

With respect to specific disputes involving alleged violations of the NLRA in connection with an organizing campaign, Congress has entrusted enforcement of the Act to the NLRB. Congress does not have the authority to enforce the Act, such as seeking to adjudicate particular cases or impose specific remedies based on the facts of the case. Congress, of course, has the authority to engage in oversight of the NLRB and ensure that the Agency is carrying out its statutory mission. Congress also can change or replace existing law, as proponents of the PRO Act are urging Congress to do so now with the NLRA. As set forth in my written testimony, I would urge Congress to consider whether certain modifications to the Board's current enforcement of the Act could achieve many of the goals of the PRO Act. Through use of its oversight authority, Congress should do so before undertaking such a substantial overhaul of the NLRA, which has achieved the objectives Congress set almost 90 years ago: ensuring workplace democracy and industrial peace.

RESPONSE BY MARK MIX TO QUESTIONS OF SENATOR CASSIDY AND SENATOR TUBERVILLE

SENATOR CASSIDY

Question 1. Union bosses claim they need to be able to force workers to pay union dues in exchange for their "representation." Can you explain the flaws in that argument?

Answer 1. Union officials may feel that their "representation" is worth workers' money, but it should be up to individual workers to decide whether they agree. No other private charity, political party, or civic organization has the power to compel people to financially support it. Forced union dues allow corrupt, ineffective union officials to continue getting paid, and give them the freedom to engage in political advocacy that workers disagree with.

Question 2. Can unions spend money on politics that their members don't agree with?

Answer 2. Forced union dues inevitably end up funding union politics. Union bosses are constitutionally prohibited from using dues money on politics without workers' consent, but a convoluted legal process ensures that right is rarely enforced. As just one example, National Right to Work Foundation client Jeanette Geary had to wage an eleven-year legal battle against union lawyers who argued that lobbying in state legislatures was not a "political" activity.

Question 3. Union officials are telling us that we need to repeal Right to Work to protect workers' right to organize a union. Does Right to Work prevent or restrict union organizing?

Answer 3. Right to Work does not restrict union organizing in any way. It simply ensures that union dues are voluntary, not forced. Union bosses feel threatened by Right to Work because it means they can be held accountable to rank-and-file workers and will lose access to a guaranteed forced-dues revenue stream.

Question 4. We've heard testimony about employers who are accused of intimidating workers into voting against a union. How common is it for unions to behave similarly, intimidating workers who don't support unionization, and how easy is it for them to get away with it?

Answer 4. Employers are under a microscope during a union drive, as everything they say and do could be the basis for unfair labor practice charges. Amazon had a mailbox installed outside their facility in Bessemer, Alabama, and that alone was used as a basis for accusing the company of intimidating workers in a union election that was ultimately overturned by the NLRB.

Union officials, on the other hand, often solicit support via union "cards." One or more organizers will approach a worker and demand they sign a card. If they refuse, they may be asked over and over again or visited at their homes, and their refusal may be made known to their pro-union colleagues to apply additional pressure. Workers rarely come forward about "Card Check" abuse, as few even know their legal rights.

Question 5. If I'm in a unionized workplace and a majority of my colleagues and I decide we don't want to be unionized anymore, can we simply vote out the union, or is it more complicated than that?

Answer 5. Response: Removing, or "decertifying" a union is far more difficult than installing one. Decertification elections are subject to several NLRB "bars," one of which is union "blocking charges" (see below). The process, though allegedly designed to be navigated by individual workers, is complicated and paperwork-intensive. Workers must collect signatures from more than 30 percent of their colleagues on a decertification petition; that is particularly difficult where workers are in a large or widespread bargaining unit. After obtaining the necessary number of signatures, a worker must complete the following steps:

- (1) Fill out the extremely complicated NLRB form 502RD;
- (2) Send form 502RD to the employer and union officials, along with "Statement of Position" and "Description of Procedures" documents;
- (3) E-file a "certificate of service" proving the above documents were sent;
- (4) Mail or deliver the original petition to the appropriate NLRB regional office.

And they have to do it in the narrow time window between all the various NLRB-created "bars."

The clear intention is to make decertification prohibitively difficult for workers acting without outside legal help. Fortunately, such help is available through non-profits like the National Right to Work Foundation, but it shouldn't be necessary in the first place.

Question 6. It seems like unions don't want employers to ever express an opinion during an organizing drive. But it occurs to me that if I'm the only candidate allowed to talk to the voters in my next election, I'm pretty much guaranteed to win. If employers don't get to weigh in on the question, how will workers get enough information on both sides to make an informed choice?

Answer 6. That's correct, and there are legitimate reasons why a union contract may not be right for many workers. They are often "one-size-fits-all," which means that the most productive workers tend to get paid less than they otherwise would, and workers' ability to create flexible arrangements is stifled. Workers should be able to hear both sides and make an informed choice about whether to unionize.

Question 7. Some people have argued that Right to Work laws are good for unions and union organizing. What can you tell me about that?

Answer 7. Despite union bosses' claims to the contrary, Right to Work laws don't diminish workers' ability to organize unions. They simply prevent union bosses from forcing workers to pay union dues without their consent. This ensures that unionization is voluntary, and ultimately voluntary organizations are better for everyone involved.

That's why Samuel Gompers, founder of the American Federation of Labor, said that "The workers of America adhere to voluntary institutions in preference to compulsory systems which are held to be not only impractical but a menace to their rights, welfare and their liberty." If today's union bosses followed Gompers' advice and embraced voluntary dues and voluntary union representation, I think they'd be a lot more successful.

Question 8. Union organizers would have us believe that the reason American workers are rejecting them so often is that their employers are so terrifying. Do you have any thoughts on why so few Americans seem to want to be in unions anymore?

Answer 8. Right now, a unionized worker is more likely to be experiencing a decertification effort in their workplace than a non-union worker is to be experiencing a union drive. Many of today's unions are radical political organizations that support politicians that workers vehemently oppose. Some, like the United Auto Workers, have been exposed for massive corruption. Other union officials have simply been asleep at the wheel, because for so long they've been coasting on their ability to force workers to pay dues and accept their so-called "representation." They haven't been attracting worker support because their model is not based on voluntary support. Unions could be doing much better under a voluntary model, but they reject voluntarism because it conflicts with union bosses' goals of advancing radical politics and lining their own pockets without accountability.

Question 9. Union leaders, and most of my colleagues in the other party, like to characterize labor relations as a struggle between unions and employers. But I know you have a different perspective on the nature of the struggle and its participants. Can you tell us more about that?

Answer 1. When people assume that labor litigation is an endless struggle between corporations and unions, they overlook a third group: workers themselves. Not every conflict is between companies and unions. When workers are trapped in a corrupt, ineffective union that they don't want, their employer often can't do anything to help them. When workers are illegally fired by their employer, union officials who advocated the firing in the first place certainly won't do anything to help. Worker victimization at the hands of union bosses is a real problem, but workers don't have the armies of highly paid lawyers that corporations and union bosses have.

So while we can be sure that any employer slip-up during a union drive will be pounced on by union lawyers, violations of workers' rights by their so-called union "representatives" are rarely exposed. Workers are pressured into silence, knowing that union militants take great pleasure in harassing union critics. They often don't know their rights, or how to bring legal action to enforce them, and even if they knew, they'd never be able to afford a prolonged court battle. Even if they retain free legal counsel from a group like the Right to Work Foundation, labor law is stacked against independent workers, and it is enforced by NLRB bureaucrats who are often former union activists themselves.

Question 10. Why do you think unions so often lose secret ballot elections, even though they collect so-called "union authorization cards" from a majority of employees?

Answer 10. "Card Check" signatures are obtained in such a coercive manner that they can't be relied upon to indicate true worker support. Workers have reported being misled about the true purpose of union cards. Some have been told they would be fired if they hadn't signed and their workplace ended up being unionized, and others have been threatened with outright violence. Even outside of these extreme situations, cards are solicited by professional union organizers who can pressure workers again and again into signing. Many will sign simply to get organizers off their backs.

It is therefore no surprise that unions will often lose secret-ballot elections after they've collected cards form a majority of workers. Union bosses often advocate replacing secret ballots with card check, and pressure employers to "voluntarily" bargain with a union whose support has been purportedly "demonstrated" by card check. But union cards do not conclusively demonstrate anything, and employers are right to protect their employees by rejecting the cards and asking that a secret-ballot election be held.

SENATOR TUBERVILLE

Question 1. As you know, Alabama is a Right to Work state—one of 28 in the country. We are proud to be one, and proud to have workers and industries across the state that have both chosen to organize and chosen not to organize.

Question 1(a). In general, could you speak to what job growth and cost-of-living adjusted income levels are like in Right to Work states vs. others?

Answer 1. According to an analysis of the most recent data by the National Institute for Labor Relations Research, the cost of living adjusted per capita disposable income in Right to Work states was $3,500 higher than in forced-unionism states.

In the decade since 2011, the percentage growth in the number of people employed was 13.2 in Right to Work states, and 5.7 in forced-unionism states.

Question 2. When discussing "illegal" business practices and workers' rights, I think it's important to focus on individual workers.

Question 2(a). What steps can be taken at the Federal level to protect every single worker, not just the ones who choose to join a union?

Answer 2. To reform Federal labor law, we need to end monopoly union bargaining, so that every worker can decide for themselves whether union representation is right for them. We need to allow workers to hear from their employers as well as their union, so they can make an informed choice without being subjected to a one-sided propaganda campaign from union organizers. We need to make unionization a voluntary choice for every worker, so that corrupt union bosses can be held accountable, and workers' freedom of association is protected. And most of all, we need to ban forced union dues across the country with a National Right to Work law.

I strongly condemn illegal actions taken by businesses and union bosses. Workers need to be able to bring legal challenges when their rights are violated, but too often the National Labor Relations Board is biased against them. The NLRB needs to be seriously reformed, if not outright abolished in its current form.

[Whereupon, at 12:01 p.m., the hearing was adjourned.]

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