

PROTECTING THE RIGHT TO ORGANIZE ACT OF 2019

DECEMBER 16, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SCOTT of Virginia, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2474]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2474) to amend the National Labor Relations Act, the Labor Management Relations Act, 1947, and the Labor-Management Reporting and Disclosure Act of 1959, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting the Right to Organize Act of 2019”.

SEC. 2. AMENDMENTS TO THE NATIONAL LABOR RELATIONS ACT.

(a) **DEFINITIONS.**—

(1) **JOINT EMPLOYER.**—Section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)) is amended by adding at the end the following: “Two or more persons shall be employers with respect to an employee if each such person co-determines or shares control over the employee’s essential terms and conditions of employment. In determining whether such control exists, the Board or a court of competent jurisdiction shall consider as relevant direct control and indirect control over such terms and conditions, reserved authority to control such terms and conditions, and control over such terms and conditions exercised by a person in fact: *Provided*, That nothing herein precludes a finding that indirect or reserved control standing alone can be sufficient given specific facts and circumstances.”.

(2) **EMPLOYEE.**—Section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)) is amended by adding at the end the following: “An individual performing any service shall be considered an employee (except as provided in the previous sentence) and not an independent contractor, unless—

“(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;

“(B) the service is performed outside the usual course of the business of the employer; and

“(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.”.

(3) **SUPERVISOR.**—Section 2(11) of the National Labor Relations Act (29 U.S.C. 152(11)) is amended—

(A) by inserting “and for a majority of the individual’s worktime” after “interest of the employer”;

(B) by striking “assign,”; and

(C) by striking “or responsibly to direct them.”.

(b) **REPORTS.**—Section 3(c) of the National Labor Relations Act is amended—

(1) by striking “The Board” and inserting “(1) The Board”; and

(2) by adding at the end the following:

“(2) Effective January 1, 2021, section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 166–44; 31 U.S.C. 1113 note) shall not apply with respect to reports required under this subsection.

“(3) Each report issued under this subsection shall include no less detail than reports issued by the Board prior to the termination of such reports under section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 166–44; 31 U.S.C. 1113 note).”.

(c) **APPOINTMENT.**—Section 4(a) of the National Labor Relations Act (29 U.S.C. 154(a)) is amended by striking “, or for economic analysis”.

(d) **UNFAIR LABOR PRACTICES.**—Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended—

(1) in subsection (a)—

(A) in paragraph (5), by striking the period and inserting “;” and

(B) by adding at the end the following:

“(6) to promise, threaten, or take any action—

“(A) to permanently replace an employee who participates in a strike as defined by section 501(2) of the Labor Management Relations Act, 1947 (29 U.S.C. 142(2));

“(B) to discriminate against an employee who is working or has unconditionally offered to return to work for the employer because the employee supported or participated in such a strike; or

“(C) to lockout, suspend, or otherwise withhold employment from employees in order to influence the position of such employees or the representative of such employees in collective bargaining prior to a strike; and

“(7) to communicate or misrepresent to an employee under section 2(3) that such employee is excluded from the definition of employee under section 2(3).”;

(2) in subsection (b)—

(A) by striking paragraphs (4) and (7);

(B) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively;

(C) in paragraph (4), as so redesignated, by striking “affected;” and inserting “affected; and”; and

(D) in paragraph (5), as so redesignated, by striking “; and” and inserting a period;

(3) in subsection (c), by striking the period at the end and inserting the following: “: *Provided*, That it shall be an unfair labor practice under subsection (a)(1) for any employer to require or coerce an employee to attend or participate in such employer’s campaign activities unrelated to the employee’s job duties, including activities that are subject to the requirements under section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 433(b)).”;

(4) in subsection (d)—

(A) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively;

(B) by striking “For the purposes of this section” and inserting “(1) For purposes of this section”;

(C) by inserting “and to maintain current wages, hours, and working conditions pending an agreement” after “arising thereunder”;

(D) by inserting “: *Provided*, That an employer’s duty to collectively bargain shall continue absent decertification of the labor organization following an election conducted pursuant to section 9” after “making of a concession.”;

(E) by inserting “*further*” before “, That where there is in effect”;

(F) by striking “The duties imposed” and inserting “(2) The duties imposed”;

(G) by striking “by paragraphs (2), (3), and (4)” and inserting “by subparagraphs (B), (C), and (D) of paragraph (1)”;

(H) by striking “section 8(d)(1)” and inserting “paragraph (1)(A)”;

(I) by striking “section 8(d)(3)” and inserting “paragraph (1)(C)” in each place it appears;

(J) by striking “section 8(d)(4)” and inserting “paragraph (1)(D)”;

(K) by adding at the end the following:

“(3) Whenever collective bargaining is for the purpose of establishing an initial collective bargaining agreement following certification or recognition of a labor organization, the following shall apply:

“(A) Not later than 10 days after receiving a written request for collective bargaining from an individual or labor organization that has been newly recognized or certified as a representative as defined in section 9(a), or within such further period as the parties agree upon, the parties shall meet and commence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.

“(B) If after the expiration of the 90-day period beginning on the date on which bargaining is commenced, or such additional period as the parties may agree upon, the parties have failed to reach an agreement, either party may notify the Federal Mediation and Conciliation Service of the existence of a dispute and request mediation. Whenever such a request is received, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

“(C) If after the expiration of the 30-day period beginning on the date on which the request for mediation is made under subparagraph (B), or such additional period as the parties may agree upon, the Service is not able to bring the parties to agreement by conciliation, the Service shall refer the dispute to a tripartite arbitration panel established in accordance with such regulations as may be prescribed by the Service, with one member selected by the labor organization, one member selected by the employer, and one neutral member mutually agreed to by the parties. The labor organization and employer must each select the members of the tripartite arbitration panel within 14 days of the Service’s referral; if the labor organization or employer fail to do so, the Service shall designate any members not selected by the labor organization or the employer. A majority of the tripartite arbitration panel shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of two years, unless amended during such period by written consent of the parties. Such decision shall be based on—

“(i) the employer’s financial status and prospects;

“(ii) the size and type of the employer’s operations and business;

“(iii) the employees’ cost of living;

“(iv) the employees’ ability to sustain themselves, their families, and their dependents on the wages and benefits they earn from the employer; and

“(v) the wages and benefits other employers in the same business provide their employees.”;

(5) by amending subsection (e) to read as follows:

“(e) Notwithstanding chapter 1 of title 9, United States Code (commonly known as the ‘Federal Arbitration Act’), or any other provision of law, it shall be an unfair labor practice under subsection (a)(1) for any employer—

“(1) to enter into or attempt to enforce any agreement, express or implied, whereby prior to a dispute to which the agreement applies, an employee undertakes or promises not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee in any forum that, but for such agreement, is of competent jurisdiction;

“(2) to coerce an employee into undertaking or promising not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee; or

“(3) to retaliate or threaten to retaliate against an employee for refusing to undertake or promise not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee: *Provided*, That any agreement that violates this subsection or results from a violation of this subsection shall be to such extent unenforceable and void: *Provided further*, That this subsection shall not apply to any agreement embodied in or expressly permitted by a contract between an employer and a labor organization.”;

(6) in subsection (g), by striking “clause (B) of the last sentence of section 8(d) of this Act” and inserting “subsection (d)(2)(B)”; and

(7) by adding at the end the following:

“(h)(1) The Board shall promulgate regulations requiring each employer to post and maintain, in conspicuous places where notices to employees and applicants for employment are customarily posted both physically and electronically, a notice setting forth the rights and protections afforded employees under this Act. The Board shall make available to the public the form and text of such notice. The Board shall promulgate regulations requiring employers to notify each new employee of the information contained in the notice described in the preceding two sentences.

“(2) Whenever the Board directs an election under section 9(c) or approves an election agreement, the employer of employees in the bargaining unit shall, not later than two business days after the Board directs such election or approves such election agreement, provide a voter list to a labor organization that has petitioned to represent such employees. Such voter list shall include the names of all employees in the bargaining unit and such employees’ home addresses, work locations, shifts, job classifications, and, if available to the employer, personal landline and mobile telephone numbers, and work and personal email addresses; the voter list must be provided in a searchable electronic format generally approved by the Board unless the employer certifies that the employer does not possess the capacity to produce the list in the required form. Not later than nine months after the date of enactment of the Protecting the Right to Organize Act of 2019, the Board shall promulgate regulations implementing the requirements of this paragraph.

“(i) The rights of an employee under section 7 include the right to use electronic communication devices and systems (including computers, laptops, tablets, internet access, email, cellular telephones, or other company equipment) of the employer of such employee to engage in activities protected under section 7 if such employer has given such employee access to such devices and systems in the course of the work of such employee, absent a compelling business rationale.”.

(e) REPRESENTATIVES AND ELECTIONS.—Section 9 of the National Labor Relations Act (29 U.S.C. 159) is amended—

(1) in subsection (c)—

(A) by amending paragraph (1) to read as follows:

“(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board, by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a), the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. The Board shall find the labor organization’s proposed unit to be appro-

appropriate if the employees in the proposed unit share a community of interest, and if the employees outside the unit do not share an overwhelming community of interest with employees inside. At the request of the labor organization, the Board shall direct that the election be conducted through certified mail, electronically, at the work location, or at a location other than one owned or controlled by the employer. No employer shall have standing as a party or to intervene in any representation proceeding under this section.”;

(B) in paragraph (3), by striking “an economic strike who are not entitled to reinstatement” and inserting “a strike”;

(C) by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively;

(D) by inserting after paragraph (3) the following:

“(4) If the Board finds that, in an election under paragraph (1), a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have been cast in favor of representation by the labor organization, the Board shall certify the labor organization as the representative of the employees in such unit and shall issue an order requiring the employer of such employees to collectively bargain with the labor organization in accordance with section 8(d). This order shall be deemed an order under section 10(c) of this Act, without need for a determination of an unfair labor practice.

“(5)(A) If the Board finds that, in an election under paragraph (1), a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have not been cast in favor of representation by the labor organization, the Board shall dismiss the petition, subject to subparagraphs (B) and (C).

“(B) In any case in which a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have not been cast in favor of representation by the labor organization and the Board determines that the election should be set aside because the employer has committed a violation of this Act or otherwise interfered with a fair election, and the employer has not demonstrated that the violation or other interference is unlikely to have affected the outcome of the election, the Board shall, without ordering a new election, certify the labor organization as the representative of the employees in such unit and issue an order requiring the employer to bargain with the labor organization in accordance with section 8(d) if, at any time during the period beginning one year preceding the date of the commencement of the election and ending on the date upon which the Board makes the determination of a violation or other interference, a majority of the employees in the bargaining unit have signed authorizations designating the labor organization as their collective bargaining representative.

“(C) In any case where the Board determines that an election under this paragraph should be set aside, the Board shall direct a new election with appropriate additional safeguards necessary to ensure a fair election process, except in cases where the Board issues a bargaining order under subparagraph (B).”; and

(E) by inserting after paragraph (7), as so redesignated, the following:

“(8) Except under extraordinary circumstances—

“(A) a pre-election hearing under this subsection shall begin not later than eight days after a notice of such hearing is served on the labor organization; and

“(B) a post-election hearing under this subsection shall begin not later than 14 days after the filing of objections, if any.”; and

(2) in subsection (d), by striking “(e) or” and inserting “(d) or”.

(f) PREVENTION OF UNFAIR LABOR PRACTICES.—Section 10(c) of the National Labor Relations Act (29 U.S.C. 160(c)) is amended by striking “suffered by him” and inserting “suffered by such employee: *Provided further*, That if the Board finds that an employer has discriminated against an employee in violation of paragraph (3) or (4) of section 8(a) or has committed a violation of section 8(a) that results in the discharge of an employee or other serious economic harm to an employee, the Board shall award the employee back pay without any reduction (including any reduction based on the employee’s interim earnings or failure to earn interim earnings), front pay (when appropriate), consequential damages, and an additional amount as liquidated damages equal to two times the amount of damages awarded: *Provided further*, no relief under this subsection shall be denied on the basis that the employee is, or was during the time of relevant employment or during the back pay period, an unauthorized alien as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other provision of Federal law relating to the unlawful employment of aliens”.

(g) ENFORCING COMPLIANCE WITH ORDERS OF THE BOARD.—

(1) IN GENERAL.—Section 10 of the National Labor Relations Act (29 U.S.C. 160) is further amended—

(A) by striking subsection (e);

(B) by redesignating subsection (d) as subsection (e);

(C) by inserting after subsection (c) the following:

“(d)(1) Each order of the Board shall take effect upon issuance of such order, unless otherwise directed by the Board, and shall remain in effect unless modified by the Board or unless a court of competent jurisdiction issues a superseding order.

“(2) Any person who fails or neglects to obey an order of the Board shall forfeit and pay to the Board a civil penalty of not more than \$10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Board to the district court of the United States in which the unfair labor practice or other subject of the order occurred, or in which such person or entity resides or transacts business. No action by the Board under this paragraph may be made until 30 days following the issuance of an order. Each separate violation of such an order shall be a separate offense, except that, in the case of a violation in which a person fails to obey or neglects to obey a final order of the Board, each day such failure or neglect continues shall be deemed a separate offense.

“(3) If, after having provided a person or entity with notice and an opportunity to be heard regarding a civil action under subparagraph (2) for the enforcement of an order, the court determines that the order was regularly made and duly served, and that the person or entity is in disobedience of the same, the court shall enforce obedience to such order by an injunction or other proper process, mandatory or otherwise, to—

“(A) restrain such person or entity or the officers, agents, or representatives of such person or entity, from further disobedience to such order; or

“(B) enjoin such person or entity, officers, agents, or representatives to obedience to the same.”;

(D) in subsection (f)—

(i) by striking “proceed in the same manner as in the case of an application by the Board under subsection (e) of this section,” and inserting “proceed as provided under paragraph (2) of this subsection”;

(ii) by striking “Any” and inserting the following: “

“(1) Within 30 days of the issuance of an order, any”; and

(iii) by adding at the end the following:

“(2) No objection that has not been urged before the Board, its member, agent, or agency shall be considered by a court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.”; and

(E) in subsection (g), by striking “subsection (e) or (f) of this section” and inserting “subsection (d) or (f)”.

(2) CONFORMING AMENDMENT.—Section 18 of the National Labor Relations Act (29 U.S.C. 168) is amended by striking “section 10(e) or (f)” and inserting “subsection (d) or (f) of section 10”.

(h) INJUNCTIONS AGAINST UNFAIR LABOR PRACTICES INVOLVING DISCHARGE OR OTHER SERIOUS ECONOMIC HARM.—Section 10 of the National Labor Relations Act (29 U.S.C. 160) is amended—

(1) in subsection (j)—

(A) by striking “The Board” and inserting “(1) The Board”; and

(B) by adding at the end the following:

“(2) Notwithstanding subsection (m), whenever it is charged that an employer has engaged in an unfair labor practice within the meaning of paragraph (1) or (3) of section 8(a) that significantly interferes with, restrains, or coerces employees in the exercise of the rights guaranteed under section 7, or involves discharge or other serious economic harm to an employee, the preliminary investigation of such charge

shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, such officer or attorney shall bring a petition for appropriate temporary relief or restraining order as set forth in paragraph (1). The district court shall grant the relief requested unless the court concludes that there is no reasonable likelihood that the Board will succeed on the merits of the Board's claim.”; and

(2) by repealing subsections (k) and (l).

(i) PENALTIES.—

(1) IN GENERAL.—Section 12 of the National Labor Relations Act (29 U.S.C. 162) is amended—

(A) by striking “SEC. 12. Any person” and inserting the following:

“SEC. 12. PENALTIES.

“(a) VIOLATIONS FOR INTERFERENCE WITH BOARD.—Any person”; and

(B) by adding at the end the following:

“(b) VIOLATIONS FOR POSTING REQUIREMENTS AND VOTER LIST.—If the Board, or any agent or agency designated by the Board for such purposes, determines that an employer has violated section 8(h) or regulations issued thereunder, the Board shall—

“(1) state the findings of fact supporting such determination;

“(2) issue and cause to be served on such employer an order requiring that such employer comply with section 8(h) or regulations issued thereunder; and

“(3) impose a civil penalty in an amount determined appropriate by the Board, except that in no case shall the amount of such penalty exceed \$500 for each such violation.

“(c) CIVIL PENALTIES FOR VIOLATIONS.—

“(1) IN GENERAL.—Any employer who commits an unfair labor practice within the meaning of section 8(a) shall, in addition to any remedy ordered by the Board, be subject to a civil penalty in an amount not to exceed \$50,000 for each violation, except that, with respect to an unfair labor practice within the meaning of paragraph (3) or (4) of section 8(a) or a violation of section 8(a) that results in the discharge of an employee or other serious economic harm to an employee, the Board shall double the amount of such penalty, to an amount not to exceed \$100,000, in any case where the employer has within the preceding five years committed another such violation.

“(2) CONSIDERATIONS.—In determining the amount of any civil penalty under this subsection, the Board shall consider—

“(A) the gravity of the unfair labor practice;

“(B) the impact of the unfair labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this Act, and on the public interest; and

“(C) the gross income of the employer.

“(3) DIRECTOR AND OFFICER LIABILITY.—If the Board determines, based on the particular facts and circumstances presented, that a director or officer's personal liability is warranted, a civil penalty for a violation described in this subsection may also be assessed against any director or officer of the employer who directed or committed the violation, had established a policy that led to such a violation, or had actual or constructive knowledge of and the authority to prevent the violation and failed to prevent the violation.

“(d) RIGHT TO CIVIL ACTION.—

“(1) IN GENERAL.—Any person who is injured by reason of a violation of paragraph (1) or (3) of section 8(a) may, after 60 days following the filing of a charge with the Board alleging an unfair labor practice, bring a civil action in the appropriate district court of the United States against the employer within 90 days after the expiration of the 60-day period or the date the Board notifies the person that no complaint shall issue, whichever occurs earlier, provided that the Board has not filed a petition under section 10(j) of this Act prior to the expiration of the 60-day period. No relief under this subsection shall be denied on the basis that the employee is, or was during the time of relevant employment or during the back pay period, an unauthorized alien as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other provision of Federal law relating to the unlawful employment of aliens.

“(2) AVAILABLE RELIEF.—Relief granted in an action under paragraph (1) may include—

“(A) back pay without any reduction, including any reduction based on the employee's interim earnings or failure to earn interim earnings;

“(B) front pay (when appropriate);

“(C) consequential damages;
 “(D) an additional amount as liquidated damages equal to two times the cumulative amount of damages awarded under subparagraphs (A) through (C);

“(E) in appropriate cases, punitive damages in accordance with paragraph (4); and

“(F) any other relief authorized by section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g)) or by section 1977A(b) of the Revised Statutes (42 U.S.C. 1981a(b)).

“(3) ATTORNEY’S FEES.—In any civil action under this subsection, the court may allow the prevailing party a reasonable attorney’s fee (including expert fees) and other reasonable costs associated with maintaining the action.

“(4) PUNITIVE DAMAGES.—In awarding punitive damages under paragraph (2)(E), the court shall consider—

“(A) the gravity of the unfair labor practice;

“(B) the impact of the unfair labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this Act, and on the public interest; and

“(C) the gross income of the employer.”.

(2) CONFORMING AMENDMENTS.—Section 10(b) of the National Labor Relations Act (29 U.S.C. 160(b)) is amended—

(A) by striking “six months” and inserting “180 days”; and

(B) by striking “the six-month period” and inserting “the 180-day period”.

(j) LIMITATIONS.—Section 13 of the National Labor Relations Act (29 U.S.C. 163) is amended by striking the period at the end and inserting the following: “: *Provided*, That the duration, scope, frequency, or intermittence of any strike or strikes shall not render such strike or strikes unprotected or prohibited.”.

(k) FAIR SHARE AGREEMENTS PERMITTED.—Section 14(b) of the National Labor Relations Act (29 U.S.C. 164(b)) is amended by striking the period at the end and inserting the following: “: *Provided*, That collective bargaining agreements providing that all employees in a bargaining unit shall contribute fees to a labor organization for the cost of representation, collective bargaining, contract enforcement, and related expenditures as a condition of employment shall be valid and enforceable notwithstanding any State or Territorial law.”.

SEC. 3. CONFORMING AMENDMENTS TO THE LABOR MANAGEMENT RELATIONS ACT, 1947.

The Labor Management Relations Act, 1947 is amended—

(1) in section 213(a) (29 U.S.C. 183(a)), by striking “clause (A) of the last sentence of section 8(d) (which is required by clause (3) of such section 8(d)), or within 10 days after the notice under clause (B)” and inserting “section 8(d)(2)(A) of the National Labor Relations Act (which is required by section 8(d)(1)(C) of such Act), or within 10 days after the notice under section 8(d)(2)(B) of such Act”; and

(2) by repealing section 303 (29 U.S.C. 187).

SEC. 4. AMENDMENTS TO THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959.

Section 203(c) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 433(c)) is amended by striking the period at the end and inserting the following “: *Provided*, That this subsection shall not exempt from the requirements of this section any arrangement or part of an arrangement in which a party agrees, for an object described in subsection (b)(1), to plan or conduct employee meetings; train supervisors or employer representatives to conduct meetings; coordinate or direct activities of supervisors or employer representatives; establish or facilitate employee committees; identify employees for disciplinary action, reward, or other targeting; or draft or revise employer personnel policies, speeches, presentations, or other written, recorded, or electronic communications to be delivered or disseminated to employees.”.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including any amendments made by this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 2474, the *Protecting the Right to Organize (PRO) Act of 2019*, is to strengthen the National Labor Relations Act (NLRA) to safeguard workers’ full freedom of association and to remedy longstanding weaknesses that fail to protect workers’

rights to organize and collectively bargain. These weaknesses have contributed to the decline of union membership, which in turn has contributed to wage stagnation and greater income inequality.

Section 7 of the NLRA states:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall have the right to refrain from any or all of such activities. . . .¹

However, the statutory remedies for violations of the law are wholly inadequate. The NLRA does not adequately deter violations because it cannot authorize civil monetary penalties. Moreover, the National Labor Relations Board (NLRB), the agency charged with enforcing rights under the NLRA, cannot enforce its own orders, and instead must seek enforcement from a United States Court of Appeals.²

Congress must update the NLRA to protect workers' rights to organize, advocate, and collectively bargain, particularly in the face of a fissuring workplace where employment relationships are "broken into pieces [and] often shifted to subcontractors, third party companies, or . . . to individuals who are treated as independent contractors."³ Employers are incentivized to misclassify employees as independent contractors in order to deny workers NLRA protections and evade joint employment liability while avoiding or frustrating union organizing.⁴ Labor law needs to adapt to ensure that workers in a fissured workplace can exercise the rights and protections afforded to them under the NLRA.

Antiunion campaigns by some employers and weak penalties for unlawful conduct have significantly contributed to a decline in union membership.⁵ A well-documented consequence of the decline in union membership is growing economic inequality in our nation.⁶ According to a recent study, the decline in union membership accounts for one-third of the rise in wage inequality among men, and one-fifth among women.⁷ The current unionization rate "is as low as it was prior to the passage of the National Labor Relations Act."⁸ In fact, only 6.4 percent of private-sector workers are union-

¹29 U.S.C. § 157. The right to form or join a labor union is also an internationally-recognized human right. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at 23(4) (Dec. 10, 1948).

²29 U.S.C. § 160(e).

³David Weil & Tanya Goldman, *Labor Standards, the Fissured Workplace, and the On-Demand Economy*, Perspectives on Work 27 (2016), http://www.fissuredworkplace.net/assets/Weil_Goldman.pdf.

⁴See Francoise Carre, (IN)dependent Contractor Misclassification 8 (2015), <https://www.epi.org/files/pdf/87595.pdf>; Josh Bivens et al., Econ. Policy Inst., *How Today's Unions Help Working People* 19 (2017), <https://www.epi.org/files/pdf/133275.pdf>.

⁵Josh Bivens et al., Econ. Policy Inst., *How Today's Unions Help Working People* 18–19 (2017), <https://www.epi.org/files/pdf/133275.pdf>.

⁶Taylor Telford, *Income Inequality in America is the Highest It's Been Since Census Bureau Started Tracking it, Data Shows*, Washington Post (Sept. 26, 2019, 3:57 PM), <https://www.washingtonpost.com/business/2019/09/26/income-inequality-america-highest-its-been-since-census-started-tracking-it-data-show/>; Josh Bivens et al., Econ. Policy Inst., *How Today's Unions Help Working People* 7 (2017), <https://www.epi.org/files/pdf/133275.pdf>.

⁷Bruce Western & Jake Rosenfeld, *Unions, Norms, and the Rise in U.S. Wage Inequality*, 76 *Am. Sociological Rev.* 513 (2011).

⁸*Protecting the Right to Organize: The Need for Labor Law Reform Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor*, 116th Cong.

ized⁹—a steep decline from the 25 percent of private-sector workers who were unionized in 1970s and the over 30 percent of private-sector workers who had the benefit of a union in the 1950s.¹⁰ However, according to a 2018 Gallup poll, 62 percent of Americans approve of labor unions,¹¹ and data from a 2018 MIT survey shows that “nearly half of nonunionized workers would join a union if given the opportunity.”¹²

To close the gap between the aspirations of workers to join a union and the low rate of union membership, Congress must address the full range of deficiencies in the NLRA. The PRO Act is designed to lessen income inequality and support workers’ fundamental right to organize and collectively bargain.

COMMITTEE ACTION

115TH CONGRESS

On December 5, 2017, Congressman Robert C. “Bobby” Scott (D–VA–3) introduced H.R. 4548, the *Workplace Action for a Growing Economy Act* (WAGE Act). The WAGE Act amended the NLRA to: require backpay and authorize additional liquidated damages equal to double the amount of backpay to employees who were terminated or experienced serious economic harm resulting from unfair labor practices, require notice posting of the rights guaranteed to workers under the NLRA, authorize civil monetary penalties for violations of the NLRA that result in the discharge of employees or other serious economic harm, prevent the misclassification of employees as supervisors or independent contractors, and streamline the process for reaching initial collective bargaining agreements. H.R. 4548 was referred to the House Committee on Education and the Workforce. No further action was taken on the bill.

On October 19, 2018, Congressman Scott (VA) introduced H.R. 6080, the *Workers’ Freedom to Negotiate Act of 2018*. H.R. 6080 amended the NLRA to: make backpay without reduction available as a remedy to employees who were terminated or experienced serious economic harm resulting from unfair labor practices, require notice posting of the rights guaranteed under the NLRA, authorize civil monetary penalties for unfair labor practices that result in the discharge of an employee or serious economic harm, prevent the misclassification of employees as independent contractors or supervisors, prevent employers from avoiding their bargaining obligations as joint employers under the NLRA, protect workers’ right to engage in strike and boycott activity, allow workers to bring civil actions against employers for labor law violations in federal court, and require bidders seeking federal contracts over \$500,000 to disclose administrative merit determinations of labor law violations.

(2019) (Testimony of Jake Rosenfeld, Professor of Sociology at Washington University, St. Louis, at 1) (reprinted as Serial 116–11), available at <https://edlabor.house.gov/imo/media/doc/RosenfeldTestimony032619.pdf> [hereinafter Rosenfeld Testimony].

⁹Bureau of Labor Statistics, *Table 3. Union Affiliation of Employed Wage and Salary Workers by Occupation and Industry*, Econ News Release (Jan. 18, 2019), <https://www.bls.gov/news.release/union2.t03.htm>.

¹⁰Josh Bivens et al., Econ. Policy Inst., *How Today’s Unions Help Working People 2* (2017), <https://www.epi.org/files/pdf/133275.pdf>.

¹¹Lydia Saad, *Labor Union Approval Steady at 15-Year High*, Gallup (Aug. 30, 2018), <https://news.gallup.com/poll/241679/labor-union-approval-steady-year-high.aspx>.

¹²Thomas Kochan et al., *Who Wants to Join a Union? A Growing Number of Americans*, MIT Mgmt. Blog (Sept. 2, 2018), <https://gcmg.mit.edu/whats-new/blog/who-wants-join-union-growing-number-americans>.

H.R. 6080 was referred to the Committee on Education and the Workforce and the Committee on Oversight and Government Reform. No further action was taken on the bill.

116TH CONGRESS

On March 26, 2019, the Health, Employment, Labor, and Pensions Subcommittee (HELP Subcommittee) of the House Committee on Education and Labor (Committee) held a hearing entitled “*Protecting Workers’ Right to Organize: The Need for Labor Law Reform*” (hereinafter March 26th Hearing). The witnesses were: Jake Rosenfeld, Professor of Sociology at Washington University, St. Louis, MO; Cynthia Harper, Former Lamination Specialist at Fuyao Glass, Englewood, OH; Glenn Taubman, Staff Attorney for the National Right to Work Foundation, Springfield, VA; and, Devki K. Virk, Member of Bredhoff & Kaiser, PLLC, Washington, DC. During the hearing, members and witnesses identified the economic consequences of declining union membership, the inadequacy of deterrents for employer violations of the NLRA, and legislative solutions that would strengthen the rights set forth in the law.

On May 2, 2019, Congressman Scott (VA) introduced H.R. 2474, the *Protecting the Right to Organize Act of 2019* (PRO Act). H.R. 2474 amends the NLRA to: require backpay without reduction as a remedy to employees who were terminated or experienced serious economic harm resulting from unfair labor practices, require a notice posting of workers’ rights under the NLRA; authorize civil monetary penalties for violations of workers’ rights under the NLRA; guarantee workers free and fair representation elections; prevent misclassification of employees as independent contractors and supervisors; prevent employers from evading their duties as joint employers under the NLRA; protect workers’ First Amendment rights; allow workers to bring civil actions against employers for labor law violations in federal court; and, provide a mechanism for reaching a first collective bargaining agreement. The PRO Act was referred to the Committee.

On May 8, 2019, the HELP Subcommittee held a legislative hearing entitled “*Protecting the Right to Organize Act: Detering Unfair Labor Practices*” (hereinafter May 8th Hearing). The witnesses were: Richard Trumka, President of the AFL–CIO, Washington, DC; Jim Staus, Former Supply Clerk at University of Pittsburgh Medical Center, Pittsburgh, PA; Philip Miscimarra, Partner at Morgan, Lewis & Bockius LLP, Washington, DC; and, Mark Pearce, Executive Director of the Workers’ Rights Institute at Georgetown University Law School and former Chairman of the NLRB, Washington, DC. During the hearing, members and witnesses explored the consequences of the NLRA’s weak enforcement scheme, the impacts of lacking penalties for employer interference with worker organizing, the NLRB’s inability to enforce its own orders, and the remedies contained in the PRO Act.

On July 25, 2019, the HELP Subcommittee held a legislative hearing entitled “*Protecting the Right to Organize Act: Modernizing America’s Labor Laws*” (hereinafter July 25th Hearing). The witnesses were: Charlotte Garden, Associate Professor and Co-Associate Dean for Research and Faculty Development at the Seattle University School of Law, Seattle, WA; Josue Alvarez, Truck Driver for XPO Logistics, Bell Gardens, CA; G. Roger King, Senior Labor

and Employment Counsel at the HR Policy Association, Washington, DC; and, Richard F. Griffin, Jr., Of Counsel at Bredhoff & Kaiser, PLLC, and former Member and General Counsel of the NLRB, Washington, DC. During the hearing, members and witnesses examined the problems caused by misclassification of employees as independent contractors or supervisors, the NLRB's efforts to narrow the joint employer standard, and undue restrictions on workers' First Amendment right to strike or engage in peaceful picketing activity.

On September 25, 2019, the Committee met for a full committee markup of H.R. 2474. The Committee considered as base text an amendment in the nature of a substitute (ANS) offered by Chairman Scott (VA). The ANS incorporated H.R. 2474 with the following modifications:

- A reinstatement of the NLRB's responsibility to submit annual reports to Congress summarizing significant case activities and operations.
- A protection for good faith collective bargaining to prevent employers from declaring an impasse in bargaining and unilaterally implementing new terms or conditions of employment.
- A prohibition on unilateral employer withdrawal of union recognition without a decertification election.
- A 14-day time limit within which labor organizations and employers select members of tripartite arbitration panels during first contract negotiations.
- A clarification that the NLRB's representation election procedures require employers to provide unions with employee contact information in a searchable electronic format.
- Protections for employee concerted activity that occurs via workplace email or other employer-provided electronic communication systems on non-working time, unless the employer has a compelling business rationale to prevent such use.
- A requirement that the NLRB find proposed bargaining units appropriate when labor organizations demonstrate that the employees in the bargaining unit share a community of interest. However, the NLRB is not required to find proposed bargaining units appropriate when there is a determination that excluded employees share an overwhelming community interest with the petitioned for unit of employees.

The following four amendments to the ANS were offered and adopted during the markup:

- Congresswoman Frederica Wilson (D-FL-24) offered an amendment to specify that an employer violates the NLRA by misclassifying an employee as anything other than an employee under the NLRA. The amendment was adopted by a vote of 25 ayes to 21 nays.
- Congressman Andy Levin (D-MI-9) offered an amendment to permit union representation elections to be conducted either electronically, through certified mail, at the employer's premises, or at a location other than one owned or controlled by the employer. The amendment was adopted by a vote of 27 ayes to 21 nays.
- Congressman Josh Harder (D-CA-10) offered an amendment to broaden the enforcement provisions in the PRO Act by authorizing civil monetary penalties for all violations of Section

8(a) of the NLRA. The amendment was adopted by a vote of 27 ayes to 21 nays.

- Congresswoman Lori Trahan (D–MA–3) offered an amendment to prohibit offensive lockouts by making it an unfair labor practice for an employer to lockout, suspend, or otherwise withhold employment from employees in order to influence the position of such employees or their union in collective bargaining prior to a strike. The amendment was adopted by a vote of 27 ayes to 21 nays.

The following 31 amendments to the ANS were offered, but not adopted during the markup:

- Congressman Rick Allen (R–GA–12) offered an amendment to strike the provision in the ANS that protects the right of unions and employers to negotiate fair share fees notwithstanding any state laws. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Allen offered an amendment to allow employees to revoke their union dues authorization at any time, rather than during prescribed time periods. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Glenn Thompson (R–PA–15) offered an amendment to require that the notice of employees' rights and protections included in the ANS must include information on opting out of paying dues for labor organizations' political activities and on opting out of all dues payment in states that prohibit fair share requirements. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Phil Roe (R–TN–1) offered an amendment to prohibit employers from recognizing unions on the basis of majority support in the form of card check. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Roe offered an amendment to require mandatory union recertification elections when turnover or mergers occur that impact over 50% of the bargaining unit. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Roe offered an amendment to allow individuals who are not union members and are covered by a collective bargaining agreement to vote on collective bargaining agreements, strikes, or participation in a multiemployer pension plan. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Jim Banks (R–IN–3) offered an amendment to require employees prove their legal status in order to vote in a union representation election. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Dusty Johnson (R–SD–At Large) offered an amendment to allow employers to avoid collective bargaining over raises that are not specified in a collective bargaining agreement. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Daniel Meuser (R–PA–9) offered an amendment to establish an unfair labor practice for labor organizations that fail to protect personal information received during an organizing drive or to use such information for any matter

other than a representation proceeding. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman William Timmons (R–SC–4) offered an amendment to authorize civil penalties against unions for violations of the secondary boycott prohibitions under current law. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman James Comer (R–KY–1) offered an amendment to strike the language repealing Section 8(b)(4) of the NLRA (covering secondary boycotts) from the ANS. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Fred Keller (R–PA–12) offered an amendment to strike the language repealing Section 8(b)(4) and 8(b)(7) of the NLRA (covering secondary boycotts and recognition picketing) from the ANS. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congresswoman Elise Stefanik (R–NY–21) offered an amendment to strike the definition of an independent contractor from the ANS. The amendment was defeated by a vote of 21–27.

- Congressman Steve Watkins (R–KS–2) offered an amendment to prevent an arbitration panel’s decision regarding a first collective bargaining agreement from being based on a requirement that employees in the bargaining unit participate in a multiemployer pension plan. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Tim Walberg (R–MI–7) offered an amendment to delay union pre-election hearings for at least 14 days. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Walberg offered an amendment to require notice accompanying union authorization cards declaring the purpose and disclosure of dues and fees. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Walberg offered an amendment to prevent human trafficking provisions from being taken into account for purposes of determining joint employer status. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Bradley Byrne (R–AL–1) offered an amendment to narrow the joint employer standard in the ANS. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Byrne offered an amendment to prevent the imposition of corporate social responsibility requirements on third parties from being used as evidence of a joint employer relationship. The amendment was defeated by a vote of 21 ayes to 27 nays.

- Congressman Lloyd Smucker (R–PA–11) offered an amendment to expand civil monetary penalty provisions in the ANS so that they apply to labor organizations. The amendment was defeated by a vote of 21 ayes to 26 nays.

- Congressman Smucker offered an amendment to prohibit unions from preventing workers, regardless of membership status in the union, from working during a strike. The amendment was defeated by a vote of 21 ayes to 26 nays.

- Congressman Smucker offered an amendment to require employees to provide 35-day advance approval of any union ex-

penditure for a purpose other than collective bargaining. The amendment was defeated by a vote of 21 ayes to 26 nays.

- Congressman Brett Guthrie (R–KY–2) offered an amendment to strike the provision in the ANS that ends employer status as a party in representation cases. The amendment was defeated by a vote of 21 ayes to 26 nays.

- Congressman Mark Walker (R–NC–6) offered an amendment to strike the provision in the ANS that clarifies the types of persuader activity that must be disclosed under the *Labor-Management Reporting and Disclosure Act of 1959* (LMRDA). The amendment was defeated by a vote of 21 ayes to 26 nays.

- Congressman Russ Fulcher (R–ID–21) offered an amendment to permit employees in a union, who have been voluntarily recognized by their employer, to petition for a decertification election within a 45-day window after recognition and eliminate the need for the NLRB to fully investigate and adjudicate an unfair labor practice charge before conducting a decertification election. The amendment was defeated by a vote of 21 ayes to 26 nays.

- Congresswoman Virginia Foxx (R–NC–5), Ranking Member of the Committee, offered an amendment to establish that an employee’s violent conduct is a violation of the NLRA, prevent reinstatement of any violent employee and end union recognition based on the violent conduct of an employee, and authorize the NLRB to seek injunctions against labor organizations that directly engage in or encourage violence. The amendment was defeated by a vote of 21 ayes to 26 nays.

- Ranking Member Foxx offered an amendment to limit the voter contact information that unions receive from an employer before a representation election to only one form of contact for each employee. The amendment was defeated by a vote of 21 ayes to 26 nays.

- Ranking Member Foxx offered an amendment to require collective bargaining over the full scope of health benefits, notwithstanding any other provision of law. The amendment was defeated by a vote of 21 ayes to 26 nays.

- Ranking Member Foxx offered an amendment to strike provisions of the ANS that provide mediation and arbitration to ensure the employer and union conclude a first collective bargaining agreement. The amendment was defeated by a vote of 21 ayes to 26 nays.

- Ranking Member Foxx offered an amendment to mandate that unions file additional annual financial reports regarding trusts such as training funds, strike funds, and apprenticeship program budgets with the U.S. Department of Labor as well as create whistleblower protections covering employees of labor unions. The amendment was defeated by a vote of 21 ayes to 26 nays.

- Ranking Member Foxx offered an amendment to rename the bill. The amendment was defeated by voice vote.

The Committee voted to favorably report H.R. 2474, as amended, to the House of Representatives by a vote of 26 ayes to 21 nays.

COMMITTEE VIEWS

The Committee is committed to protecting employees' fundamental rights to freedom of association and collective bargaining. The PRO Act deters violations of these rights by authorizing civil monetary penalties, simplifying the enforcement of remedies, and bolstering transparency. Moreover, the PRO Act prevents employers from evading their obligations under the NLRA, eliminates prohibitions on employees' First Amendment rights, and safeguards employees' right to engage in concerted activity.

UNIONS ARE ESSENTIAL FOR A THRIVING MIDDLE CLASS

Once a union is elected by a majority of employees, or voluntarily recognized by an employer on the basis of a showing of majority support for the union, workers have the right to negotiate for better terms and conditions of employment. Through this process of collective bargaining, unions can secure gains including wage increases, healthcare and retirement benefits, increased workplace safety, predictable work schedules, and protections against discrimination.¹³

A worker covered by a collective bargaining agreement earns an average of 13.2 percent more in wages than a peer in the same sector who has similar experience, education, and occupational classification in a non-union workplace.¹⁴ Workers covered by a union contract are more than four times as likely to have a defined benefit pension than nonunion workers,¹⁵ and private sector workers covered by a union contract are 28 percent more likely to be offered health insurance through their employer.¹⁶

Data show that union membership helps to narrow the racial wealth gap.¹⁷ Union members of color have almost five times the median wealth of their non-union counterparts.¹⁸ Moreover, union representation benefits all workers regardless of race by ensuring that they have job stability and other critical employment benefits.¹⁹

Unions nearly close the gender wage gap. As Dr. Rosenfeld testified at the March 26th Hearing, "collective bargaining agreements often include many key tools proven to reduce wage inequality between men and women. They standardize wage rates, promote pay transparency, and provide workers who feel they have been unfairly treated with procedures to file formal complaints."²⁰ Union contracts ensure equal pay for the same job classification and se-

¹³ See generally Josh Bivens et al., Econ. Policy Inst., *How Today's Unions Help Working People* (2017), <https://www.epi.org/files/pdf/133275.pdf>.

¹⁴ *Id.*

¹⁵ Bureau of Labor Statistics, *Retirement Benefits: Access, Participation, and Take-Up Rates*, Employee Benefits Survey (Mar. 2018), <https://www.bls.gov/ncs/ebs/benefits/2018/ownership/civilian/table02a.htm>.

¹⁶ Bureau of Labor Statistics, *Medical Care Benefits: Access, Participation, and Take-Up Rates*, Econ. News Release (Mar. 2018), <https://www.bls.gov/ncs/ebs/benefits/2018/ownership/private/table09a.htm>.

¹⁷ Christian E. Weller and David Madland, *Union Membership Narrows the Racial Wealth Gap for Families of Color*, Center for American Progress (Sept. 4, 2018, 8:00 AM), <https://www.americanprogress.org/issues/economy/reports/2018/09/04/454781/union-membership-narrows-racial-wealth-gap-families-color/>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Rosenfeld Testimony at 5 (citing Elise Gould & Celine McNicholas, *Unions Help Narrow the Gender Wage Gap*, Econ. Policy Inst. (Apr. 3, 2017), <https://www.epi.org/blog/unions-help-narrow-the-gender-wage-gap/>).

niority regardless of gender.²¹ For women represented by unions, average hourly wages are 9.2 percent higher than for nonunionized women who have comparable characteristics.²²

THE DECLINE OF UNION MEMBERSHIP HAS BEEN A MAJOR CAUSE OF
WAGE STAGNATION AND INCOME INEQUALITY

Despite the benefits of union membership, union density has fallen from 33.2 percent of the workforce in 1956 to 10.5 percent in 2018.²³ This decline in union density has contributed to over 40 years of wage stagnation. Hourly wages for the typical worker grew in lockstep with productivity between the end of World War II and 1979, increasing by more than 90 percent.²⁴ Since 1979, however, wages have only grown by 11.6 percent, adjusting for inflation, while workers' productivity has increased by 69.6 percent.²⁵

Loss of union density has also contributed to wage stagnation for non-union workers, as non-union employers faced less pressure to increase wages to match those in unionized workplaces. At the March 26th Hearing, Dr. Rosenfeld testified about research he conducted in 2016, which revealed that the wages of non-union men would be more than \$50 higher per week, adjusting for inflation, if unions today remained as strong as they were in the late 1970s.²⁶

The decline in union membership also widened income inequality.²⁷ If workers are not able to collectively bargain, then they are unable to negotiate for a fair share of the wealth they create. As the chart below from the Economic Policy Institute demonstrates, while union density steadily declined from 25.4 percent in 1979 to 11.1 percent in 2015, the share of income in the United States received by the wealthiest 10 percent of Americans increased from 32.3 percent to 47.8 percent during that same period.²⁸

²¹ Elise Gould & Celine McNicholas, *Unions Help Narrow the Gender Wage Gap*, Econ. Policy Inst. (Apr. 3, 2017), <https://www.epi.org/blog/unions-help-narrow-the-gender-wage-gap/>.

²² Josh Bivens et al., Econ. Policy Inst., *How Today's Unions Help Working People* 11 (2017), <https://www.epi.org/files/pdf/133275.pdf>.

²³ *Id.*; Bureau of Labor Statistics, *Union Membership (Annual)*, News Release (Jan. 19, 2018), <https://www.bls.gov/news.release/union2.htm>.

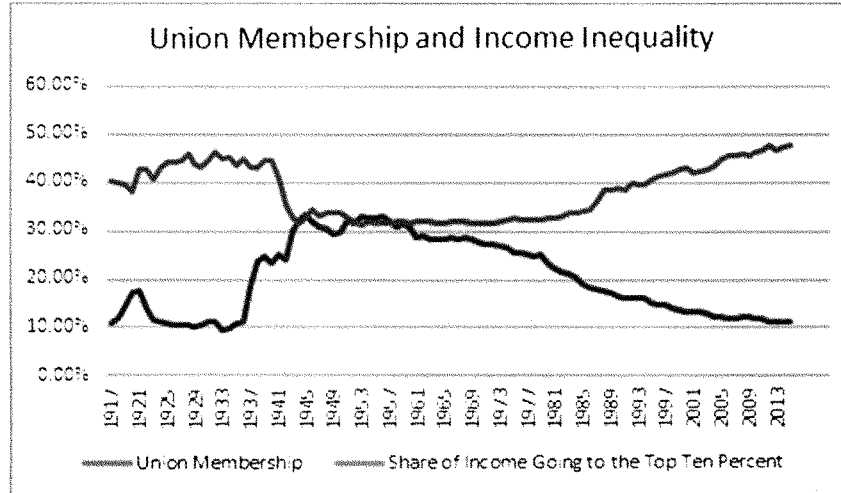
²⁴ THE PRODUCTIVITY-PAY GAP, Econ. Policy Inst., <https://www.epi.org/productivity-pay-gap/> (last visited Dec. 4, 2019) (updated July 2019).

²⁵ *Id.*

²⁶ Rosenfeld Testimony at 2 (citing Jake Rosenfeld et al., Econ. Policy Inst., *Union Decline Lowers Wages of Nonunion Workers* 12 (2016), <https://www.epi.org/files/pdf/112811.pdf>).

²⁷ Bruce Western and Jake Rosenfeld, *Unions, Norms, and the Rise in U.S. Wage Inequality*, 76 Am. Sociological Rev. 513 (2011).

²⁸ Josh Bivens et al., Econ. Policy Inst., *How Today's Unions Help Working People* 11–12 (2017), <https://www.epi.org/files/pdf/133275.pdf>.



**WEAK LABOR LAWS AND INTENSIFIED EMPLOYER OPPOSITION ARE
MAJOR CAUSES OF THE DECLINE IN UNION MEMBERSHIP**

The low rate of union membership is not a product of worker choice; survey results show that just under half of all non-union workers would join a union if they had the opportunity to do so.²⁹ The gap between workers' desire to form a union and their ability to do so is largely attributable to the NLRA's failure to deter employers from violating their employees' rights to organize and bargain.³⁰

A 2009 study on employer conduct during union elections found that, in 96 percent of elections, employers conducted anti-union campaigns during representation elections that consisted "of threats, interrogation, surveillance, harassment, coercion, and retaliation."³¹ That study found that employers threatened to close the plant in 57 percent of representation elections, and that employers threatened to cut wages in 47 percent of union representation elections.³² The study also found that 90 percent of employers forced their employees to attend captive audience meetings—mandatory anti-union meetings—prior to a representation election, and 77 percent had supervisors conduct one-on-one meetings with workers where the employees were threatened and/or interrogated about their union activity.³³ To make matters worse, the law does not prohibit employers from requiring employees to attend such meet-

²⁹Thomas Kochan et al., *Who Wants to Join a Union? A Growing Number of Americans*, MIT Mgmt. Blog (Sept. 2, 2018), <https://gcj.mit.edu/whats-new/blog/who-wants-join-union-growing-number-americans>.

³⁰At the March 26th Hearing, Dr. Rosenfeld rebutted the claim that automation and outsourcing have been major causes of the decline in union density; he did so by comparing the dramatic decline in union membership across industries, noting that the decline has been equally great in industries like transportation and construction, which have not been greatly affected by automation and outsourcing. Rosenfeld Testimony at 5–6.

³¹Kate Bronfenbrenner, Econ. Policy Inst., *No Holds Barred: The Intensification of Employer Opposition to Organizing* 9–10 (2009), <https://www.epi.org/files/page/-/pdf/bp235.pdf>.

³²*Id.*

³³*Id.* at 12.

ings,³⁴ except in the 24 hours immediately preceding the election.³⁵ The error in this policy is that captive audience meetings are just as coercive at any time before an election as they are the day before.³⁶

Despite the frequent use of intimidation tactics against employees, unions only reported 40 percent of cases of illegal behavior to the NLRB because the administrative process is “fraught with delays and risks to the worker, with extremely limited penalties for the employer, even in the most extreme cases.”³⁷ Such tactics, coupled with the firing of union supporters during elections, effectively stymie employees’ right to choose a union in an environment free of coercion.

At the March 26th Hearing, Ms. Virk testified about how the NLRA fails to deter employers from violating the law:

The NLRB investigates hundreds of charges of illegal firings and retaliation each year. In fiscal year 2018, the NLRB obtained 1,270 reinstatement orders from employers for workers who were illegally fired for exercising their rights under labor law, and the NLRB collected \$54 million in back pay for workers.³⁸ But because there are no significant monetary penalties against employers who illegally fire workers—only the back pay that the employer would have been paying the worker all along, minus any wages the worker did or could have earned in the meantime—employers just keep on firing workers when they try to organize a union.³⁹

Taken together, employer antiunion tactics and the NLRA’s deficiencies actually have the effect of incentivizing employers to commit unfair labor practices. As Mr. Pearce explained at the May 8th Hearing:

The employer can take full advantage of violating the law with minimum repercussions. You terminate an individual . . . and kill the organizing drive. You could possibly put the back-pay owed to that individual in a low interest savings account and, by the time there is a determination that you have to pay, and you subtract the interim earnings from that, you have made money on your wrongdoing.⁴⁰

³⁴ *J.P. Stevens & Co.*, 219 NLRB 850, 854 (1974).

³⁵ *Peerless Plywood Co.*, 107 NLRB 427 (1953) (ruling that captive audience speeches are unlawful if they occur within 24 hours of the election).

³⁶ See Tumka Testimony at 3; see also Michael M. Oswalt, *The Content of Coercion*, 52 U.C. Davis L. Rev. 1585, 1626 (2019) (noting that, when the NLRB provided a rationale for prohibiting captive audience meetings 24 hours before an election, the NLRB never explained “why a thirty-six, forty-eight, or even fifty-six hour cooling-off period would not have been psychically better”).

³⁷ Kate Bronfenbrenner, Econ. Policy Inst., No Holds Barred: The Intensification of Employer Opposition to Organizing 3 (2009), <https://www.epi.org/files/page/-/pdf/bp235.pdf>.

³⁸ NLRB, FY 2018 Performance and Accountability Report 15 (2018), <https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1674/nlrpar2018508.pdf>.

³⁹ *Protecting Workers’ Right to Organize: The Need for Labor Law Reform Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor*, 116th Cong. (2019) (written testimony of Devki Virk, Member at Bredhoff & Kaiser, PLLC, at 10–11) (reprinted as Serial 116–11) [Hereinafter Virk Testimony].

⁴⁰ Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor, *Protecting the Right to Organize Act: Deterring Unfair Labor Practices*, YouTube (May 8, 2019), <https://www.youtube.com/watch?v=ns7zq9WLwvs> (answer of Mr. Pearce at 1:28:26).

THE PRO ACT WOULD DETER EMPLOYERS FROM VIOLATING WORKERS'
RIGHT TO ORGANIZE

*Congress Must Amend the NLRA to Provide for Civil Penalties and
Meaningful Remedies for Violations*

The NLRA's weaknesses are contrary to the statute's explicit purpose of "encouraging the practice and procedure of collective bargaining" and "protecting the exercise by workers of full freedom of association."⁴¹ As Mr. Pearce explained at the May 8th Hearing, Section 10(c) of the NLRA limits remedies for an unfair labor practice to a cease-and-desist order, a notice posting, and, in the event of an unlawful termination, reinstatement with backpay.⁴² Because the NLRB is only empowered to award backpay, employers can commit serious violations of the NLRA—such as threats, rules in the employee handbook that prohibit protected concerted activity, or surface bargaining with no intent to reach an agreement—and avoid paying any monetary amount because the violation did not directly cause an individual monetary harm.⁴³ The NLRA is so weak that, in particularly egregious cases, the NLRB's "extraordinary" remedy is not a monetary penalty, but an order for the employer to read the notice aloud to the employees.⁴⁴

In this sense, the NLRA is unlike other federal labor and employment laws. For example, an employee may receive compensatory and punitive damages for a violation of Title VII of the Civil Rights Act of 1964,⁴⁵ and employees under the Fair Labor Standards Act (FLSA) can recover liquidated damages in addition to unpaid minimum wages and overtime.⁴⁶

Further undermining the NLRA's remedies is that the NLRB must reduce any backpay award by the amount of income the employee has earned while their case is pending before the NLRB. At the May 8th Hearing, Mr. Staus testified as to how this negatively impacted his case, where the NLRB found that University of Pittsburgh Medical Center unlawfully fired him for union organizing:

Although the federal government twice found that UPMC wrongly fired me, six years later I still haven't returned to work at UPMC and I still haven't seen a penny of back-pay. In fact, under current law, everything I earn since I was fired is deducted from what UPMC owes me. By trying to provide for my family at another job, I am working off UPMC's debt.⁴⁷

The PRO Act resolves these defects by awarding monetary penalties of up to \$50,000 for any unfair labor practice, which is deter-

⁴¹ 29 U.S.C. § 151.

⁴² *Protecting the Right to Organize Act: Deterring Unfair Labor Practices Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor*, 116th Cong. (2019) (written testimony of Mark Gaston Pearce, Executive Director of the Workers' Rights Institute at Georgetown University Law Center, at 2) [Hereinafter Pearce Testimony]; *see also* 29 U.S.C. § 160(c).

⁴³ Virk Testimony at 11, 19.

⁴⁴ *Ishikawa Gasket Am., Inc.*, 337 NLRB 176, 176 (2001) (declining to require employer to read notice where employer violated NLRA by discharging employee for union activities, decreasing an annual bonus because of union activity, soliciting an employee to surveil employees' union activities, and requiring an employee to sign a separation agreement where the employee waives their right to engage in protected activities in exchange for a settlement payment); *see also* Virk Testimony at 11.

⁴⁵ Pearce Testimony at 2; *see also* 42 U.S.C. § 1981a(a)(1).

⁴⁶ Pearce Testimony at 2; *see also* 29 U.S.C. § 216.

⁴⁷ *Protecting the Right to Organize Act: Deterring Unfair Labor Practices Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor*, 116th Cong. (2019) (written testimony of Jim Staus, at 3).

mined based upon the gravity of the unfair labor practice, the impact of the violation, and the gross income of the employer. The NLRB must double this penalty if the violation involves an employee's discharge or serious economic harm and if the employer committed another such violation within the preceding five years. To further deter employers from retaliating against employees, the PRO Act awards backpay plus an amount equal to two times the backpay award, without any reduction for interim earnings.

The NLRB Must Be Able to Enforce Its Own Orders

The NLRB is further limited by weaknesses in its own administrative procedure. For example, as early as 1969, the Administrative Conference of the United States (ACUS) observed that the NLRB is unlike other federal enforcement agencies in that its orders are not self-enforcing.⁴⁸ Instead, an employer can simply refuse to obey the order, requiring the NLRB to apply for enforcement from a United States Court of Appeals, which further delays remedies for an employee.⁴⁹ ACUS concluded that this procedure “serves no useful purpose but operates to delay the effectiveness of NLRB orders and impose unnecessary costs on the Board.”⁵⁰

Fifty years after ACUS recommended that the NLRB should be authorized to issue self-enforcing orders similar to those of other federal agencies, the PRO Act implements that recommendation. The ACUS report points to the Federal Trade Commission as a model.⁵¹ Under the PRO Act, NLRB orders would be effective upon issuance, and the PRO Act allows the aggrieved party 30 days to petition for review from a United States Court of Appeals.

Workers Must Be Able to Secure Temporary Reinstatement for the Duration of Their NLRB Proceedings

Despite the fact that employees confront lengthy delays in securing reinstatement and backpay, the NLRB “sparingly” uses its authority to seek court injunctions for temporary reinstatement when an employer fires workers for union organizing.⁵² As Mr. Pearce explained at the May 8th Hearing, “In fiscal year 2018, the Board only authorized 22 injunctions . . . By contrast, during my years as Chairman, the Board authorized an average of 43 injunctions per year.”⁵³ Although the NLRA’s stated purpose is to protect employees’ freedom of association,⁵⁴ the NLRB is not mandated to seek an injunction requiring temporary reinstatement while the employee’s case is pending, but it must do so if an employer alleges that a union engages in unlawful secondary activity or recog-

⁴⁸ *Judicial Enforcement of Orders of the National Labor Relations Board*, Administrative Conference of the United States, <https://www.acus.gov/recommendation/judicial-enforcement-orders-national-labor-relations-board> (last visited Dec. 4, 2019) (recommendation No. 69–2, published on October 22, 1969).

⁴⁹ 29 U.S.C. § 160(e).

⁵⁰ *Judicial Enforcement of Orders of the National Labor Relations Board* Administrative Conference of the United States, <https://www.acus.gov/recommendation/judicial-enforcement-orders-national-labor-relations-board2> (last visited Dec. 4, 2019) (recommendation No. 69–2, at 238, published on October 22, 1969).

⁵¹ *Id.*; see also 15 U.S.C. § 45(l) (establishing penalties for violation of an order by the Federal Trade Commission). The PRO Act also adopts enforcement provisions that govern the Federal Communications Commission. See 47 U.S.C. § 401(b).

⁵² Pearce Testimony at 6; see also 29 U.S.C. § 160(j).

⁵³ *Id.*

⁵⁴ 29 U.S.C. § 151.

nitional picketing.⁵⁵ This disparity in the treatment of workers lacks a reasoned basis.

NLRB enforcement proceedings often continue for years after the employee is fired and may have found other work, and they almost always conclude long after an organizing drive is over. As Ms. Virk noted in her written testimony: “The Board’s remedies are . . . ineffective deterrents . . . practically, as employees never get to see an unlawfully fired employee made whole by returning to the workplace at a time when it still matters for an organizing drive.”⁵⁶

The PRO Act requires the NLRB’s General Counsel to seek injunctive relief whenever an employee suffers a violation of the NLRA involving discharge of other serious economic harm. As Mr. Griffin explained at the July 25th Hearing, “These provisions will make the Board much more capable of addressing unfair labor practice violations quickly and effectively, and will strengthen the Board’s hand in settlement negotiations as well.”⁵⁷

Workers Need a Private Right of Action if the NLRB Does Not Offer Recourse

The PRO Act also authorizes a private right of action in instances where the NLRB’s General Counsel fails to prosecute an employee’s unfair labor practice charge. Under current law, the General Counsel has exclusive discretion whether to prosecute a violation,⁵⁸ and, if they decline to prosecute, then the employee alleging a violation has no recourse whatsoever.⁵⁹ Under the PRO Act, if an employee files an unfair labor practice charge with the NLRB alleging discharge or serious economic harm, they may take their claim to federal district court if the General Counsel does not pursue an injunction to protect them within 60 days. This avenue for recourse strikes a balance between the NLRB’s expertise in matters of labor relations, to which courts should defer, and the employee’s right to due process if they do not receive recourse from the agency.

THE PRO ACT WOULD SAFEGUARD FREE AND FAIR UNION REPRESENTATION ELECTIONS

The NLRA Provides Employers Imbalanced Power to Shape Union Representation Elections, and They Are Not Even on the Ballot

Union representation elections under current law are fraught with opportunities for employers to chill the environment against employees’ right to exercise “full freedom of association.”⁶⁰ Elec-

⁵⁵ Compare *id.* § 160(j) (permitting the NLRB’s General Counsel to seek injunctive relief for the duration of a proceeding) with *id.* § 160(l) (requiring the General Counsel to seek injunctive relief against a union charged with violating Section 8(b)(4), Section 8(e), or Section 8(b)(7) of the NLRA).

⁵⁶ Virk Testimony at 11.

⁵⁷ *Protecting the Right to Organize Act: Modernizing America’s Labor Laws Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor*, 116th Cong. (2019) (written testimony of Richard Griffin, Member of Bredhoff & Kaiser PLLC, at 12–13) [Hereinafter Griffin Testimony].

⁵⁸ Under the current Administration, this discretion has been used in an increasingly partisan way. For example, the current General Counsel, Peter Robb, has dismissed employees’ charges against employers at a far greater rate than his predecessor, leaving those employees without opportunities for recourse. Robert Iafolla, *Top Trump Labor Lawyer Seeking Pro-Union Findings to Overturn*, Bloomberg Law (May 2, 2019, 6:30 AM) <https://news.bloomberglaw.com/daily-labor-report/trumps-top-labor-lawyer-seeking-pro-labor-findings-to-overturn-1>.

⁵⁹ 29 U.S.C. § 153(d).

⁶⁰ 29 U.S.C. § 151.

tions are typically conducted on the employer’s premises, even if the employer campaigns against the union, holds captive audience meetings, or requires employees to submit to one-on-one meetings with supervisors about union organizing.⁶¹ The PRO Act remedies this problem by requiring the NLRB to conduct the election electronically, by mail ballot, or at a neutral location at the request of the union.

The PRO Act undermines employers’ disproportionate power over union representation elections by specifying that an employer commits an unfair labor practice when it holds a captive audience meeting and forces employees to listen to antiunion speech.⁶² Criticism that this provision “would eliminate the right of employers . . . to express opinions regarding union representation issues” is false.⁶³ As Mr. Trumka explained to the Committee in a supplemental statement after the May 8th Hearing, this provision prohibits employers from requiring or coercing employees into listening to employer speech, rather than the expression of any views.⁶⁴ Indeed, the Supreme Court has recognized that “no one has a right to press even good’ ideas on an unwilling recipient.”⁶⁵ The PRO Act does not prohibit meetings that are truly voluntary.

Unnecessary procedural delays have historically enabled employers to have more time to campaign against the union through lawful or unlawful means.⁶⁶ In 2014, the NLRB streamlined many of its representation election procedures to prevent unnecessary delays, such as by requiring that the pre-election hearing occur no later than eight days after the notice of a hearing.⁶⁷ The PRO Act codifies the timelines in the 2014 Election Rule.

NLRB procedures have long allowed employers to participate as a party in union representation cases—even though the NLRA does not grant employers this right. This policy undermines employees’ freedom of association: employers are never on the ballot, and only the unions are. Section 9 of the NLRA requires that, once a union files a petition for an election, the NLRB must determine, “in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining.”⁶⁸ Section 9 also requires the NLRB to hold a

⁶¹ Kate Bronfenbrenner, Econ. Policy Inst., No Holds Barred: The Intensification of Employer Opposition to Organizing 12 (2009), <https://www.epi.org/files/page/-/pdf/bp235.pdf>.

⁶² Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor, *Protecting the Right to Organize Act: Deterring Unfair Labor Practices*, YouTube (May 8, 2019), <https://www.youtube.com/watch?v=ns7zq9WLuvs> (answer of Mr. Pearce at 2:31:11) (explaining how the PRO Act would allow employees to choose not to participate in an employer’s campaign against the union, including through meetings, through ride-alongs where an agent of the employer sits next to an employee-driver urging them to oppose the union, through new technology, or through other methods).

⁶³ *Protecting the Right to Organize Act: Deterring Unfair Labor Practices Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor*, 116th Cong. (2019) (written testimony of Philip A. Miscimarra, Partner at Morgan Lewis & Bockius LLP, at 7).

⁶⁴ *Protecting the Right to Organize Act: Deterring Unfair Labor Practices Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor*, 116th Cong. (2019) (supplemental statement of Richard L. Trumka, President of the AFL–CIO).

⁶⁵ *Id.* (quoting *Rowan v. United States Post Office Dept.*, 397 U.S. 728, 738 (1970)); see also *Frisby v. Schultz*, 487 U.S. 474, 487 (“The First Amendment permits the government to prohibit offensive speech as intrusive when the captive’ audience cannot avoid the objectionable speech.”).

⁶⁶ Kate Bronfenbrenner, Econ. Policy Inst., No Holds Barred: The Intensification of Employer Opposition to Organizing 12 (2009), <https://www.epi.org/files/page/-/pdf/bp235.pdf>.

⁶⁷ Representation Case Procedures, 79 Fed. Reg. 74307 (Dec. 15, 2014) (codified at 29 C.F.R. pts. 101–03).

⁶⁸ 29 U.S.C. § 159(b).

hearing prior to directing an election.⁶⁹ In the legislative history of the NLRA, Congress did not contemplate giving employers standing as parties in representation procedures, because these procedures are investigative, not adversarial, in nature.⁷⁰

As a result of NLRB procedures developed after the passage of the NLRA, when a union files a petition for a representation election, the employer has standing as a party to litigate issues prior to and after the election. These issues include the scope of the bargaining unit and whether certain ballots should be excluded from the tally of votes.⁷¹ This remains true today.⁷²

Although the NLRB has acquiesced to standing in representation cases, courts do not consider employers as having any due process right to litigate representation issues before the NLRB. “Board supervision and Board investigation with no provision for a hearing on employer complaints would be perfectly consistent with due process for employers.”⁷³ When the U.S. Chamber of Commerce challenged the NLRB’s 2014 Election Rule, the United States District Court for the District of Columbia rejected the challenge and found that employers have no due process rights to be heard in NLRB representation procedures.⁷⁴

Under the *Railway Labor Act*,⁷⁵ which covers employees in the airline and railway industries, employers have no standing as parties before the National Mediation Board (NMB). The Supreme Court explicitly blessed this denial of employer standing, noting that the NMB has sole discretion to permit employers to litigate representation issues.⁷⁶

As Mr. Trumka explained at the May 8th Hearing, granting employers party status “is like Canada trying to influence your election because it is involved in trade negotiations with the U.S.”⁷⁷ In order to prevent employers from exploiting NLRB representation proceedings, the PRO Act removes employers’ standing as parties

⁶⁹*Id.* § 159(c).

⁷⁰1 Legislative History of the *National Labor Relations Act*, 1425–26 (1949) (from Hearings before the Senate Committee on Education and Labor from March 11th–14th, 1935, 74th Congress on S. 1958).

⁷¹Craig Becker, *Democracy in the Workplace: Union Representation Elections and Federal Labor Law*, 77 Minn. L. Rev. 495, 506–24 (1993) (detailing how NLRB procedures evolved to provide employers party standing in representation procedures).

⁷²29 C.F.R. § 102.1(h).

⁷³*NLRB v. ARA Services, Inc.*, 717 F.2d 57, 67 (3d Cir. 1983); see also *American Cable & Radio Corp. v. Douds*, 111 F. Supp. 482, 485 (S.D.N.Y. 1952) (“Since [the employees] are to choose their representative unhindered by the employer, [the employer] is at most a nominal party to the proceeding. Of course the employer has an obvious ultimate interest in who the collective bargaining representative is to be . . . But it has no such immediate legal interest in as to authorize its appearance, as a matter of right, clothed with all the armor of due process . . .”).

⁷⁴*Chamber of Commerce v. NLRB*, 118 F. Supp. 3d 171, 202 (D.D.C. 2015) (internal citations omitted) (“A procedural due process violation occurs when an official deprives an individual of a liberty or property interest without providing appropriate procedural protections. And as the Chamber conceded during oral argument, the Chamber plaintiffs were unable to direct the Court to any case that identifies a due process interest in what takes place during a representation election proceeding.”).

⁷⁵45 U.S.C. § 151.

⁷⁶*Brotherhood of Railway Clerks v. Assoc. for the Benefit of Non-Contract Employees*, 380 U.S. 650, 666–67 (1965) (“Whether and to what extent carriers will be permitted to present their views on craft or class questions is a matter that the Act leaves solely in the discretion of the Board . . . [W]hile the Board’s investigation and resolution of a dispute in one craft or class rather than another might impose some additional burden upon the [employer], we cannot say that the latter’s interest rises to a status which requires the full panoply of procedural protections.”).

⁷⁷*Protecting the Right to Organize Act: Deterring Unfair Labor Practices Before the Subcomm. On Health, Employment, Labor, and Pensions of the H. Comm. On Education and Labor*, 116th Cong. (2019) (written testimony of Richard L. Trumka, President of the AFL–CIO, at 5) [Hereinafter Trumka Testimony].

to representation elections. Doing so returns representation proceedings to their original purpose of being investigative, rather than adversarial, in nature.

One consequence of granting employers the right to participate in representation proceedings is that doing so empowers them to gerrymander union representation elections. When the NLRB determines whether a unit of employees is appropriate for union representation and collective bargaining, its traditional analysis examined whether the employees in the unit share a community of interest,⁷⁸ and the NLRB can add other employees into the bargaining unit only if they share an “overwhelming community of interest” such that there “is no legitimate basis upon which to exclude certain employees from it.”⁷⁹ The NLRB’s 2011 *Specialty Healthcare* decision clarified this standard, and eight U.S. Courts of Appeals upheld the decision as articulating longstanding precedent.⁸⁰ However, on December 15, 2017, the NLRB overturned the “overwhelming community of interest” standard⁸¹ and replaced it with a standard where the NLRB will only exclude the addition of other employees if the union can prove that the proposed unit’s employees share distinct interests from those outside the unit.⁸² This departure allows employers to gerrymander union elections by litigating to require additional employees be included in the unit, even though the added employees have never expressed interest in joining the union. The PRO Act requires that, in the NLRB’s determination of whether a bargaining unit is appropriate, it must apply the test articulated in *Specialty Healthcare*.

Employees Must Be Able to Have the Opportunity to Communicate with Each Other During Organizing Campaigns

Since the NLRB’s *Excelsior Underwear* decision over 60 years ago,⁸³ the NLRB has required employers to provide a list of employee names and home addresses prior to a representation election. The reason for this mandate is to address the problem where only one side—the employer—has the opportunity to communicate by mail with all workers prior to the election, and the union does not have an equivalent ability to respond. The employer, unlike the union, is also free to contact employees one-on-one in the workplace. Given the employer’s advantages in contacting employees during a union election, the voter registration list attempts to level the playing field.

The NLRB’s 2014 Election Rule updated what contact information employers must provide a union before an election to include, in addition to employees’ names and home addresses, their work lo-

⁷⁸*Specialty Healthcare*, 357 NLRB 934 (2011) (identifying factors including similarity of wages, hours, terms and conditions of work, supervision, whether the workers are organized into a separate department, whether the workers have distinct skills and training, and interchange with other employees), *enforced sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013).

⁷⁹*Id.* at 944.

⁸⁰*Rhino Northwest, LLC v. NLRB*, 867 F.3d 95, 101–02 (D.C. Cir. 2017); *Macy’s Inc. v. NLRB*, 824 F.3d 557, 567 (5th Cir. 2016); *Constellation Brands, Inc. v. NLRB*, 842 F.3d 784, 792 (2d Cir. 2016); *FedEx Freight, Inc. v. NLRB*, 839 F.3d 636, 639 (7th Cir. 2016); *NLRB v. FedEx Freight, Inc.*, 832 F.3d 432, 442 (3d Cir. 2016); *Nestle Dreyer’s Ice Cream Co. v. NLRB*, 821 F.3d 489, 500 (4th Cir. 2016); *FedEx Freight, Inc. v. NLRB*, 816 F.3d 515, 523 (8th Cir. 2016), *reh’g and reh’g en banc denied* (May 26, 2016); *Kindred Nursing Centers East, LLC*, 727 F.3d 552, 561 (6th Cir. 2013).

⁸¹*PCC Structural, Inc.*, 365 NLRB No. 160 (2017).

⁸²*Boeing Co.*, 368 NLRB No. 67 (2019).

⁸³156 NLRB 1236 (1966).

cations, shifts, job classifications, available personal email addresses, and available home and cell phone numbers. The PRO Act codifies this update to representation election procedures. Although Republicans alleged at the July 25th Hearing that this would enable unions to harass employees,⁸⁴ nothing supports this claim. In fact, the NLRB informed the Committee on February 15, 2018, that no union has ever been alleged to have abused information in the voter registration list since the 2014 Election Rule was enacted.⁸⁵

Remedies for Employer Interference in Elections Must be Strengthened

The NLRB's representation process is further hampered by its limited remedies in the event of employer interference. In the most serious instances, the NLRB may issue a *Gissel* order requiring that the employer bargain with the union when the employer has committed unfair labor practices that have made the holding of a fair rerun election unlikely or have undermined the union's majority support.⁸⁶ However, employers can appeal these bargaining orders, thus extending the process for years and ultimately denying their employees their right to form a union. Moreover, employers who engage in these dilatory tactics do not face fines and are not required to pay employees for any monetary losses, even after a reviewing court upholds the *Gissel* order.⁸⁷

The PRO Act reforms this precedent by requiring that, when a labor organization loses a representation election where it previously had majority support, and when the employer committed a violation of the NLRA or otherwise interfered with the election, the NLRB shall presume that the employer's conduct affected the election outcome. Unless the employer rebuts that presumption, the NLRB must certify the union and order the employer to bargain. This will deter employers from unlawfully interfering in elections. If an employer commits an unfair labor practice before an election, the PRO Act is clear that the employer can be subject to both the NLRB's procedures for remedying unfair labor practices and the NLRB's consideration on whether to issue a bargaining order.

Employers Should Not Cease Recognition of a Union Without a Decertification Election

Under current law, even though an employer can require an election in order for the union to be certified, the employer can withdraw recognition of a union without an election.⁸⁸ The NLRB embraced this asymmetry on July 3, 2019, when it held that an employer may withdraw recognition from a union regardless of wheth-

⁸⁴ Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor, *Protecting the Right to Organize Act: Modernizing America's Labor Laws*, YouTube (July 25, 2019), https://www.youtube.com/watch?v=UA3vxNxKi_c (exchange between Rep. Foxx and Mr. King at 58:04).

⁸⁵ Letter from Marvin Kaplan, Chairman, NLRB, and Peter Robb, General Counsel, NLRB to Pat Murray, Senator, Robert C. "Bobby" Scott (VA), Congressman, Kilili Sablan, Congressman, and Donald Norcross, Congressman (Feb. 15, 2018) (on file with addressee), available at <https://edlabor.house.gov/imo/media/doc/2.15.2018%20-%20NLRB%20Response%20to%20Congress%20-%202014%20Election%20Rule%20Data.pdf>; Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Education and Labor, *Protecting the Right to Organize Act: Detering Unfair Labor Practices*, YouTube (May 8, 2019), <https://www.youtube.com/watch?v=ns7zq9WLwvs> (exchange between Ms. Hayes and Mr. Trumka at 2:28:56).

⁸⁶ *NLRB v. Gissel Packing Co., Inc.*, 395 U.S. 575, 611–18 (1969).

⁸⁷ Kate Bronfenbrenner, Econ. Policy Inst., No Holds Barred: The Intensification of Employer Opposition to Organizing 18 (2009), <https://www.epi.org/files/page/-/pdf/bp235.pdf>.

⁸⁸ *Johnson Controls, Inc.*, 368 NLRB No. 20 (2019).

er the union has the support of a majority of workers at the time of withdrawal.⁸⁹ Under this new standard, an employer may announce that it will withdraw recognition of a union within 90 days prior to the expiration of a collective bargaining agreement based on evidence that the union has lost majority support, such as signatures in a petition, and may suspend bargaining for the new agreement. Such an announcement would force the union to file for a new representation election within 45 days in order to regain recognition, and it would not prevent the employer from withdrawing recognition of the union at the expiration of the agreement if the election is not scheduled before then, even if the union has evidence of majority support at the close of the agreement.

This new standard permits an employer to withdraw recognition of the union before an election occurs, even if the union can demonstrate majority support before the election. The PRO Act remedies this problem by specifying that an employer's duty to bargain continues unless employees decertify the union in an election.

THE PRO ACT WOULD SAFEGUARD THE RIGHT TO COLLECTIVELY
BARGAIN

Even when workers manage to win voluntary recognition of their union, or certification by the NLRB, the victory often proves hollow. For workers, the purpose of organizing is to negotiate and finalize a collective bargaining agreement with the employer. However, in almost half of all elections where a union is certified as the bargaining representative, a union is unable to conclude a first contract with an employer within one year of the election.⁹⁰

Under existing law, the Federal Mediation and Conciliation Service (FMCS) may proffer mediation and conciliation services upon its own motion or upon request of one or more of the parties to the dispute, whenever it believes that the dispute threatens a substantial interruption to commerce. The NLRA currently does not provide for the use of binding arbitration to resolve disputes. When an employer bargains in bad faith or otherwise unlawfully refuses to bargain, the NLRA's sole remedy is an order from the NLRB to direct the party to resume good faith bargaining.

The PRO Act helps establish a bargaining relationship, and provide for more meaningful good faith bargaining when negotiating the first collective bargaining agreement. It would do so in several steps. First, the employer and the union would have 90 days to bargain, after which either the union or the employer can request mediation services from FMCS. If the employer and union fail to reach an agreement through mediation after 30 days, or for a longer period as the employer and union may agree, either the union or the employer may request an arbitration panel. The selection of the arbitration panel would allow the employer and union to each select one arbitrator, and a third, neutral member would be appointed by agreement of the two parties. To protect good faith collective bargaining and address situations where an employer declares an impasse and unilaterally implements its preferred terms

⁸⁹ *Id.*

⁹⁰ Kate Bronfenbrenner, Econ. Policy Inst., No Holds Barred: The Intensification of Employer Opposition to Organizing 3 (2009), <https://www.epi.org/files/page/-/pdf/bp235.pdf>; see also Pearce Testimony at 8.

and conditions of employment,⁹¹ the PRO Act requires employers to maintain the *status quo ante* pending an agreement with the union.

THE PRO ACT WOULD FACILITATE TRANSPARENCY IN LABOR-
MANAGEMENT RELATIONS

Employees Deserve to Know Their Rights

Many employees are not aware of their rights under the NLRA, or that the NLRA's protections extend beyond union organizing and collective bargaining. The NLRA also protects the right to engage in other "concerted activities for the purpose of . . . mutual aid or protection."⁹² Protected activity encompasses two or more employees' acting together to improve their terms and conditions of employment with or without a union, such as advocating for a raise or a sexual harassment policy. As Mr. Griffin explained at the July 25th Hearing, "[e]mployees who are unaware of their rights are not in a position to enforce them, and employers who are ignorant of employee rights are not in a position to conform their conduct to what the law requires."⁹³

In 2011, citing research demonstrating employees' lack of awareness of their rights, the NLRB promulgated a regulation requiring employers to post and maintain a notice detailing employees' rights under the NLRA.⁹⁴ However, two United States Courts of Appeals vacated the rule on the grounds that the NLRB lacked specific statutory authority to promulgate the notice posting rule and enforce it.⁹⁵ Other federal employment laws require employers to post notices of employee rights.⁹⁶ By codifying the 2011 rulemaking, the PRO Act would ensure that employees and employers are aware of their rights, would prevent violations, and would help the NLRB more effectively redress injustices.⁹⁷

Congressional Oversight Requires the Restoration of the NLRB's Reporting Requirements

For the NLRB's entire history until 2009, it submitted annual reports to Congress containing a detailed breakdown of its casehandling, as required by Section 3 of the NLRA.⁹⁸ The NLRB ended this practice after Congress discontinued numerous agency reporting requirements.⁹⁹ Because much of the data in these annual reports cannot be found anywhere else, the PRO Act restores these requirements. Such information is necessary for Congress to conduct oversight into whether the NLRB is fulfilling the purposes

⁹¹ *CalMat Co.*, 331 NLRB 1084, 1097 (2000) ("[A]fter bargaining to an impasse an employer does not violate the Act by making unilateral changes that are reasonably comprehended within his preimpasse proposals.") (internal citations omitted).

⁹² 29 U.S.C. § 157.

⁹³ Griffin Testimony at 5.

⁹⁴ Notification of Employee Rights Under the National Labor Relations Act, 76 Fed. Reg. 54006 (Aug. 30, 2011) (to be codified at 29 C.F.R. 104).

⁹⁵ *Chamber of Commerce v. NLRB*, 721 F.3d 152 (4th Cir. 2013); *Nat'l Ass'n of Mfrs. v. NLRB*, 717 F.3d 947 (D.C. Cir. 2013).

⁹⁶ Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-10; Age Discrimination in Employment Act, 29 U.S.C. § 627; Occupational Safety and Health Act, 29 U.S.C. § 657(c)(1); Americans with Disabilities Act, 42 U.S.C. § 12115; Family and Medical Leave Act, 29 U.S.C. § 2619; 29 C.F.R. 516.4 (U.S. Department of Labor Regulation requiring notice posting of rights under the FLSA).

⁹⁷ Pearce Testimony at 8.

⁹⁸ 29 U.S.C. 153(c).

⁹⁹ Federal Reports Elimination and Sunset Act of 1995, Pub. L. No. 166-44, 109 Stat. 707; 31 U.S.C. § 1113.

of the NLRA.¹⁰⁰ In cases where a Member of the NLRB has a conflict of interest in a precedent-setting case, this data can also aid Congress in understanding how the NLRB's handling of cases is affected by Members' conflicts of interest, due to the reports' detailed data on adjudication.¹⁰¹

Labor Law Must Shed Light on the Anti-Union Persuader Industry

Section 203 of the LMRDA requires employers to disclose to the U.S. Department of Labor (DOL) arrangements in which a consultant “undertakes activities where an object thereof, directly or indirectly, is to persuade employees” regarding the exercise of their right to organize.¹⁰² Similarly, consultants must disclose their arrangements to DOL.¹⁰³ The LMRDA exempts employers and consultants from reporting requirements when consultants merely give employers “advice.”¹⁰⁴ Although the statute does not define the term “advice,” the DOL has read the LMRDA’s exemption of “advice” activities so broadly as to exclude all indirect persuader activities.¹⁰⁵

Studies show that employers hire union avoidance persuaders to consult them in up to 87 percent of union elections.¹⁰⁶ Although these consultants engage in considerable indirect persuasion—including producing anti-union literature, writing speeches for captive audience meetings, and identifying employees for discipline or reward—DOL’s interpretation shields all of these antiunion expenditures from disclosure.

On March 24, 2016, DOL promulgated the Persuader Rule to finally close this loophole.¹⁰⁷ As Mr. Griffin explained in response to a Question for the Record after the July 25th Hearing, closing this loophole provides employees with important information regarding their employers’ activities and spending during an organizing campaign.¹⁰⁸ Nevertheless, DOL rescinded the rule on August 17, 2018.¹⁰⁹

The PRO Act codifies the Persuader Rule by specifying that the LMRDA cannot exempt arrangements between an employer and a consultant for the consultant to plan or conduct employee meetings, train supervisors, coordinate activities, establish employee commit-

¹⁰⁰ Letter from Robert C. “Bobby” Scott (VA), Congressman, and Frederica Wilson, Congresswoman, to Peter Robb, General Counsel, NLRB (Aug. 12, 2019) (on file with author) *available at* https://src.bna.com/KAt?_ga=2.239243715.1351935645.1572188739-123486428.1563191824 (requesting data on the General Counsel’s processing of unfair labor practice cases).

¹⁰¹ *See, e.g.*, Memorandum from David P. Berry, National Labor Relations Board Inspector General, Notification of a Serious and Flagrant Problem and/or Deficiency in the Board’s Administration of its Deliberative Process and the National Labor Relations Act with Respect to the Deliberation of a Particular Matter, (Feb. 9, 2018) *available at* <https://www.nlr.gov/sites/default/files/attachments/basic-page/node-5976/OIG%20Report%20Regarding%20Hy%20Brand%20Deliberations.pdf> (detailing effect of Member William Emanuel’s conflict of interest on case adjudication and a decision to seek remand of a decision pending review).

¹⁰² 29 U.S.C. § 433(a).

¹⁰³ *Id.* § 433(b).

¹⁰⁴ *Id.* § 433(c).

¹⁰⁵ Memorandum from Charles Donohue, Solicitor of Labor, regarding “modification of Position Regarding Advice’ under Section 203(c)” of the LMRDA to John L. Holcombe, Commissioner, (Feb. 19, 1962).

¹⁰⁶ Persuader Rule, 81 Fed. Reg. 15924, 12933 n.10 (Mar. 24, 2016).

¹⁰⁷ *Id.*

¹⁰⁸ *Protecting the Right to Organize Act: Modernizing America’s Labor Laws Before the Subcomm. On Health, Employment, Labor, and Pensions of the H. Comm. On Educ. and Labor*, 116th Cong. (2019) (answers to questions for the record by Richard Griffin, Member of Bredhoff & Kaiser PLLC).

¹⁰⁹ 83 Fed. Reg. 33826 (Aug. 17, 2018).

tees, identify employees for discipline or reward, or draft the employer’s messaging on union organizing. This reform would foster transparency and inform employees about how their employer spends money in response to union organizing.¹¹⁰ Republicans erroneously contended at the May 8th Hearing that this provision would require the reporting of communications otherwise protected by attorney-client privilege.¹¹¹ However, as noted in a letter Mr. Griffin submitted in response to a Question for the Record after the July 25th Hearing, which was signed by over 500 attorneys (including 244 members of the American Bar Association), nothing in the Persuader Rule required the reporting of privileged information or legal advice.¹¹² The same is true of the PRO Act.

THE PRO ACT PREVENTS EMPLOYERS FROM AVOIDING THEIR LEGAL RESPONSIBILITIES UNDER THE NLRA

The Definition of Employee Requires Clarification

The NLRA only protects workers’ rights to organize and collectively bargain if those workers are employees and not independent contractors.¹¹³ Employers seeking to avoid union organizing have an incentive to misclassify their employees as independent contractors. This problem is increasingly pervasive with the rise of ride-sharing,¹¹⁴ but is also common in many industries including trucking, entertainment, and construction.¹¹⁵ In 2015, a study by the Economic Policy Institute concluded that “between 10 and 20 percent of employers misclassify at least one worker as an independent contractor.”¹¹⁶

Under the Trump Administration, the NLRB further enables employers to misclassify employees as independent contractors in order to evade their obligations under the NLRA. The question of whether a worker is an employee or an independent contractor has historically been governed by the common law as articulated in the Restatement (Second) of Agency, which involves weighing 10 non-exhaustive factors.¹¹⁷ In the NLRB’s *SuperShuttle* decision on Jan-

¹¹⁰*Protecting the Right to Organize Act: Deterring Unfair Labor Practices Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor*, 116th Cong. (2019) (answers to questions for the record by Richard L. Trumka, President of the AFL–CIO).

¹¹¹Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor, *Protecting the Right to Organize Act: Deterring Unfair Labor Practices*, YouTube (July 25, 2019), https://www.youtube.com/watch?v=UA3vxNxKi_c (question and answer between Mr. Taylor and Mr. Miscimarra at 2:17:08).

¹¹²Letter from Labor Attorneys to John Kline, Congressman, and Robert C. Bobby Scott (VA), Congressman (May 17, 2017) (on file with addressee).

¹¹³29 U.S.C. § 152(3). *see also Annual Reports*, NLRB <https://www.nlr.gov/reports/nlr-performance-reports/annual-reports> (last visited Dec. 4, 2019).

¹¹⁴Michael Hitzik, Uber and Lyft Try to Blunt a Court Ruling that their Drivers are Employees, Los Angeles Times (July 11, 2019, 7:13 AM), <https://www.latimes.com/business/hiltzik/la-fi-hiltzik-uber-lyft-dynamex-20190711-story.html>.

¹¹⁵Francoise Carre, Econ. Policy Inst., (In)dependent Contractor Misclassification 1 (2015), <https://www.epi.org/files/pdf/87595.pdf>.

¹¹⁶*Id.*

¹¹⁷*See FedEx Home Delivery v. NLRB*, 849 F.3d 1123, 1125 (D.C. Cir. 2017) (“The Restatement (Second) of Agency provides a non-exhaustive list of ten factors to consider in deciding whether a worker is an independent contractor: (1) the extent of control the employer has over the work; (2) whether the worker is engaged in a distinct occupation or business; (3) whether the kind of occupation is usually done under the direction of the employer or by a specialist without supervision; (4) the skill required in the particular occupation; (5) whether the employer or worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (6) the length of time for which the person is employed; (7) whether the employer pays by the time or by the job; (8) whether the worker’s work is a part of the regular business of the employer; (9) whether the employer and worker believe they are creating an employer-employee relationship; and (10) whether the employer is or is not in business.”) (internal citations omitted).

uary 25, 2019, it held that it would apply those 10 factors “through the prism” of whether the worker has “entrepreneurial opportunity.”¹¹⁸ In doing so, the NLRB interpreted entrepreneurial opportunity so loosely that it denied SuperShuttle drivers employee status—and thus protection under the NLRA—even though those drivers were subject to non-compete clauses that prohibited them from driving for any of SuperShuttle’s competitors.

As Professor Garden explained to the Committee at the July 25th Hearing, “the Board’s experience over the last several decades has proven that [the common law factors] are an inadequate method of determining which workers will be protected by labor law. The factors are simply too indeterminate, and the reality in turn allows gamesmanship by employers.”¹¹⁹

To prevent misclassification of employees as independent contractors, the PRO Act codifies the ABC test, which considers any worker to be an employee unless three conditions are met:

(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;

(B) the service is performed outside the usual course of business of the employer; and

(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

Over 20 states use this test in some form for determining whether a worker is an employee.¹²⁰ Most states use it in the context of unemployment compensation, and California recently joined New Jersey and Massachusetts in applying this test to state wage and hour laws.¹²¹ Professor Garden identified three advantages to this test at the July 25th Hearing:

First, it consists of three relatively clear and easy-to-apply factors, and workers qualify as [independent contractors] rather than employees only if each factor applies. This approach is self-evidently more straightforward and predictable than one that calls on the NLRB to balance (at least) ten factors as it sees fit. Second, for similar reasons, the ABC test is less amenable to manipulation by employers than the Restatement factors. Third, the ABC test is better aligned than the Restatement factors with the purpose of the NLRA: ensuring that workers who lack individual bargaining power—“actual liberty of contract”—can bargain collectively.¹²²

Applying this test in the context of the NLRA would prevent workers who are treated as employees from being misclassified as independent contractors. In doing so, it would prevent employers

¹¹⁸ 367 NLRB No. 75 (2019).

¹¹⁹ *Protecting the Right to Organize Act: Modernizing America’s Labor Laws Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Education and Labor*, 116th Cong. (2019) (written testimony of Charlotte Garden, Professor at Seattle University School of Law, at 13) [Hereinafter Garden Testimony].

¹²⁰ Rebecca Smith, *Washington State Considers ABC Test for Employee Status*, Nat’l Emp’t Law Project (Jan. 28, 2019), <https://www.nelp.org/blog/washington-state-considers-abc-test-employee-status/>.

¹²¹ *Id.*; California Lab. Code § 2750.3.

¹²² Garden Testimony at 14 (quoting 29 U.S.C. § 151).

from undermining union organizing by informing employees that organizing is futile due to their independent contractor status.

The NLRA Must Deter Misclassification of Employees

During an exchange at the July 25th Hearing with Chairwoman Wilson (D–FL–24), Mr. Griffin explained how misclassification independently violates workers’ rights under the NLRA:

If you are an employee, you have rights . . . If you are an independent contractor, you don’t have rights, you are not protected. So, if an employer deliberately takes someone who has employee status and does not allow them to exercise their rights by advising them that they are an independent contractor, that they have no rights, it is a fundamental violation of people’s ability to engage in the activities protected under Section 7. In addition, it has a chilling effect on people’s ability to speak to each other, to engage in the type of concerted activity that the Act protects, because they think they don’t have any rights.¹²³

Misclassification incorrectly conveys to employees that they do not have rights under the NLRA, and thus that any exercise of those rights is futile.¹²⁴ However, on August 29, 2019, the NLRB held in *Velox Express, Inc.* that misclassification did not independently violate the NLRA.¹²⁵ The PRO Act, as amended in the markup, overturns *Velox* by specifying that an employer commits an unfair labor practice when it communicates to workers, who are employees under the NLRA, that they are not employees.

The Definition of Supervisor Requires Clarification

In excluding supervisors from coverage of the NLRA, Congress intended to only exclude individuals who are “vested with such genuine management prerogatives as the right to hire or fire [or] discipline,” and not exclude “straw bosses, lead men, set-up men, and other minor supervisory employees.”¹²⁶ However, the Supreme Court’s decision in *NLRB v. Kentucky River Community Care Inc.* seized on ambiguous language in Section 2(11) of the NLRA to interpret the supervisory exclusion more broadly than Congress intended.¹²⁷

As Ms. Virk explained to the Committee at the March 26th Hearing, because supervisors can face retaliation for supporting an organizing campaign, the vague definition of supervisor places many workers’ rights in jeopardy.¹²⁸ The PRO Act brings clarity to the supervisory exemption by stating that a supervisor must engage in such activities “for a majority of the individual’s worktime.” It also removes consideration of whether the supervisor has authority “to assign,” or “responsibly to direct.”¹²⁹

¹²³ Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor, *Protecting the Right to Organize Act: Modernizing America’s Labor Laws*, YouTube (July 25, 2019), https://www.youtube.com/watch?v=UA3vxNxKi_c (answer of Mr. Griffin at 52:03).

¹²⁴ *Id.*; see also Memorandum from Barry J. Kearney, Associate General Counsel Division of Advice, NLRB, on *Pac. 9 Transp., Inc.*, No. 21–CA–150875 to Olivia Garcia, Regional Director, NLRB (Dec. 18, 2015) (released Aug. 26, 2016).

¹²⁵ 368 NLRB No. 61 (2019).

¹²⁶ S. Rep. No. 105 at 410 (1947) (submitted in the 80th Congress during the 1st session).

¹²⁷ 532 U.S. 706 (2001).

¹²⁸ Virk Testimony at 17–18.

¹²⁹ *Kentucky River*, 532 U.S. at 726 (Stevens, J., dissenting in part) (noting the ambiguity of the term “responsibly to direct”).

The NLRA Must Prevent Joint Employers from Evading Responsibility under the NLRA

Approximately three million Americans are employed by a temporary staffing agency on any given day, performing work on behalf of a client company that directs the employee's work but does not write the employee's paycheck.¹³⁰ The NLRA guarantees employees the right to collectively bargain for wages and working conditions, but if multiple entities control workers' terms and conditions of employment, this right is rendered futile if workers cannot bargain with all companies that actually control—directly or through a contract—those wages and working conditions.

For a majority of the time since the NLRA was enacted in 1935, the NLRB found that an entity may be liable to bargain with the employees of a subcontractor as a joint employer even if its control over terms and conditions of employment was indirect—such as exercised through an intermediary—or reserved in its contract with an intermediary. In 1984, the NLRB began relieving employers of responsibility to bargain in those cases where its control over their subcontractors' employees was not direct and immediate.¹³¹ In the NLRB's 2015 *Browning-Ferris* decision, it returned to the original, pre-1984 standard, which determined that employers are responsible under the NLRA when they exercise control indirectly or reserve control through an intermediary in addition to through direct and immediate control. On December 28, 2018, the U.S. Court of Appeals for the D.C. Circuit explicitly affirmed the *Browning-Ferris* standard as consistent with the NLRA and the common law of agency.¹³² The court wrote that “the common-law inquiry is not woodenly confined to indicia of direct and immediate control.”¹³³

The PRO Act codifies the *Browning-Ferris* standard by stating that an employee has multiple employers if each employer codetermines or shares control over the essential terms and conditions of employment. In determining whether such control exists, the PRO Act requires the consideration of both exercised and reserved control, as well as whether that control is exercised directly or indirectly through an intermediary.

Labor Law Must Protect Workers Regardless of Their Immigration Status

In 2002, the Supreme Court in *Hoffman Plastic Compounds, Inc. v. NLRB* held that the NLRB has no power to order reinstatement or backpay for workers who are undocumented under the Immigration Reform and Control Act, even though undocumented workers are employees under the NLRA.¹³⁴ As Mr. Pearce explained at the May 8th Hearing, this decision “removed a vital check on workplace abuses” because “[t]he very employers most likely to be emboldened by a backpay-free prospect to retaliate against undocumented workers for concertedly protesting their terms and conditions of employment are the ones most likely to impose the worst

¹³⁰ Bureau of Labor Statistics, *Employees on Nonfarm Payrolls by Industry Sector and Selected Industry Data* Econ. News Release, <https://www.bls.gov/news.release/empsit.t17.htm> (last visited Dec. 4, 2019).

¹³¹ *TLI, Inc.*, 271 NLRB 748 (1984); *Laerco Transportation*, 269 NLRB 324 (1984).

¹³² *Browning-Ferris Indus. v. NLRB*, 911 F.3d 1195 (D.C. Cir. 2018).

¹³³ *Id.* at 1209.

¹³⁴ 535 U.S. 137 (2002).

terms and conditions.”¹³⁵ The PRO Act overturns the Supreme Court’s decision by explicitly stating that employees who suffer a violation of the NLRA will not be denied remedies under the NLRA regardless of their immigration status.

THE PRO ACT REMOVES UNJUST RESTRICTIONS ON WORKERS’
EXERCISE OF RIGHTS

The First Amendment Protects Secondary and Recognition Picketing

When the NLRA was amended in 1947, it placed significant constraints on workers’ free speech rights. Some of the restrictions prohibit collective action such as strikes or picketing directed at “secondary” employers, which are employers other than the employees’ direct employer.¹³⁶ The amendments were a Republican reaction to a wave of strikes at the end of World War II.¹³⁷ To prevent strikes that would disrupt production in war industries, President Franklin Delano Roosevelt established the National War Labor Board in 1942, which arbitrated labor disputes and prohibited unions from supporting strikes.¹³⁸ Immediately after the war, labor disputes proliferated as rank-and-file workers demanded wages that would reinstate their pre-war standard of living.¹³⁹ Republicans reacted by passing the *Labor Management Relations Act, 1947* to curtail the power of unions, and they overrode President Harry Truman’s veto of the legislation.¹⁴⁰

One of the 1947 amendments, Section 8(b)(4) of the NLRA, prohibits unions from encouraging employees of another company to strike and from picketing designed to pressure a secondary employer to cease doing business with the workers’ employer.¹⁴¹ These restrictions pose serious problems under the First Amendment to the Constitution of the United States. As Professor Garden explained at the July 25th Hearing, this section “is in tension with more recent First Amendment cases in which the Supreme Court has made clear that speaker- and content-based restrictions on speech are presumptively invalid,” and the Supreme Court has repeatedly construed the provision narrowly in order to avoid having to decide on its constitutionality.¹⁴² Further, in an increasingly fissured workplace where companies subcontract for labor, subcontracted workers are more limited in their ability to engage in free speech picketing against the entity that controls their economic arrangements because of the risk that picketing is unlawful if the contracting entity is not an employer.¹⁴³ The 1947 amendments to the NLRA further undermine workers’ free speech rights through Section 8(b)(7), which almost completely prohibits them from peacefully picketing their employer to encourage the employer to recognize their union.¹⁴⁴

¹³⁵ Pearce Testimony at 12.

¹³⁶ 29 U.S.C. § 158(b)(4).

¹³⁷ Philip Dray, *There is Power in a Union: The Epic Story of Labor in America* 491–96 (2010).

¹³⁸ Exec. Order No. 9017, 7 Fed. Reg. 237 (Jan. 14, 1942).

¹³⁹ Philip Dray, *There is Power in a Union: The Epic Story of Labor in America* 491–96 (2010).

¹⁴⁰ Pub. L. No. 80–101, 61 Stat. 136 (1947).

¹⁴¹ 29 U.S.C. § 8(b)(4).

¹⁴² Garden Testimony at 4–5.

¹⁴³ Garden Testimony 1–3, 8–10.

¹⁴⁴ 29 U.S.C. § 8(b)(7); see also Garden Testimony at 10; Catherine Fisk & Jessica Rutter, *Labor Protest Under the New First Amendment*, 36 Berkeley J. Emp. & Lab. L. 277, 293–95 (2015) (observing that the Supreme Court has never ruled on the constitutionality of Section

The PRO Act protects workers' First Amendment rights by repealing prohibitions on unions' picketing and secondary activities. In addition, because the PRO Act ends the prohibition on picketing designed to convince an employer to cease doing business with another company, the PRO Act also ends the prohibition on unions and employers freely bargaining for such an agreement in support of a secondary boycott.¹⁴⁵

The NLRA Must Safeguard the Right to Strike

Section 13 of the NLRA explicitly states that none of its provisions "shall be construed so as either to interfere with or impede or diminish in any way the right to strike or to affect the limitations or qualifications on that right."¹⁴⁶ Despite this plain language, Mr. Pearce explained to the Committee at the May 8th Hearing that "the reality has been more complicated."¹⁴⁷

Notably, the Supreme Court has taken the position that it is lawful to permanently replace economic strikers for the purpose of continuing operations during a strike,¹⁴⁸ and in *Hot Shoppes, Inc.*, 146 NLRB 802, 805 (1964), the NLRB established a presumption, not present in the Supreme Court decisions, that an employer may permanently replace strikers . . . unless there is evidence that the employer had an "independent unlawful purpose" for doing so. This presumption has had an effect of whittling away the right to strike and preventing employees from relying on the protections of the Act.¹⁴⁹

Employers may further undermine employees' right to strike by locking out employees before a strike even begins and bringing in temporary replacements in order to leverage employers' position at the bargaining table, even if employees have not indicated that a strike is imminent.¹⁵⁰ These lockouts are classified as offensive lockouts in contrast to defensive lockouts, which occur after a strike has begun. Offensive lockouts curtail workers' ability to strike by removing workers' control over the timing and duration of any work stoppages, and employers are free to hire temporary replacements during the lockout. In one offensive example that occurred in 2018, National Grid locked out utility workers represented by the United Steelworkers for over six months to leverage its own position at the bargaining table, even though no strike

8(b)(7), and that current application of Section 8(b)(7) is incompatible with contemporary First Amendment jurisprudence).

¹⁴⁵In this regard, the PRO Act repeals Section 8(e) of the NLRA, which prohibits unions and employers from bargaining for an agreement where the employer ceases dealing with any products from another employer. According to the legislative history of the LMRDA, also referred to as the Landrum-Griffin Act, this prohibition was added in order to expand on the purposes of Section 8(b)(4), preventing employers and unions from agreeing to a provision that Section 8(b)(4) prohibits unions from picketing to achieve. House Report No. 731, at 21–22 (1959) *reprinted in* 1 Legislative History of the Labor-Management Reporting and Disclosure Act, 778–79 (1959).

¹⁴⁶29 U.S.C. § 163.

¹⁴⁷Pearce Testimony at 9.

¹⁴⁸*NLRB v. Erie Resistor Corp.*, 373 U.S. 221 (1963); *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938).

¹⁴⁹Pearce Testimony at 9–10.

¹⁵⁰*Harter Equipment, Inc.*, 280 NLRB 597 (1986) (holding that an employer does not violate Section 8(a)(3) and (1) of the NLRA by locking out employees and hiring temporary replacements for the sole purpose of pressuring the employees to support its bargaining position), *aff'd Local 825 Int'l Union of Operating Engineers v. NLRB*, 829 F.2d 458 (3d Cir. 1987).

was imminent.¹⁵¹ During that time, the locked out employees did not receive paychecks and lost access to their health care.¹⁵² Lockouts like these retaliate against employees simply for maintaining their bargaining positions and their membership in the union.

In order to protect employers' right to strike from offensive employer retaliation that renders the right futile, the PRO Act specifies that it is an unfair labor practice for an employer to permanently replace striking employees or to lockout employees prior to the beginning of a strike. The PRO Act also explicitly states that the duration, scope, frequency, or intermittence of a strike shall not render it unprotected by the NLRA.

The NLRA Must Protect Workers' Rights to Litigate Joint, Class, or Collective Claims

Many employers engage in a widespread practice of requiring employees to waive their right to go to court over workplace disputes as a condition of employment, and to agree to arbitrate claims individually before an arbitrator of the employer's choosing. Today, over 60 million workers are subject to these requirements.¹⁵³

Under longstanding precedent, the NLRA's protection of concerted activity extend to employees' efforts to seek administrative or legal remedies for workplace disputes.¹⁵⁴ As Mr. Griffin explained at the July 25th Hearing, "it is clear that an employer requirement that an employee must proceed individually to resolve all employment law disputes through arbitration violates Section 8(a)(1) because it interferes with the employee's Section 7 right to act jointly or collectively to address such matters."¹⁵⁵

However, despite the plain text of the NLRA permitting employees to engage in concerted activity for mutual aid and protection, the Supreme Court in 2018 rejected the NLRB's position that the NLRA protects workers' rights to engage in joint, class, or collective litigation.¹⁵⁶ In *Epic Systems v. Lewis*, the Court held that the Federal Arbitration Act "instructed federal courts to enforce arbitration agreements according to their terms," and incorrectly found that the NLRA "says nothing about how judges and arbitrators must try legal disputes."¹⁵⁷

This decision fueled the already-rampant practice of employers requiring employees to sign agreements agreeing to arbitrate any workplace claims individually and before an arbitrator of the employer's choosing. Many individual actions are simply not feasible to litigate, as employees are unable to secure counsel, whereas collective actions allow workers to pool resources and litigate more effectively. Because of the *Epic Systems* decision, 80 percent of pri-

¹⁵¹ Katie Johnston, *National Grid Union Workers OK Contract, Ending Lockout*, Boston Globe (Jan. 7, 2019, 4:02 PM) <https://www.bostonglobe.com/business/2019/01/07/two-unions-approve-national-grid-contract/hEg7JnmsMWjT71CRQ9NKQM/story.html>.

¹⁵² *Id.*

¹⁵³ Andrew J.S. Colvin, Econ. Policy Inst., *The Growing Use of Mandatory Arbitration 2* (2018), <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/>.

¹⁵⁴ Griffin Testimony at 14 (citing *Spandisco Oil and Royalty Co.*, 42 NLRB 942, 949 (1942)).

¹⁵⁵ *Id.*

¹⁵⁶ *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018).

¹⁵⁷ *Id.* at 1619.

vate sector, non-union workers are expected to be covered by a forced individual arbitration clause by 2024.¹⁵⁸

As Justice Ginsburg noted in her dissent in *Epic Systems*: “Congressional correction of the Court’s elevation of the FAA over workers’ rights to act in concert is urgently in order.”¹⁵⁹ The PRO Act provides that correction by prohibiting pre-dispute agreements that require employees to waive their rights to litigate a joint, class, or collective claim in any forum of competent jurisdiction. It also prohibits employers from coercing employees into such a waiver, or from retaliating against employees for refusing to enter into such a waiver, regardless of whether the coercion or retaliation occurred before or after the dispute.

The NLRA Must Protect Workers’ Ability to Negotiate Fair Share Fees

The NLRA states that a recognized or certified union is the exclusive representative of the employees it represents. Therefore, the union must represent all workers within the bargaining unit equally and without regard to their membership in the union.¹⁶⁰ Accordingly, the NLRA allows unions and employers to agree to require that employees who are not members of the union, but benefit from a collective bargaining agreement, may be assessed a fair share fee to support the costs of representation and collective bargaining as a condition of continuing employment.¹⁶¹ However, as a result of the 1947 amendments to the NLRA, Section 14(b) permits states to pass laws that prevent unions from requiring membership as a condition of employment.¹⁶² As a result, 27 states have passed so-called “right to work” laws that prohibit unions and employers from entering into agreements requiring fair share fees from workers who benefit from union representation.

During an exchange at the March 27 hearing between Dr. Rosenfeld and Congresswoman Marcia Fudge (D–OH–11), they discussed how bans on fair share fees were originally crafted to enforce segregation:

Ms. Fudge: Can you tell me if, in fact, right-to-work laws really were designed to keep unions out because [certain employers] didn’t want blacks and whites to have the same equal rights?

Dr. Rosenfeld: Thank you for that question, Congresswoman. So the history of right to work is interesting. It is pretty ugly. One of the key drivers behind these types of regulations was a Texas businessman, a successful businessman and white supremacist, Vance Muse, who promoted the rule because he ardently felt that unions brought people together, brought workers together across racial lines, and that was something he felt needed to be stopped in its tracks. And so it was no accident that the

¹⁵⁸ Griffin Testimony at 16 (citing Center for Popular Democracy and Econ. Policy Inst., *Unchecked Corporate Power: Forced Arbitration, the Enforcement Crisis, and How Workers are Fighting Back* (2019), <https://www.epi.org/files/uploads/Unchecked-Corporate-Power-web.pdf>).

¹⁵⁹ *Epic Systems Corp.*, 138 S. Ct. at 1633 (Ginsburg, J., dissenting).

¹⁶⁰ 29 U.S.C. § 159(a).

¹⁶¹ *Id.* § 158(a)(3).

¹⁶² *Id.* § 164(b).

first states that adopted these types of regulations happened to be the states of the former Confederacy.¹⁶³

These limits on how unions and employers can negotiate have negative implications on workers' wages. As Mr. Trumka explained to the Committee after the May 8th Hearing, "workers' wages in right-to-work states are 3.1 percent lower than those in non-right-to-work states . . . and [on] average full-time workers earn \$1,558 less per year in right-to-work states."¹⁶⁴

Statutory prohibitions on fair share agreements undermine unions' ability to represent employees and collectively bargain because they create a free-rider problem, where individuals enjoy the benefits from representation without paying any of the costs. This shifts the costs of free riders onto the shoulders of coworkers who elect to join the union and pay dues. The PRO Act solves the free rider problem by permitting unions and employers to negotiate to require fair share fees, notwithstanding state laws, to cover the costs of collective bargaining and administration of the agreement.

THE RIGHT TO JOIN A UNION IS A HUMAN RIGHT, AND THE PRO ACT BOLSTERS THE UNITED STATES' COMPLIANCE WITH INTERNATIONAL STANDARDS

The United States is a member of the International Labor Organization (ILO), which codifies labor rights into international conventions for member countries to ratify. Although the ILO has designated its Convention Concerning Freedom of Association and Protection of the Right to Organize¹⁶⁵ and its Convention Concerning the Application of the Principles of the Right to Organize and Bargain Collectively¹⁶⁶ as two of its core conventions, the United States has ratified neither.¹⁶⁷ However, the United States is a signatory to the ILO's Declaration on Fundamental Principles and Rights at Work,¹⁶⁸ and it therefore has "an obligation" to "respect, to promote, and to realize . . . the principles concerning the fundamental rights . . . [of] freedom of association and the effective recognition of the right to collective bargaining."¹⁶⁹

The ILO's Committee on Freedom of Association has repeatedly observed that the NLRA falls short of the protections afforded in these international standards.¹⁷⁰ During an exchange between Mr.

¹⁶³Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor, *Protecting Workers' Right to Organize: The Need for Labor Law Reform*, YouTube (July 25, 2019), <https://www.youtube.com/watch?v=T9FPVr5-umY> (question an answer between Ms. Fudge and Dr. Rosenfeld at 1:06:26) (reprinted as Serial 116–11).

¹⁶⁴Trumka Supplemental Statement at 5 (citing Ross Eisenbrey, *New Study Confirms that Right-to-Work Laws Are Associated with Significantly Lower Wages*, Econ. Policy Inst. (Apr. 22, 2015, 3:24 PM), <https://epi.org/blog/new-study-confirms-that-right-to-work-laws-are-associated-with-significantly-lower-wages>).

¹⁶⁵ILO, Convention (No. 87) Concerning Freedom of Association and Protection of the Right to Organize, July 9, 1948, 68 U.N.T.S. 17.

¹⁶⁶ILO, Convention (No. 98) Concerning the Application of the Principles of the Right to Organize and Bargain Collectively, July 1, 1949, 96 U.N.T.S. 257.

¹⁶⁷Trumka Testimony at 6 (adding that only five other ILO members have ratified two or fewer core conventions).

¹⁶⁸International Labor Organization, Declaration on Fundamental Principles and Rights at Work, Section 2 (June 18, 1998), available at http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang_en/index.htm.

¹⁶⁹*Id.*

¹⁷⁰See, e.g., International Labor Organization, Committee on Freedom of Association, Complaint Against the Government of the United States Presented by the AFL–CIO, para. 854, Report No. 349, Case No. 2524 (2006), https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2910434 (finding that the NLRA's exclusion of supervisors is "overly wide" and not "limited to those workers genuinely representing the interests of employers"); International Labor Organization, Committee on Freedom

Trumka and Congresswoman Donna Shalala (D–FL–27) at the May 8th Hearing, they discussed the implications of the United States’ noncompliance with international standards:

Ms. Shalala: Does the U.S. law comply with the basic standards of the ILO conventions? And how does non-compliance diminish our standing in the world? And how would the PRO Act help promote compliance with international human rights standards?

Mr. Trumka: It does not comply. Our laws don’t comply with ILO conventions . . . There was just a study done by the World Justice Project . . . And the way that it affects us most is, because we don’t do the things that we ask other[countries] to do, we look like hypocrites. We ask them to do something and we haven’t done it. We do not protect the right to strike. That is one of the things that the international community specifically addresses . . . and says the right to strike cannot exist when you can permanently replace anybody who exercises the right to strike. So what it does is, it lessens our standing in the world and it makes it more difficult for us to help people in other parts of the world correct the outrageous labor standards and lack of labor laws that they have.¹⁷¹

The PRO Act is designed to bolster compliance with international labor standards, including the Declaration on Fundamental Principles and Rights at Work and respective core conventions, by protecting workers’ full freedom of association.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states that the title of the bill is the *Protecting the Right to Organize Act of 2019*.

Section 2. Amendments to the National Labor Relations Act

a. Definitions

This subsection amends the definitions of employer, employee, and supervisor:

of Association, Complaint Against the Government of the United States Presented by the AFL–CIO, para. 610, Report No. 332, Case No. 2227 (2003). https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2907332 (“[T]he remedial measures left to the NLRB in cases of illegal dismissals of undocumented workers are inadequate to ensure effective protection against acts of anti-union discrimination.”); International Labor Organization, Committee on Freedom of Association, Complaint Against the Government of the United States Presented by the United Food and Commercial Workers International Union, para. 198, Report No. 284, Case No. 1523 (1992) https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2901959 (observing that requiring temporary injunctions against unions for violations against employers, but not against employers for violations against employees, is inequitable); International Labor Organization, Committee on Freedom of Association, Complaint Against the Government of the United States Presented by the AFL–CIO, para. 92, Report No. 278, Case No. 1543 (1991) https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2902035 (finding that permitting the permanent replacement of strikers undermines the right to strike and “may affect the free exercise of trade union rights”).

¹⁷¹ Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Education and Labor, *Protecting the Right to Organize Act: Detering Unfair Labor Practices*, YouTube (May, 2019), https://www.youtube.com/watch?v=UA3vxNxKi_c (question and answer between Ms. Shalala and Mr. Trumka at 2:01:36) (citing Rule of Law Index, World Justice Project (2019), <https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2019-Single%20Page%20View-Reduced.pdf>).

- Amends 2(2) of the NLRA (defining employer) so that two more persons shall be employers under the NLRA if each co-determines or shares control over the employees' essential terms and conditions of employment.
- Amends 2(3) of the NLRA (defining employee) to ensure workers performing any service are employees and not independent contractors unless: (1) the individual is free from the employer's control in connection with the performance of the service, both under the contract for the performance of service and in fact; (2) the service is performed outside the usual course of the business of the employer; and (3) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.
- Amends 2(11) of the NLRA (defining supervisor) to require that the individual's supervisory activities be executed for "a majority of the individual's worktime" and modifies the list of supervisory activities in 2(11) to remove the individual's authority to "assign" and "responsibly to direct" employees.

b. Annual report

This subsection reinstates the NLRB's requirement to prepare annual reports:

- Amends 3(c) of the NLRA (governing annual reports) requiring the NLRB to submit annual reports to Congress detailing the agency's significant case handling activities and operations.

c. Appointment of individuals to conduct economic analyses

This subsection permits the NLRB to conduct economic analyses:

- Amends 4(a) of the NLRA (describing officers and employees) by striking the provision of current law that prohibits the NLRB from appointing individuals to conduct economic analyses.

d. Unfair labor practices and collective bargaining procedures for a first contract

This subsection strengthens workers' rights to engage in protected activities:

- Amends § 8(a) of the NLRA (governing unfair labor practices committed by employers) to prohibit employers from, permanently replacing employees who strike, or discriminating against employees who support or participate in a strike.
- Amends § 8(a) of the NLRA (governing unfair labor practices committed by employers) to prohibit companies from offensively locking out employees in the absence of a threatened strike.
- Amends § 8(a) of the NLRA (governing unfair labor practices committed by employers) to prohibit employers from misclassifying employees by communicating or misrepresenting to an employee that they are not covered by the NLRA, when in fact they are an "employee" under 2(3) of the NLRA.
- Amends § 8(b) of the NLRA (governing unfair labor practices by labor organizations) and strikes the following provisions of the NLRA:

- § 8(b)(4) (prohibiting union secondary boycott activity);
- and
- § 8(b)(7) (prohibiting union recognition picketing).
- Amends § 8(c) of the NLRA (governing the expression of views) to prohibit employers from requiring employees' attendance at anti-union meetings or campaign related activities as a condition of employment.
- Amends § 8(d) of the NLRA (governing employers and labor organizations' duty to bargain) to clarify that the duty to bargain requires the employer to maintain current terms and conditions of employment pending an agreement.
- Amends § 8(d) of the NLRA (governing employers and labor organizations' duty to bargain) to prevent employers from unilaterally withdrawing union recognition prior to the completion of a decertification election by the employees.
- Amends § 8(d)(3) of the NLRA (governing employers and labor organizations' duty to bargain) to require that the following applies whenever collective bargaining is for the purpose of establishing an initial collective bargaining agreement with a labor organization:
 - Within 10 days of the union submitting a request to the employer, or for a longer duration if the parties mutually agree, the parties shall meet and commence bargaining and make every reasonable effort to conclude a bargaining agreement.
 - If after expiration of 90 days (or for additional periods as the parties may agree) the parties fail to reach an agreement, either party may request mediation facilitated by the Federal Mediation and Conciliation Service (FMCS).
 - If after 30 days from the request for mediation (or for additional periods as the parties may agree) the FMCS cannot bring the parties to agreement by conciliation, the FMCS shall refer the dispute to a tripartite arbitration panel.
 - The arbitration panel shall be composed of one member selected by the labor organization, one member selected by the employer, and one neutral member mutually agreed to by the parties. A majority of the panel shall render a decision settling the dispute, and such decision shall be binding on the parties for two years, unless amended during such period by written consent of the parties. Such decision shall be based on:
 - the employer's financial status and prospects;
 - the size and type of the employer's operations and business;
 - the employees' cost of living;
 - the employees' ability to sustain themselves, their families, and their dependents on the wages and benefits they earn from the employer; and
 - the wages and benefits other employers in the same business provide their employees.
- Amends § 8(d)(3) of the NLRA (governing employers and labor organizations' duty to bargain) to provide 14 days for labor organizations and employers to select arbitrators to serve on the arbitration panel. If the labor organization or employer

fail to do so within that time period, the FMCS shall designate any members not selected by the employer or the labor organization.

- Amends § 8(e) of the NLRA (governing the enforceability of agreements to boycott employers) striking the prohibition on hot cargo agreements and inserting a prohibition on collective and class action litigation waivers. This provision also establishes an unfair labor practice under § 8(a)(1) of the NLRA (prohibiting employers from interfering with employees right to engage in concerted activities) that prohibits employers from requiring employees (regardless of their union membership) to waive their right to collective and class action litigation. This section now makes it unlawful for employers to:

- enter into or enforce an agreement where an employee undertakes or promises not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee, prior to a dispute to which the agreement applies;
- coerce an employee into promising not to pursue, bring, join, litigate or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee; or
- retaliate or threaten to retaliate against an employee for refusing to undertake or promise not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee.
- Adds a new § 8(h)(1) to the NLRA to direct the NLRB to promulgate regulations requiring employers to post and maintain notices to employees of their rights under the NLRA and to notify each new employee of the information in the notice.
- Adds a new § 8(h)(2) to the NLRA to require that employers provide unions with a list that includes employees' names, addresses, work locations, shifts, job classifications, and, if available to the employer, personal landline and mobile telephone numbers and email addresses—of all the employees in the bargaining unit, in a searchable electronic format, no later than two business days after the NLRB directs an election.
- Adds a new § 8(i) to the NLRA to protect employees' right to engage in concerted activity when it occurs on workplace email or other employer-provided electronic communication systems, absent a compelling business rationale.

e. Representation elections and bargaining orders

This subsection ensures fairness in union representation elections:

- Amends section § 9(c)(1) of the NLRA (governing NLRB election hearings) to require that the NLRB find the union's proposed unit of employees appropriate if the union demonstrates that the employees share a community of interest, unless any excluded employees share an overwhelming community of interest with the employees in the unit.
- Amends § 9(c)(1) of the NLRA (governing NLRB election hearings) to permit offsite union representation elections elec-

tronically, through certified mail, or at a location other than the one owned or controlled by the employer.

- Amends §9(c)(1) of the NLRA (governing NLRB election hearings) to eliminate employer standing as a party in union representation proceedings.

- Adds a new §9(c)(4) to the NLRA mandating that the NLRB issue an order requiring the parties to engage in bargaining when a majority of valid ballots have been cast in favor of a union.

- Adds a new §9(c)(5) to the NLRA authorizing the NLRB to issue orders requiring employers to bargain with unions when a majority of employees in the voting unit have signed authorization cards designating the union as their representative, but a majority of ballots during a union representation election were not cast in favor of the labor organization due to employer interference.

- Adds a new §9(c)(8) to the NLRA requiring the NLRB to schedule pre-election hearings not later than eight days after notice of the hearing is served on the labor organization and to schedule post-election hearings not later than 14 days after the filing of objections disputing election results.

f. Prevention of unfair labor practices

This subsection improves the NLRB's ability to prevent unfair labor practices:

- Amends §10(c) of the NLRA (findings and orders of Board) to provide that when an employer discriminates against an employee in violation of §8(a)(3) of the NLRA (prohibiting employer discrimination against employees in regard to hire or tenure of employment), discriminates against an employee in violation of §8(a)(4) of the NLRA (prohibiting employer discrimination against employees for filing an unfair labor practice), or has committed a violation of §8(a) of the NLRA (governing unfair labor practices committed by employers) that results in the discharge of an employee or other serious economic harm to an employee, the NLRB shall award the employee back pay without any reduction, front pay (when appropriate), consequential damages, and an additional amount as liquidated damages equal to two times the amount of damages awarded. The NLRB must not deny relief under this subsection on the basis that the employee is, or has ever been, an unauthorized alien as defined under any provision of federal law relating to the unlawful employment of aliens.

g. Enforcing compliance with orders of the NLRB and penalties for contempt

This subsection improves the efficacy of NLRB orders:

- Adds a new §10(d)(1) to the NLRA permitting the NLRB to enforce its own orders.

- Adds a new §10(d)(2) to the NLRA requiring parties that fail or neglect to obey NLRB orders to pay the NLRB a civil monetary penalty of not more than \$10,000 for each violation, which accrues to the United States Treasury. This penalty may

be recovered in a civil action brought in federal district court, providing such action may not be brought until 30 days following the issuance of an order. Each such violation of an order shall be deemed a separate offense.

- Amends §10(f) of the NLRA (governing review of final NLRB orders) to grant parties adversely affected by NLRB orders the right to seek review before federal courts of appeals within 30 days of the contempt order being issued.

h. Injunctions against unfair labor practices involving discharge or other serious economic harm

This subsection ensures that employees who allege a violation causing serious economic harm receive injunctive relief for the duration of their proceeding:

- Amends §10(j) of the NLRA (injunctions) to require the NLRB seek temporary injunctions whenever there is reasonable cause to believe:
 - an employer has engaged in an unfair labor practice within the meaning of §8(a)(1) of the NLRA (prohibiting employer interference with employees' right to engage in concerted activities); or
 - an employer has engaged in an unfair labor practice within the meaning of §8(a)(3) of the NLRA (prohibiting employer discrimination against employees in regard to hire or tenure of employment); or
 - an employer has engaged in an unfair labor practice that involves discharge or serious economic harm to an employee.
- Requires federal district courts to grant the relief requested unless the court concludes there is no reasonable likelihood that the NLRB will succeed on the merits.

i. Penalties

This subsection authorizes civil monetary penalties for an employer's unfair labor practices and other violations, and provides an alternative means for enforcing alleged violations of the NLRA when the NLRB fails to act in a timely manner:

- Adds a new §12(b) to the NLRA that authorizes the NLRB to assess a civil monetary penalty not to exceed \$500 when an employer fails to post a notice of employee rights and protections in the workplace, fails to inform new employees about their rights under the NLRA, or fails to timely produce voter eligibility lists.
- Adds a new §12(c) to the NLRA to authorize a civil monetary penalty not to exceed \$50,000 when an employer commits an unfair labor practice within the meaning of §8(a) of the NLRA (governing unfair labor practices committed by employers). In determining the size of such penalty, the NLRB may consider the gravity of the violation, the impact of the violation on the employee, and the size of the employer. If the employer has committed another such violation causing discharge or serious economic harm in the previous five years, the NLRB is authorized assess a civil monetary penalty up to \$100,000. Under certain circumstances, the NLRB may hold an officer or

director of an employer personally liable and assess a civil penalty against that individual.

- Adds a new § 12(d) to the NLRA to permit any person injured by a violation of § 8(a)(1) of the NLRA (prohibiting employer interference with employee's right to engage in concerted activities) or § 8(a)(3) of the NLRA (prohibiting employer discrimination against employees in regard to hire or tenure of employment) to file a civil action in federal district court. The employee may bring a civil action if the NLRB does not seek an injunction within 60 days of filing a charge, and the employee has 90 days to bring the civil action after the expiration of the 60-day period or the date the Board notifies the person that no complaint shall issue, whichever occurs earlier.

j. Limitations on strike activity

This subsection clarifies employees' right to strike:

- Amends § 13 (right to strike) of the NLRA by indicating that the duration, scope, frequency, or intermittence of any strike does not render the strike unlawful.

k. Fair share agreements permitted

This subsection permits labor organizations to negotiate for fair share fees to ensure employees benefitting from collective bargaining agreements contribute their fair share to the labor organization:

- Amends § 14(b) of the NLRA (agreements requiring union membership) to permit unions and employers to enter into collective bargaining agreements that require all employees in a bargaining unit to contribute fees to labor organizations for the cost of representation, contract enforcement, and related expenditures as a condition of employment, irrespective of state law.

Section 3. Conforming amendments to the Labor Management Relations Act of 1947

This section updates the Labor Management Relations Act (LMRA) to reflect changes made by the PRO Act to NLRA provisions that the LMRA references:

- Amends § 213 of the LMRA (governing conciliation of labor disputes in the health care industry) to reflect organizational and non-substantive changes made to § 8(d) of the NLRA (governing employers and labor organizations' duty to bargain). This section also strikes § 303 (private right of action to bring suit for damages related to unlawful secondary boycotts and unlawful combinations) because § 8(b)(4) (prohibitions on secondary boycotts and picketing) is repealed in the PRO Act and § 303 is, therefore, rendered superfluous.

Section 4. Amendments to the Labor-Management Reporting and Disclosure Act of 1959

This section promotes employer transparency by requiring employers to report arrangements with consultants regarding employee labor relations:

- Amends § 203(c) of the LMRDA (governing employer reporting requirements) to clarify that neither employers nor

consultants who agree to undertake persuader activities (for an object described in § 203(b)(1) of the LMRDA) are exempt from requirements mandating the disclosure of arrangements they enter into with consultants to directly or indirectly persuade employees on how to exercise their rights under the NLRA. These arrangements include planning or conducting employee meetings, training employer representatives, identifying employees for disciplinary action or targeting, or drafting employer personnel policies.

Section 5. Authorization of appropriations

This section authorizes such sums as may be necessary to carry out the provisions of the Act.

EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the descriptive portions of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104–1, H.R. 2474, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

UNFUNDED MANDATE STATEMENT

Pursuant to section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104–4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 2474, as amended, prepared by the Director of the Congressional Budget Office.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2474 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 2474:

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 1 Bill: Amendment Number: 2

Disposition: Adopted by a vote of 25-21

Sponsor/Amendment: Wilson /Renders an employers' misclassification of employees to be a violation of NLRA

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)	X			Mr. ROE (TN)		X	
Mr. GRIJALVA (AZ)			X	Mr. THOMPSON (PA)		X	
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)		X	
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)		X	
Mr. SABLAN (MP)	X			Mr. BYRNE (AL)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. SMUCKER (PA)		X	
Mr. DESAULNIER (CA)	X			Mr. BANKS (IN)		X	
Mr. NORCROSS (NJ)	X			Mr. WALKER (NC)		X	
Ms. JAYAPAL (WA)	X			Mr. COMER (KY)		X	
Mr. MORELLE (NY)	X			Mr. CLINE (VA)		X	
Ms. WILD (PA)	X			Mr. FULCHER (ID)		X	
Mr. HARDER (CA)	X			Mr. TAYLOR (TX)		X	
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)		X	
Ms. SCHRIER (WA)	X			Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)	X			Mr. MEUSER (PA)		X	
Mrs. HAYES (CT)	X			Mr. TIMMONS (SC)		X	
Ms. SHALALA (FL)	X			Mr. JOHNSON (SD)		X	
Mr. LEVIN (MI)	X			Mr. KELLER (PA)		X	
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)			X				

TOTALS: Ayes: 25 Nos: 21 Not Voting: 4

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 2 Bill: Amendment Number: 3

Disposition: Adopted by a vote of 27-21

Sponsor/Amendment: Levin / Permits NLRB elections to be conducted on mail ballot or off the work location,
 electronically, or via mail ballot

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)	X			Mr. ROE (TN)		X	
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)		X	
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)		X	
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)		X	
Mr. SABLAN (MP)	X			Mr. BYRNE (AL)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. SMUCKER (PA)		X	
Mr. DESAULNIER (CA)	X			Mr. BANKS (IN)		X	
Mr. NORCROSS (NJ)	X			Mr. WALKER (NC)		X	
Ms. JAYAPAL (WA)	X			Mr. COMER (KY)		X	
Mr. MORELLE (NY)	X			Mr. CLINE VA)		X	
Ms. WILD (PA)	X			Mr. FULCHER (ID)		X	
Mr. HARDER (CA)	X			Mr. TAYLOR (TX)		X	
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)		X	
Ms. SCHRIER (WA)	X			Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)	X			Mr. MEUSER (PA)		X	
Mrs. HAYES (CT)	X			Mr. TIMMONS (SC)		X	
Ms. SHALALA (FL)	X			Mr. JOHNSON (SD)		X	
Mr. LEVIN (MI)	X			Mr. KELLER (PA)		X	
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)	X						

TOTALS: Ayes: 27

Nos: 21

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 3 Bill: Amendment Number: 4

Disposition: Adopted by a vote of 27-21

Sponsor/Amendment: Harder / Extends penalties to violations of employee rights beyond those causing
 serious economic harm

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)	X			Mr. ROE (TN)		X	
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)		X	
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)		X	
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)		X	
Mr. SABLAN (MP)	X			Mr. BYRNE (AL)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. SMUCKER (PA)		X	
Mr. DESAULNIER (CA)	X			Mr. BANK (IN)		X	
Mr. NORCROSS (NJ)	X			Mr. WALKER (NC)		X	
Ms. JAYAPAL (WA)	X			Mr. COMER (KY)		X	
Mr. MORELLE (NY)	X			Mr. CLINE (VA)		X	
Ms. WILD (PA)	X			Mr. FULCHER (ID)		X	
Mr. HARDER (CA)	X			Mr. TAYLOR (TX)		X	
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)		X	
Ms. SCHRIER (WA)	X			Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)	X			Mr. MEUSER (PA)		X	
Mrs. HAYES (CT)	X			Mr. TIMMONS (SC)		X	
Ms. SHALALA (FL)	X			Mr. JOHNSON (SD)		X	
Mr. LEVIN (MI)	X			Mr. KELLER (PA)		X	
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)	X						

TOTALS: Ayes: 27

Nos: 21

■ Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 4 Bill: Amendment Number: 5

Disposition: Adopted by a vote of 27-21

Sponsor/Amendment: Trahan / Amends NLRA to prohibit offensive lockouts by employers

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)	X			Mr. ROE (TN)		X	
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)		X	
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)		X	
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)		X	
Mr. SABLAN (MP)	X			Mr. BYRNE (AL)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. SMUCKER (PA)		X	
Mr. DESAULNIER (CA)	X			Mr. BANKS (IN)		X	
Mr. NORCROSS (NJ)	X			Mr. WALKER (NC)		X	
Ms. JAYAPAL (WA)	X			Mr. COMER (KY)		X	
Mr. MORELLE (NY)	X			Mr. CLINE (VA)		X	
Ms. WILD (PA)	X			Mr. FULCHER (ID)		X	
Mr. HARDER (CA)	X			Mr. TAYLOR (TX)		X	
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)		X	
Ms. SCHRIER (WA)	X			Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)	X			Mr. MEUSER (PA)		X	
Mrs. HAYES (CT)	X			Mr. TIMMONS (SC)		X	
Ms. SHALALA (FL)	X			Mr. JOHNSON (SD)		X	
Mr. LEVIN (MI)	X			Mr. KELLER (PA)		X	
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)	X						

TOTALS: Ayes: 27

Nos: 21

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 5 Bill: Amendment Number: 6

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Allen / Strikes provisions in the ANS that end "right to work"

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

■ Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 6 H.R. 2474 Amendment Number: 7
 Bill:

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Allen / Allows employees to revoke their dues to the union at any time

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 7 Bill: Amendment Number: 8

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Thompson / Prescribes that the notice of employees' rights and protections include
 information on not paying union dues

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27 Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 8 Bill: Amendment Number: 9

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Roe / Prohibits employers from recognizing unions on the basis of
 majority support in the form of card check

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 9 Bill: Amendment Number: 10

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Roe / Requires mandatory union recertification elections

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 10 Bill: Amendment Number: 11

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Roe / Allow non-members of a union to vote on collective bargaining

agreements, strikes, or participation in multiemployer pension plans

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 11 Bill: Amendment Number: 12

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Banks / Requires legal status to vote in union representation elections

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474

Roll Call: 12

Bill:

Amendment Number: 13

Disposition: defeated by a vote of 21-26

Sponsor/Amendment: Johnson / Allows employers to avoid collective bargaining pertaining to employee raises

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)			X	Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 26

Not Voting: 3

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 13 H.R. 2474 Amendment Number: 14
 Bill:

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Meuser / Makes it an unfair labor practice for a union to fail to protect employee personal information received in a representation proceeding

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRUJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27 Not Voting: 2

Total: 50 / Quorum: 17 / Report: 26

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 14 Bill: Amendment Number: 15

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Timmons / Authorize civil penalties against unions for violations of the secondary boycott provisions under current law

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 15

H.R. 2474
Bill:

Amendment Number: 16

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Comer / Strikes provision in ANS ending prohibition on secondary boycotts

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 16 Bill: Amendment Number: 17

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Keller / Strikes provisions in ANS that eliminate the prohibition on free speech
 activities like secondary boycotts and picketing

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 17 H.R. 2474 Amendment Number: 18
 Bill:

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Stefanik / Strikes provision in ANS that clarifies definition of employee

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (KY)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474

Roll Call: 18

Bill:

Amendment Number: 19

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Watkins / Prevents arbitration panel from requiring first contract
to include participation in multiemployer pension plan

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474

Roll Call: 19

Bill:

Amendment Number: 20

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Walberg / Delays a union pre-election hearing for at least 14 days

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 20 Bill: Amendment Number: 21

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Walberg / Requires notices accompanying union authorization cards to declare purpose
 and disclose dues and fees

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 21 Bill: Amendment Number: 22

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Walberg/ Prevents human trafficking provisions from being taken into account

for purposes of determining joint employer status

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474

Roll Call: 22

Bill:

Amendment Number: 23

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Byrne / Narrows joint employer standard

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRUJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474

Roll Call: 23

Bill:

Amendment Number: 24

Disposition: defeated by a vote of 21-27

Sponsor/Amendment: Byrne / Prevents corporate social responsibility requirements from being used
as evidence of joint employer relationship

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMOMS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 27

Not Voting: 2

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474

Roll Call: 24

Bill:

Amendment Number: 25

Disposition: defeated by a vote of 21-26

Sponsor/Amendment: Smucker / Expands civil penalties in the ANS

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)			X*				
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 26

Not Voting: 3

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 25 Bill: Amendment Number: 26

Disposition: defeated by a vote of 21-26

Sponsor/Amendment: Smucker / Prohibits unions from preventing workers from breaking a strike

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)			X*				
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 26

Not Voting: 3

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 26 Bill: Amendment Number: 27

Disposition: defeated by a vote of 21-26

Sponsor/Amendment: Smucker / Prevents employees from paying dues to a union for purposes
 other than collective bargaining

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHIMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)			X*				
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 26 Not Voting: 3

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 27 H.R. 2474 Amendment Number: 28, 30, 31, 34 en bloc
 Bill:

Disposition: defeated by a vote of 21-26

Sponsor/Amendment: Guthrie (amend #28), Fulcher (amend #30), Foxx (amend #31), Foxx (amend #34)

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)			X*				
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 26

■ Not Voting: 3

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 28 H.R. 2474 Amendment Number: 29 and 35 en bloc
 Bill:

Disposition: defeated by a vote of 21-26

Sponsor/Amendment: Walker (amend #29), Foxx (amend #35)

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)			X*				
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 26 Not Voting: 3

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 29 H.R. 2474 Amendment Number: 32
 Bill:

Disposition: defeated by a vote of 21-26

Sponsor/Amendment: Foxx / Limits the voter registration list that unions receive before
 an election to one form of contact information

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)			X*				
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 26 Not Voting: 3

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

H.R. 2474
 Roll Call: 30 Bill: Amendment Number: 33

Disposition: defeated by a vote of 21-26

Sponsor/Amendment: Foxx / Requires collective bargaining over the full scope of health benefits,
 notwithstanding any other provision of law

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)		X		Mr. ROE (TN)	X		
Mr. GRUJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. SMUCKER (PA)	X		
Mr. DESAULNIER (CA)		X		Mr. BANKS (IN)	X		
Mr. NORCROSS (NJ)		X		Mr. WALKER (NC)	X		
Ms. JAYAPAL (WA)		X		Mr. COMER (KY)	X		
Mr. MORELLE (NY)		X		Mr. CLINE (VA)	X		
Ms. WILD (PA)		X		Mr. FULCHER (ID)	X		
Mr. HARDER (CA)		X		Mr. TAYLOR (TX)	X		
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)	X		
Ms. SCHRIER (WA)		X		Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)		X		Mr. MEUSER (PA)	X		
Mrs. HAYES (CT)		X		Mr. TIMMONS (SC)	X		
Ms. SHALALA (FL)		X		Mr. JOHNSON (SD)	X		
Mr. LEVIN (MI)		X		Mr. KELLER (PA)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)			X*				
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 21

Nos: 26

Not Voting: 3

Total: 50 / Quorum: / Report:

(28 D - 22 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 9/25/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 31 H.R. 2474 Amendment Number: Motion
 Bill:

Disposition: Adopted by a vote of 26-21

Sponsor/Amendment: Bonamici/to report to the House with an amendment and with the recommendation that the amendment be agreed to, and the bill as amended, do pass

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)	X			Mr. ROE (TN)		X	
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)		X	
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)		X	
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)		X	
Mr. SABLAN (MP)	X			Mr. BYRNE (AL)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. SMUCKER (PA)		X	
Mr. DESAULNIER (CA)	X			Mr. BANKS (IN)		X	
Mr. NORCROSS (NJ)	X			Mr. WALKER (NC)		X	
Ms. JAYAPAL (WA)	X			Mr. COMER (KY)		X	
Mr. MORELLE (NY)	X			Mr. CLINE (VA)		X	
Ms. WILD (PA)	X			Mr. FULCHER (ID)		X	
Mr. HARDER (CA)	X			Mr. TAYLOR (TX)		X	
Mrs. MCBATH (GA)			X	Mr. WATKINS (KS)		X	
Ms. SCHRIER (WA)	X			Mr. WRIGHT (TX)			X
Ms. UNDERWOOD (IL)	X			Mr. MEUSER (PA)		X	
Mrs. HAYES (CT)	X			Mr. TIMMONS (SC)		X	
Ms. SHALALA (FL)	X			Mr. JOHNSON (SD)		X	
Mr. LEVIN (MI)	X			Mr. KELLER (PA)		X	
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)			X [^]				
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)	X						

TOTALS: Ayes: 26 Nos: 21 Not Voting: 3

Total: 50 / Quorum: / Report:

(28 D - 22 R)

[^]Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 2474 are to: deter employers from violating workers' right to organize, safeguard free and fair union representation elections, protect the right of employees to collectively bargain, facilitate transparency in labor-management relations, prevent employers from avoiding their legal responsibilities under federal labor laws, and remove unjust restrictions on workers' exercise of rights.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 2474 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

HEARINGS

Pursuant to section 103(i) of H. Res. 6 for the 116th Congress, the Committee held the following hearings.

On March 26, 2019, the Committee held a hearing entitled "*Protecting Workers' Right to Organize: The Need for Labor Law Reform,*" which was used to develop H.R. 2474. The Committee heard testimony on the economic consequences of declining union membership, the inadequacy of deterrents for employer violations of the NLRA, and legislative solutions that would strengthen rights set forth in the law. The Committee heard testimony from: Jake Rosenfeld, Professor of Sociology at Washington University, St. Louis, MO; Cynthia Harper, Former Lamination Specialist at Fuyao Glass, Englewood, OH; Glenn Taubman, Staff Attorney for the National Right to Work Foundation, Springfield, VA; and Devki K. Virk, Member of Bredhoff & Kaiser, PLLC, Washington, DC.

On May 8, 2019, the Committee held a legislative hearing entitled "*Protecting the Right to Organize Act: Detering Unfair Labor Practices,*" which was used to consider H.R. 2474. The Committee heard testimony on the consequences of the NLRA's weak enforcement scheme, the impacts of lacking penalties for employer interference with workers organizing, the NLRB's inability to enforce its own orders, and the remedies contained in the PRO Act. The Committee heard testimony from: Richard Trumka, President of the AFL-CIO, Washington, DC; Jim Staus, Former Supply Clerk at University of Pittsburgh Medical Center, Pittsburgh, PA; Philip Miscimarra, Partner at Morgan, Lewis & Bockius LLP, Washington, DC; and Mark Pearce, Executive Director of the Workers' Rights Institute at Georgetown University Law School and Former Chairman of the NLRB, Washington, DC.

On July 25, 2019, the Committee held a legislative hearing entitled "*Protecting the Right to Organize Act: Modernizing America's Labor Laws,*" which was used to consider H.R. 2474. The Committee heard testimony on the problems caused by misclassification of employees, the NLRB's efforts to narrow the joint employer

standard, and undue restrictions on workers' First Amendment right to strike or engage in peaceful picketing activity. The Committee heard testimony from: Charlotte Garden, Associate Professor and Co-Associate Dean for Research and Faculty Development at the Seattle University School of Law, Seattle, WA; Josue Alvarez, Truck Driver for XPO Logistics, Bell Gardens, CA; G. Roger King, Senior Labor and Employment Counsel at the HR Policy Association, Washington, DC; and Richard F. Griffin, Jr., Of Counsel at Bredhoff & Kaiser, PLLC, Washington, DC.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 2474 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 5, 2019.

Hon. BOBBY SCOTT,
*Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2474, the Protecting the Right to Organize Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Meredith Decker.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

At a Glance			
H.R. 2474, Protecting the Right to Organize Act of 2019			
As ordered reported by the House Committee on Education and Labor on September 25, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	14	39
Increase or Decrease (-) in the Deficit	0	-14	-39
Spending Subject to Appropriation (Outlays)	*	3	not estimated
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Over Threshold
* = between zero and \$500,000.			

The bill would:

- Expand the enforcement powers of the National Labor Relations Board (NLRB)
- Amend the definition of joint employer, employee, and supervisor under the National Labor Relations Act (NLRA)
- Authorize appropriations for additional data collection, reporting, and dispute mediation
- Impose intergovernmental and private-sector mandates by preempting state laws, requiring employers to undertake additional actions during collective bargaining negotiations, and prohibiting certain labor practices

Estimated budgetary effects would primarily stem from:

- Imposing new civil penalties on violators of the NLRA
- Authorizing appropriations for the Federal Mediation and Conciliation Service and the Department of Labor

Areas of significant uncertainty include:

- Predicting employer and employee responses to the legislation and resulting changes in the NLRB's workload
- Estimating costs to employers

Bill summary: H.R. 2474 would amend several provisions of the National Labor Relations Act (NLRA), which establishes the rights of most private-sector employees to engage in collective bargaining. The bill would change the statutory definitions of joint employer, employee, and supervisor; modify the list of actions that would qualify as unfair labor practices; and allow collective bargaining agreements to require all employees in a unit to contribute fees to a labor organization as a condition of employment. Employers would be required to post notices that inform workers of their rights under the NLRA and would be prohibited from engaging in certain labor practices. Parties negotiating an initial collective bargaining agreement would be encouraged to use the mediation and arbitration services of the Federal Mediation and Conciliation Service (FMCS) early in the collective bargaining process.

The NLRA is administered by the National Labor Relations Board (NLRB). The bill would allow the NLRB to take into account economic analysis when deciding cases and to assess civil penalties

for violations of the act. H.R. 2474 also would require the NLRB to report annually on its activities to the Congress and the President.

In addition, H.R. 2474 would require more employers to disclose to the Department of Labor any indirect activities (such as hiring outside parties to draft personnel policies or presentations) designed to persuade employees to exercise or not to exercise their right to organize and bargain collectively.

Estimated Federal cost: The estimated budgetary effect of H.R. 2474 is shown in Table 1. The costs of the legislation fall within budget function 500 (education, training, employment, and social services).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 2474

	By fiscal year, millions of dollars—												
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020–2024	2020–2029	
	Increases in Revenues												
Estimated Revenues	0	2	3	4	5	5	5	5	5	5	14	39	
	Increases in Spending Subject to Appropriation												
Estimated Authorization	*	1	1	1	1	n.e.	n.e.	n.e.	n.e.	n.e.	3	n.e.	
Estimated Outlays	*	1	1	1	1	n.e.	n.e.	n.e.	n.e.	n.e.	3	n.e.	

Components may not sum to totals because of rounding; n.e. = not estimated, * = between zero and \$500,000.

Basis of estimate: CBO assumes that the bill will be enacted early in 2020 and that the necessary amounts will be available each fiscal year. Estimated outlays are based on historical patterns for existing and similar activities.

Revenues: The bill would provide the NLRB with the authority to assess civil penalties on employers that violate certain sections of the NLRA. Under current law, the NLRB may seek remedies including reinstatement and back pay for discharged workers. H.R. 2474 would enable the NLRB to assess a civil penalty of up to \$50,000 on employers that commit an unfair labor practice as defined by the NLRA and up to \$100,000 on employers that specifically discriminate against or discharge an employee because of membership in a labor organization. The higher penalty also could be assessed on employers that discriminate against or discharge an employee for filing charges or giving testimony related to unfair labor practices. Based on the history of such cases, CBO estimates those penalties would be imposed in about 120 cases per year, about one-quarter of which would be subject to the higher penalty. The bill also would enable the NLRB to assess a civil penalty of up to \$10,000 on any person who fails to obey an order of the board. Based on the history of such cases, CBO estimates those penalties would apply to about 60 cases per year. Altogether, CBO estimates that enacting those provisions would increase revenues by \$39 million over the 2020–2029 period.

Spending Subject to Appropriation: CBO estimates that implementing H.R. 2474 would cost \$3 million, on net, over the 2020–2024 period. Such spending would be subject to the availability of appropriated funds.

National Labor Relations Board. Some provisions of H.R. 2474 would increase the workload of the NLRB, such as requiring NLRB to report annually to the Congress and the President and allowing

the agency to hire staff to conduct economic analysis to support the agency’s rulemaking and decisionmaking. Other provisions would decrease the workload of the NLRB, because the agency would no longer need to seek enforcement of its orders through the U.S. Courts of Appeals. On net, CBO estimates that implementing those provisions would not significantly change the operating costs for the NLRB over the 2020–2024 period.

Federal Mediation and Conciliation Service. Currently, FMCS receives around 500 notifications annually from the NLRB that new bargaining units have been certified and that the parties are working toward an initial collective bargaining agreement. The agency mediates disputes only if both parties request its services, which occurs in roughly 10 percent of initial collective bargaining cases. H.R. 2474 would allow either side to request mediation services from FMCS early in the collective bargaining process. If the dispute were not resolved, FMCS could refer the parties to an arbitration panel.

Using information from the agency, CBO expects that the number of initial cases mediated by FMCS would double under the bill because either party could request mediation. Additionally, CBO expects that the agency would continue to encourage parties to work toward an agreement independently before mediating any conflict and referring parties to arbitration. The costs of mediation are covered by FMCS; any arbitration costs are covered by the parties. Using information from FMCS, CBO estimates that personnel and administrative costs would increase by \$2 million over the 2020–2024 period mostly for the agency to update its system for referring parties to arbitration, and to hire an additional mediator.

Department of Labor. Section 4 would require employers to report more of their indirect efforts to influence employees’ decisions to organize or bargain collectively to the department’s Office of Labor-Management Standards. Using information from the department, CBO expects that the number of reports filed would roughly triple and that enforcement and processing costs would increase by \$1 million over the 2020–2024 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in Table 2.

TABLE 2.—CBO’S ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF H.R. 2474, PROTECTING THE RIGHT TO ORGANIZE ACT OF 2019, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON EDUCATION AND LABOR ON SEPTEMBER 25, 2019

	By fiscal year, millions of dollars—												
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020–2024	2020–2029	
	Net Decrease in the Deficit												
Pay-As-You-Go Effect	0	–2	–3	–4	–5	–5	–5	–5	–5	–5	–14	–39	

Increase in long-term deficits: None.

Mandates: H.R. 2474 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of the public-sector mandate

would be below the annual threshold for the intergovernmental mandates established by UMRA (\$82 million in 2019, adjusted annually for inflation). CBO estimates that the aggregate cost of complying with the private-sector mandates would exceed the annual threshold established in UMRA (\$164 million in 2019, adjusted annually for inflation).

Mandate that affects the public sector: The bill would preempt current law in states that prohibit contracts between employers and unions from requiring workers to pay for the costs of union representation as a condition of employment. CBO estimates the costs of the preemption, for example to update the information available to businesses and employees about the change in law, would be small.

Mandates that affect the private sector: By requiring employers to post notices outlining new protections for employees and potential employees, H.R. 2474 would impose a mandate on employers under the jurisdiction of the NLRA. Using information from the NLRB, CBO estimates that the cost of the requirement would be approximately \$73 per business and that it would apply to most of the nation's roughly 8 million businesses. Thus, CBO estimates that posting the new notices would cost several hundred million dollars in total.

Several other private-sector mandates are contained in H.R. 2474 but CBO cannot anticipate the number of businesses that would be affected nor the extent to which changes in their labor practices would be required. Therefore, CBO cannot estimate the cost of the following mandates:

- Employers would be prohibited from participating in union elections, requiring employees to attend employer-organized meetings related to labor representation, or misrepresenting employees' status as it relates to the right to representation.
- Employers would be required to allow employees to use electronic and communication equipment for labor organizing and to maintain wages and working conditions for employees during collective bargaining.
- Employers could not reduce or deny employees' hours to influence their position in collective bargaining before a strike, permanently replace employees who participate in strikes seeking better wages and benefits, or prevent employees from engaging in class action lawsuits relating to employment conditions.

The bill also would broaden employers' reporting requirements related to labor-management representation and collective bargaining efforts. Finally, for employment contracts that are not part of a union agreement, the bill would prohibit and void predispute arbitration agreements.

Uncertainty: Depending on the responses of labor organizations, employers, and employees to the bill's provisions, and on how the NLRB implements the bill, the agency's workload could change significantly. The NLRB could interpret the bill as increasing the number of people classified as employees under the NLRA, and those employees might bring more charges of unfair labor practices to the NLRB, and thus increase its workload. On the other hand, larger potential penalties and additional enforcement powers for the NLRB could encourage violators of the NLRA to settle cases earlier, and thus decrease litigation costs. In addition, the NLRB

could choose not to impose penalties when it settles certain cases, and thus reduce revenues.

For the private sector, CBO cannot anticipate the number of businesses likely to be affected by the bill or the extent of changes in their labor practices resulting from it; therefore, CBO cannot estimate the cost to comply with many of those requirements.

Estimate prepared by: Federal Costs: Meredith Decker; Revenues: Bayard Meiser; Mandates: Lilia Ledezma.

Estimate reviewed by: Sheila Dacey, Chief, Income Security and Education Cost Estimates Unit; Joshua Shakin, Chief, Tax Analysis Division; Susan Willie, Chief, Mandates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis; Theresa Gullo, Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 2474. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act of 1974*.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 2474, as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

NATIONAL LABOR RELATIONS ACT

* * * * *

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term “person” includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11 of the United States Code, or receivers.

(2) The term “employer” includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent

of such labor organization. *Two or more persons shall be employers with respect to an employee if each such person codetermines or shares control over the employee's essential terms and conditions of employment. In determining whether such control exists, the Board or a court of competent jurisdiction shall consider as relevant direct control and indirect control over such terms and conditions, reserved authority to control such terms and conditions, and control over such terms and conditions exercised by a person in fact: Provided, That nothing herein precludes a finding that indirect or reserved control standing alone can be sufficient given specific facts and circumstances.*

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined. *An individual performing any service shall be considered an employee (except as provided in the previous sentence) and not an independent contractor, unless—*

(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;

(B) the service is performed outside the usual course of the business of the employer; and

(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or

having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board provided for in section 3 of this Act.

(11) The term "supervisor" means any individual having authority, in the interest of the employer *and for a majority of the individual's worktime*, to hire, transfer, suspend, lay off, recall, promote, discharge, [assign,] reward, or discipline other employees, [or responsibly to direct them,] or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term "professional employee" means—

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(14) The term "health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) The National Labor Relations Board (hereinafter called the "Board") created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by

and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof, except that upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

(c) **【The Board】** (1) *The Board* shall at the close of each fiscal year make a report in writing to Congress and to the President summarizing significant case activities and operations for that fiscal year.

(2) *Effective January 1, 2021, section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 166-44; 31 U.S.C. 1113 note) shall not apply with respect to reports required under this subsection.*

(3) *Each report issued under this subsection shall include no less detail than reports issued by the Board prior to the termination of such reports under section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 166-44; 31 U.S.C. 1113 note).*

(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of a vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as

General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.

SEC. 4. (a) Each member of the Board and the General Counsel of the Board shall receive a salary of \$12,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No trial examiner's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no trial examiner shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation[, or for economic analysis].

(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

* * * * *

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or as-

sisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later; (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)【.】;

(6) *to promise, threaten, or take any action—*

(A) *to permanently replace an employee who participates in a strike as defined by section 501(2) of the Labor Management Relations Act, 1947 (29 U.S.C. 142(2));*

(B) *to discriminate against an employee who is working or has unconditionally offered to return to work for the employer because the employee supported or participated in such a strike; or*

(C) *to lockout, suspend, or otherwise withhold employment from employees in order to influence the position of such employees or the representative of such employees in collective bargaining prior to a strike; and*

(7) *to communicate or misrepresent to an employee under section 2(3) that such employee is excluded from the definition of employee under section 2(3).*

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom member-

ship in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

[(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

[(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

[(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

[(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

[(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity other than picketing, for the purposes of truth-

fully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;】

【(5)】 (4) To require of employees covered by an agreement authorized under subsection (a)(3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees 【affected;】 *affected; and*

【(6)】 (5) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed【; and】.

【(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

【(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

【(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

【(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods

or not to perform any services. Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b).】

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit【.】: *Provided, That it shall be an unfair labor practice under subsection (a)(1) for any employer to require or coerce an employee to attend or participate in such employer's campaign activities unrelated to the employee's job duties, including activities that are subject to the requirements under section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 433(b)).*

(d) 【For the purposes of this section】 (1) *For purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder and to maintain current wages, hours, and working conditions pending an agreement, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: Provided, That an employer's duty to collectively bargain shall continue absent decertification of the labor organization following an election conducted pursuant to section 9 Provided further, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—*

【(1)】 (A) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

【(2)】 (B) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

【(3)】 (C) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

【(4)】 (D) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

【The duties imposed】 (2) *The duties imposed upon employers, employees, and labor organizations 【by paragraphs (2), (3), and (4) by subparagraphs (B), (C), and (D) of paragraph (1) shall become inapplicable upon an intervening certification of the Board, under*

which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within any notice period specified in this subsection, or who engages in any strike within the appropriate period specified in subsection (g) of this section, shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer. Whenever the collective bargaining involves employees of a health care institution, the provisions of this section 8(d) shall be modified as follows:

(A) The notice of **【section 8(d)(1)】** *paragraph (1)(A)* shall be ninety days; the notice of **【section 8(d)(3)】** *paragraph (1)(C)* shall be sixty days; and the contract period of **【section 8(d)(4)】** *paragraph (1)(D)* shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in **【section 8(d)(3)】** *paragraph (1)(C)*.

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

(3) Whenever collective bargaining is for the purpose of establishing an initial collective bargaining agreement following certification or recognition of a labor organization, the following shall apply:

(A) Not later than 10 days after receiving a written request for collective bargaining from an individual or labor organization that has been newly recognized or certified as a representative as defined in section 9(a), or within such further period as the parties agree upon, the parties shall meet and commence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.

(B) If after the expiration of the 90-day period beginning on the date on which bargaining is commenced, or such additional period as the parties may agree upon, the parties have failed to reach an agreement, either party may notify the Federal Mediation and Conciliation Service of the existence of a dispute and request mediation. Whenever such a request is received, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(C) If after the expiration of the 30-day period beginning on the date on which the request for mediation is made under sub-

paragraph (B), or such additional period as the parties may agree upon, the Service is not able to bring the parties to agreement by conciliation, the Service shall refer the dispute to a tripartite arbitration panel established in accordance with such regulations as may be prescribed by the Service, with one member selected by the labor organization, one member selected by the employer, and one neutral member mutually agreed to by the parties. The labor organization and employer must each select the members of the tripartite arbitration panel within 14 days of the Service's referral; if the labor organization or employer fail to do so, the Service shall designate any members not selected by the labor organization or the employer. A majority of the tripartite arbitration panel shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of two years, unless amended during such period by written consent of the parties. Such decision shall be based on—

- (i) the employer's financial status and prospects;*
- (ii) the size and type of the employer's operations and business;*
- (iii) the employees' cost of living;*
- (iv) the employees' ability to sustain themselves, their families, and their dependents on the wages and benefits they earn from the employer; and*
- (v) the wages and benefits other employers in the same business provide their employees.*

[(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: *Provided*, That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further*, That for the purposes of this subsection (e) and section 8(b)(4)(B) the terms "any employer", "any person engaged in commerce or an industry affecting commerce", and "any person" when used in relation to the terms "any other producer, processor, or manufacturer", "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further*, That nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception.]

(e) Notwithstanding chapter 1 of title 9, United States Code (commonly known as the "Federal Arbitration Act"), or any other provision of law, it shall be an unfair labor practice under subsection (a)(1) for any employer—

(1) *to enter into or attempt to enforce any agreement, express or implied, whereby prior to a dispute to which the agreement applies, an employee undertakes or promises not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee in any forum that, but for such agreement, is of competent jurisdiction;*

(2) *to coerce an employee into undertaking or promising not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee; or*

(3) *to retaliate or threaten to retaliate against an employee for refusing to undertake or promise not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee: Provided, That any agreement that violates this subsection or results from a violation of this subsection shall be to such extent unenforceable and void: Provided further, That this subsection shall not apply to any agreement embodied in or expressly permitted by a contract between an employer and a labor organization.*

(f) It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided, That nothing in this subsection shall set aside the final proviso to section 8(a)(3) of this Act: Provided further, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or 9(e).*

(g) A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in [clause (B) of the last sentence of section 8(d) of

this Act] subsection (d)(2)(B). The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties.

(h)(1) The Board shall promulgate regulations requiring each employer to post and maintain, in conspicuous places where notices to employees and applicants for employment are customarily posted both physically and electronically, a notice setting forth the rights and protections afforded employees under this Act. The Board shall make available to the public the form and text of such notice. The Board shall promulgate regulations requiring employers to notify each new employee of the information contained in the notice described in the preceding two sentences.

(2) Whenever the Board directs an election under section 9(c) or approves an election agreement, the employer of employees in the bargaining unit shall, not later than two business days after the Board directs such election or approves such election agreement, provide a voter list to a labor organization that has petitioned to represent such employees. Such voter list shall include the names of all employees in the bargaining unit and such employees' home addresses, work locations, shifts, job classifications, and, if available to the employer, personal landline and mobile telephone numbers, and work and personal email addresses; the voter list must be provided in a searchable electronic format generally approved by the Board unless the employer certifies that the employer does not possess the capacity to produce the list in the required form. Not later than nine months after the date of enactment of the Protecting the Right to Organize Act of 2019, the Board shall promulgate regulations implementing the requirements of this paragraph.

(i) The rights of an employee under section 7 include the right to use electronic communication devices and systems (including computers, laptops, tablets, internet access, email, cellular telephones, or other company equipment) of the employer of such employee to engage in activities protected under section 7 if such employer has given such employee access to such devices and systems in the course of the work of such employee, absent a compelling business rationale.

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employees or a group of employees shall have the right at any time at present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of col-

lective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) [(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

[(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or

[(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.]

(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board, by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a), the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds

upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. The Board shall find the labor organization's proposed unit to be appropriate if the employees in the proposed unit share a community of interest, and if the employees outside the unit do not share an overwhelming community of interest with employees inside. At the request of the labor organization, the Board shall direct that the election be conducted through certified mail, electronically, at the work location, or at a location other than one owned or controlled by the employer. No employer shall have standing as a party or to intervene in any representation proceeding under this section.

(2) In determining whether or not a question or representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10(c).

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in [an economic strike who are not entitled to reinstatement] *a strike* shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) *If the Board finds that, in an election under paragraph (1), a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have been cast in favor of representation by the labor organization, the Board shall certify the labor organization as the representative of the employees in such unit and shall issue an order requiring the employer of such employees to collectively bargain with the labor organization in accordance with section 8(d). This order shall be deemed an order under section 10(c) of this Act, without need for a determination of an unfair labor practice.*

(5)(A) *If the Board finds that, in an election under paragraph (1), a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have not been cast in favor of representation by the labor organization, the Board shall dismiss the petition, subject to subparagraphs (B) and (C).*

(B) *In any case in which a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have not been cast in favor of representation by the labor organization and the Board determines that the election should be set aside because the employer has committed a violation of this Act or otherwise interfered with a fair election, and the employer has not demonstrated that the violation or other interference is unlikely to have affected the outcome of the election, the Board shall, without ordering a new election, certify the labor organization as the representative of the employees in such unit and issue an order requiring the employer*

to bargain with the labor organization in accordance with section 8(d) if, at any time during the period beginning one year preceding the date of the commencement of the election and ending on the date upon which the Board makes the determination of a violation or other interference, a majority of the employees in the bargaining unit have signed authorizations designating the labor organization as their collective bargaining representative.

(C) In any case where the Board determines that an election under this paragraph should be set aside, the Board shall direct a new election with appropriate additional safeguards necessary to ensure a fair election process, except in cases where the Board issues a bargaining order under subparagraph (B).

[(4)] (6) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

[(5)] (7) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

(8) Except under extraordinary circumstances—

(A) a pre-election hearing under this subsection shall begin not later than eight days after a notice of such hearing is served on the labor organization; and

(B) a post-election hearing under this subsection shall begin not later than 14 days after the filing of objections, if any.

(d) Whenever an order of the Board made pursuant to section 10(c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10[(e) or] (d) or 10(f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

(e)(1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8(a)(3), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, com-

munications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than ~~【six months】~~ *180 days* prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event ~~【the six-month period】~~ *the 180-day period* shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U.S.C., title 28, secs. 723-B, 723-C).

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination ~~【suffered by him】~~ *suffered by such employee: Provided further, That if the Board finds that an employer has discriminated against an employee in violation of paragraph (3) or (4) of section 8(a) or has committed a violation of section 8(a) that results in the discharge of an employee or other serious economic*

harm to an employee, the Board shall award the employee back pay without any reduction (including any reduction based on the employee's interim earnings or failure to earn interim earnings), front pay (when appropriate), consequential damages, and an additional amount as liquidated damages equal to two times the amount of damages awarded: Provided further, no relief under this subsection shall be denied on the basis that the employee is, or was during the time of relevant employment or during the back pay period, an unauthorized alien as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other provision of Federal law relating to the unlawful employment of aliens: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2), and in deciding such cases, the same regulations and rules of decisions shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

(d)(1) Each order of the Board shall take effect upon issuance of such order, unless otherwise directed by the Board, and shall remain in effect unless modified by the Board or unless a court of competent jurisdiction issues a superseding order.

(2) Any person who fails or neglects to obey an order of the Board shall forfeit and pay to the Board a civil penalty of not more than \$10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Board to the district court of the United States in which the unfair labor practice or other subject of the order occurred, or in which such person or entity resides or transacts business. No action by the Board under this paragraph may be made until 30 days following the issuance of an order. Each separate violation of such an order shall be a separate offense, except that, in the case of a violation in which a person fails to obey or neglects to obey a final order of the Board, each day such failure or neglect continues shall be deemed a separate offense.

(3) If, after having provided a person or entity with notice and an opportunity to be heard regarding a civil action under subpara-

graph (2) for the enforcement of an order, the court determines that the order was regularly made and duly served, and that the person or entity is in disobedience of the same, the court shall enforce obedience to such order by an injunction or other proper process, mandatory or otherwise, to—

(A) restrain such person or entity or the officers, agents, or representatives of such person or entity, from further disobedience to such order; or

(B) enjoin such person or entity, officers, agents, or representatives to obedience to the same.

[(d)] (e) Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

[(e)] The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Su-

preme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.]

(f) **[Any]**

(1) *Within 30 days of the issuance of an order, any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or on the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall **[proceed in the same manner as in the case of an application by the Board under subsection (e) of this section,]** *proceed as provided under paragraph (2) of this subsection* and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact it supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.*

(2) *No objection that has not been urged before the Board, its member, agent, or agency shall be considered by a court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.*

(g) The commencement of proceedings under [subsection (e) or (f) of this section] *subsection (d) or (f)* shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order on the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101-115).

(j) [The Board] (1) *The Board* shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the United States District Court for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(2) *Notwithstanding subsection (m), whenever it is charged that an employer has engaged in an unfair labor practice within the meaning of paragraph (1) or (3) of section 8(a) that significantly interferes with, restrains, or coerces employees in the exercise of the rights guaranteed under section 7, or involves discharge or other serious economic harm to an employee, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, such officer or attorney shall bring a petition for appropriate temporary relief or restraining order as set forth in paragraph (1). The district court shall grant the relief requested unless the court concludes that there is no reasonable likelihood that the Board will succeed on the merits of the Board's claim.*

[(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

[(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in

the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the United States District Court for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further*, That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) if a charge against the employer under section 8(a)(2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition other courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D).]

(m) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 8, such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under subsection (i).

* * * * *

SEC. 12. PENALTIES.

(a) *VIOLATIONS FOR INTERFERENCE WITH BOARD.*—Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

(b) *VIOLATIONS FOR POSTING REQUIREMENTS AND VOTER LIST.*—*If the Board, or any agent or agency designated by the Board for*

such purposes, determines that an employer has violated section 8(h) or regulations issued thereunder, the Board shall—

- (1) state the findings of fact supporting such determination;
- (2) issue and cause to be served on such employer an order requiring that such employer comply with section 8(h) or regulations issued thereunder; and
- (3) impose a civil penalty in an amount determined appropriate by the Board, except that in no case shall the amount of such penalty exceed \$500 for each such violation.

(c) **CIVIL PENALTIES FOR VIOLATIONS.**—

(1) **IN GENERAL.**—Any employer who commits an unfair labor practice within the meaning of section 8(a) shall, in addition to any remedy ordered by the Board, be subject to a civil penalty in an amount not to exceed \$50,000 for each violation, except that, with respect to an unfair labor practice within the meaning of paragraph (3) or (4) of section 8(a) or a violation of section 8(a) that results in the discharge of an employee or other serious economic harm to an employee, the Board shall double the amount of such penalty, to an amount not to exceed \$100,000, in any case where the employer has within the preceding five years committed another such violation.

(2) **CONSIDERATIONS.**—In determining the amount of any civil penalty under this subsection, the Board shall consider—

- (A) the gravity of the unfair labor practice;
- (B) the impact of the unfair labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this Act, and on the public interest; and
- (C) the gross income of the employer.

(3) **DIRECTOR AND OFFICER LIABILITY.**—If the Board determines, based on the particular facts and circumstances presented, that a director or officer's personal liability is warranted, a civil penalty for a violation described in this subsection may also be assessed against any director or officer of the employer who directed or committed the violation, had established a policy that led to such a violation, or had actual or constructive knowledge of and the authority to prevent the violation and failed to prevent the violation.

(d) **RIGHT TO CIVIL ACTION.**—

(1) **IN GENERAL.**—Any person who is injured by reason of a violation of paragraph (1) or (3) of section 8(a) may, after 60 days following the filing of a charge with the Board alleging an unfair labor practice, bring a civil action in the appropriate district court of the United States against the employer within 90 days after the expiration of the 60-day period or the date the Board notifies the person that no complaint shall issue, whichever occurs earlier, provided that the Board has not filed a petition under section 10(j) of this Act prior to the expiration of the 60-day period. No relief under this subsection shall be denied on the basis that the employee is, or was during the time of relevant employment or during the back pay period, an unauthorized alien as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other provision of Federal law relating to the unlawful employment of aliens.

(2) *AVAILABLE RELIEF.*—Relief granted in an action under paragraph (1) may include—

(A) back pay without any reduction, including any reduction based on the employee's interim earnings or failure to earn interim earnings;

(B) front pay (when appropriate);

(C) consequential damages;

(D) an additional amount as liquidated damages equal to two times the cumulative amount of damages awarded under subparagraphs (A) through (C);

(E) in appropriate cases, punitive damages in accordance with paragraph (4); and

(F) any other relief authorized by section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g)) or by section 1977A(b) of the Revised Statutes (42 U.S.C. 1981a(b)).

(3) *ATTORNEY'S FEES.*—In any civil action under this subsection, the court may allow the prevailing party a reasonable attorney's fee (including expert fees) and other reasonable costs associated with maintaining the action.

(4) *PUNITIVE DAMAGES.*—In awarding punitive damages under paragraph (2)(E), the court shall consider—

(A) the gravity of the unfair labor practice;

(B) the impact of the unfair labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this Act, and on the public interest; and

(C) the gross income of the employer.

LIMITATIONS

SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right[.]: *Provided, That the duration, scope, frequency, or intermittence of any strike or strikes shall not render such strike or strikes unprotected or prohibited.*

SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law[.]: *Provided, That collective bargaining agreements providing that all employees in a bargaining unit shall contribute fees to a labor organization for the cost of representation, collective bargaining, contract enforcement, and related expenditures as a condition of employment shall be valid and enforceable notwithstanding any State or Territorial law.*

(c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not suffi-

ciently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

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SEC. 18. No petition entertained, no investigation made, no election held, and no certification issued by the National Labor Relations Boards, under any of the provisions of section 9 of the National Labor Relations Act, as amended, shall be invalid by reason of the failure of the Congress of Industrial Organizations to have complied with the requirements of section 9 (f), (g), or (h) of the aforesaid Act prior to December 22, 1949, or by reason of the failure of the American Federation of Labor to have complied with the provisions of section 9(f), (g), or (h), of the aforesaid Act prior to November 7, 1947: *Provided*, That no liability shall be imposed under any provision of this Act upon any person for failure to honor any election or certificate referred to above, prior to the effective date of this amendment: *Provided, however*, That this proviso shall not have the effect of setting aside or in any way affecting judgments or decrees heretofore entered under [section 10(e) or (f)] *subsection (d) or (f) of section 10* and which have become final.

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LABOR MANAGEMENT RELATIONS ACT, 1947

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TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

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CONCILIATION OF LABOR DISPUTES IN THE HEALTH CARE INDUSTRY

SEC. 213. (a) If, in the opinion of the Director of the Federal Mediation and Conciliation Service a threatened or actual strike or lockout affecting a health care institution will, if permitted to occur or to continue, substantially interrupt the delivery of health care in the locality concerned, the Director may further assist in the resolution of the impasse by establishing within 30 days after the notice to the Federal Mediation and Conciliation Service under [clause (A) of the last sentence of section 8(d) (which is required by clause (3) of such section 8(d)), or within 10 days after the notice under clause (B)] *section 8(d)(2)(A) of the National Labor Relations Act (which is required by section 8(d)(1)(C) of such Act), or within 10 days after the notice under section 8(d)(2)(B) of such Act*, an impartial Board of Inquiry to investigate the issues involved in the dispute and to make a written report thereon to the parties within fifteen (15) days after the establishment of such a Board. The writ-

ten report shall contain the findings of fact together with the Board's recommendations for settling the dispute, with the objective of achieving a prompt, peaceful and just settlement of the dispute. Each such Board shall be composed of such number of individuals as the Director may deem desirable. No member appointed under this section shall have any interest or involvement in the health care institutions or the employee organizations involved in the dispute.

(b)(1) Members of any board established under this section who are otherwise employed by the Federal Government shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out its duties under this section.

(2) Members of any board established under this section who are not subject to paragraph (1) shall receive compensation at a rate prescribed by the Director but not to exceed the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5, United States Code, including travel for each day they are engaged in the performance of their duties under this section and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

(c) After the establishment of a board under subsection (a) of this section and for 15 days after any such board has issued its report, no change in the status quo in effect prior to the expiration of the contract in the case of negotiations for a contract renewal, or in effect prior to the time of the impasse in the case of an initial bargaining negotiation, except by agreement, shall be made by the parties to the controversy.

(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

TITLE III—SUITS BY AND AGAINST LABOR ORGANIZATIONS

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【BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

【SEC. 303. (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8(b)(4) of the National Labor Relations Act, as amended.

【(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.】

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**LABOR-MANAGEMENT REPORTING AND DISCLOSURE
ACT OF 1959**

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**TITLE II—REPORTING BY LABOR ORGANIZATIONS, OFFI-
CERS AND EMPLOYEES OF LABOR ORGANIZATIONS, AND
EMPLOYERS**

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REPORT OF EMPLOYERS

SEC. 203. (a) Every employer who in any fiscal year made—

(1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefor, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization, except (A) payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution and (B) payments of the kind referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended;

(2) any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;

(3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

(4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or

(5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision (4); shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal of-

ficers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof, in each such case such information shall be set forth in such categories as the Secretary may prescribe.

(c) Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder[.]: *Provided, That this subsection shall not exempt from the requirements of this section any arrangement or part of an arrangement in which a party agrees, for an object described in subsection (b)(1), to plan or conduct employee meetings; train supervisors or employer representatives to conduct meetings; coordinate or direct activities of supervisors or employer representatives; establish or facilitate employee committees; identify employees for disciplinary action, reward, or other targeting; or draft or revise employer personnel policies, speeches, presentations, or other written, recorded, or electronic communications to be delivered or disseminated to employees.*

(d) Nothing contained in this section shall be construed to require an employer to file a report under subsection (a) unless he

has made an expenditure, payment, loan, agreement, or arrangement of the kind described therein. Nothing contained in this section shall be construed to require any other person to file a report under subsection (b) unless he was a party to an agreement or arrangement of the kind described therein.

(e) Nothing contained in this section shall be construed to require any regular officer, supervisor, or employee of an employer to file a report in connection with services rendered to such employer nor shall any employer be required to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer.

(f) Nothing contained in this section shall be construed as an amendment to, or modification of the rights protected by, section 8(c) of the National Labor Relations Act, as amended.

(g) The term "interfere with, restrain, or coerce" as used in this section means interference, restraint, and coercion which, if done with respect to the exercise of rights guaranteed in section 7 of the National Labor Relations Act, as amended, would, under section 8(a) of such Act, constitute an unfair labor practice.

* * * * *

MINORITY VIEWS

INTRODUCTION

For more than 70 years, federal labor law has struck a careful balance between the right of labor unions to organize and bargain collectively on behalf of employees, the right of employers to respond to those organizing and bargaining efforts, and the right of employees to refrain from participating in or funding union activity. Throughout this time, the National Labor Relations Board (NLRB or Board) has issued decisions and promulgated regulations that have swung this balance in one direction or another within the confines of the *National Labor Relations Act* (NLRA) and its subsequent amendments.

Committee Republicans are committed to protecting constitutionally-guaranteed rights such as the freedom of speech and the freedom of association. We support the right of employees to join together and form a union, just as we support the right of individuals to refrain from joining unions. Federal labor law is outdated and in need of modernization and improvement, such as strengthening protections for workers within labor unions and increasing union transparency. Unfortunately, H.R. 2474, the *Protecting the Right to Organize Act of 2019*, does nothing to modernize labor law. It merely doubles down on an antiquated worldview of the American economy and a coercive model of unionization that has failed to attract the support of American workers in the 21st century.

In 1935, Congress enacted the NLRA, which covers the vast majority of private sector employees in the United States and codifies their right to organize into unions, engage in collective bargaining, and take collective actions such as strikes to advance their interests. The law established the NLRB and subsequent rules for organizing and bargaining, as well as a list of unfair labor practices—illegal activity by employers that impede union and employee rights protected by the NLRA. Federal labor law has seen only two major updates since then. In response to a wave of strikes throughout the 1930s and 1940s, the *Labor-Management Relations Act of 1947*, more commonly known as the *Taft-Hartley Act*, defined a series of unfair union labor practices and allowed states to enact right-to-work laws stating that a worker cannot be fired for refusing to join or pay a union. In 1959, in response to rampant union corruption, Congress enacted the *Labor-Management Reporting and Disclosure Act* (LMRDA), which established a Bill of Rights for union members and created reporting requirements for labor unions and their leadership. Neither of these laws substantially changed the right to organize and bargain collectively.

However, union membership rates have steadily declined over the last 60 years. As a percentage of all employed workers, union membership peaked in 1954 at 28.3 percent. The total number of

union members peaked in 1979 at 21 million employees.¹ In 2018, just 10.5 percent of workers, or 14.7 million, were members of a union, 7.6 million of which were in the private sector. The unionization rate in the private sector was just 6.4 percent in 2018.² Importantly, under current law, once a union is certified in a workplace, it is not required to stand for periodic recertification elections. As a result, 94 percent of workers covered by a union under the NLRA as of 2015 have never voted for that union to represent them.³ They either voted against the union, or more commonly inherited a union that was voted in years or even decades earlier.

It is against this backdrop that Committee Democrats introduced H.R. 2474. This bill is a blatant attempt to legislate a radical, one-sided and undemocratic assault on workplace rights in order to bail out labor union special interests. H.R. 2474 undermines the rights of employers and employees alike in order to increase the wealth and coercive power of labor unions and union leaders. It subjects millions of additional workers to union harassment by expanding the definition of joint employment and “employee” under the NLRA and by overturning the longstanding ban on secondary boycotts, in which a union targets the business partners of a company it is seeking to organize. H.R. 2474 forces employers to turn over reams of workers’ personal information to union organizers without giving workers any say in the matter, undermines employers’ right to free speech throughout the organizing process, and in certain circumstances forces workers to publicly voice their support or opposition to the union rather than through a secret-ballot election. It overturns all state right-to-work laws, forcing millions of Americans to make financial contributions to a labor union they do not want or need as a condition of employment. For these reasons, Committee Republicans are united in their opposition to H.R. 2474.

NUMEROUS CONCERNS WITH H.R. 2474

Committee Republicans strongly oppose H.R. 2474 for numerous policy reasons. Many of the bill’s attacks on worker and employer rights and other objectionable provisions are described below.

IMPOSING FORCED UNIONIZATION

H.R. 2474 bans right-to-work laws that guarantee an employee cannot be fired for refusing to join or pay a labor union. Currently, 27 states have enacted right-to-work laws and as a result of this bill, workers in a union shop would be forced to pay hundreds of dollars per year in union dues, even if they object to union representation and wish to represent themselves. In addition to funding collective bargaining expenses, from 2010 through 2018 unions sent more than \$1.6 billion in member dues to hundreds of political advocacy organizations, including Planned Parenthood and the Progressive Democrats of America.⁴ In a March 26, 2019, Sub-

¹ GERALD MEYER, CONG. RES. SERV., UNION MEMBERSHIP TRENDS IN THE UNITED STATES (Aug. 31, 2004).

² BUREAU OF LAB. STAT., UNION MEMBERS—2018 (Jan. 18, 2019).

³ JAMES SHERK, HERITAGE FOUND., UNELECTED REPRESENTATIVES: 94 PERCENT OF UNION MEMBERS NEVER VOTED FOR A UNION (Aug. 30, 2016).

⁴ CTR. FOR UNION FACTS, HOW LABOR UNIONS FINANCE THEIR POLITICAL AGENDA: 2010–2018 (Sept. 5, 2019).

committee on Health, Employment, Labor, and Pensions hearing on labor law reform, Mr. Glenn Taubman, a staff attorney at the National Right to Work Legal Defense Foundation, explained why both forced union dues and forced union representation violate workers' rights:

It is neither fair nor constitutional to force employees into paying dues to a private organization upon pain of discharge. . . . Similarly, forcing an individual to be represented by a private organization is antithetical to American values of free speech and free association. Just as few on this Committee would approve of being represented against their will by a lawyer or accountant purporting to serve as their exclusive representative for purposes of dealing with the government, few employees want to be forced into an exclusive agency relationship with a labor union for purposes of negotiating their wages and working conditions.

Democrats claim that forced union dues are necessary to cover the cost of representation, but this assumes all workers in the bargaining unit want union representation. In reality, workers who prefer to represent themselves are *forced* riders, not so-called free riders. Mr. Taubman further expounded on how the so-called free rider problem is one of unions' own creation:

Union officials fought tooth and nail for the abusive power to force their so-called "representation" on all workers. By exercising this monopoly power, they forbid individual workers from representing themselves. Then, rubbing salt in the wound, these same union officials turn around and falsely complain that since they've forced those workers to accept their representation, they should also be able to force those workers to pay for it. This is like being kidnapped by a cab driver, driven all over town against your will, and then being forced to pay the driver an exorbitant fare for the "services" he allegedly rendered.

Moreover, not only do right-to-work laws protect workers' freedom of speech and freedom of association by ensuring they are not forced to fund speech with which they disagree, they also produce economic benefits and have enjoyed the support of a majority of the American people. As of 2017, right-to-work states enjoyed greater employment growth, population growth, and cost-of-living-adjusted per capita disposable income, as well as lower rates of welfare dependency.⁵ As of 2014, the most recent year the question was polled by Gallup, 71 percent of Americans favored right-to-work laws, compared to just 22 percent who said they opposed these laws.⁶ H.R. 2474's elimination of state right-to-work laws undermines federalism, violates workers' freedom of speech and association, harms the economy, and disregards the preferences of the American people.

⁵NATIONAL INST. FOR LAB. REL. RES., RIGHT TO WORK STATES BENEFIT FROM FASTER GROWTH, HIGHER REAL PURCHASING POWER—WINTER 2019 UPDATE (Jan. 11, 2019).

⁶GALLUP, AMERICANS APPROVE OF UNIONS BUT SUPPORT "RIGHT-TO-WORK" (Aug. 28, 2014).

ELIMINATING EMPLOYEE FREE CHOICE

H.R. 2474 also contains a risky “card-check” scheme that allows unions to organize a workplace without ever receiving majority support in a secret-ballot election. Currently, unions must collect authorization cards expressing interest in the union signed by at least 30 percent of the bargaining unit. Unless the employer voluntarily recognizes the union, the union must win the majority of votes cast in a secret-ballot election. Under H.R. 2474, if a union receives cards from a majority of the bargaining unit but loses the election, it can file an unfair labor practice charge against the employer, alleging interference. Unless the employer proves its actions did not affect the outcome of the election, the union is automatically certified without ever winning a secret-ballot election—turning America’s presumption of innocence on its head and depriving workers an opportunity to voice their opinion free of the harassment and intimidation that unions often use to coerce workers into signing authorization cards.

Over the past decade, the Committee has heard testimony from employees who have been personally subjected to this kind of union coercion. For example, in 2011, Mr. Larry Getts, an employee at Dana Corporation in Fort Wayne, Indiana, testified that union officials would “even follow us to our vehicles at the end of the day and some of us even to our homes.”⁷ In 2013, Ms. Marlene Felter, a medical records coder in California, testified that union organizers “were calling them on their cell phones, coming to their homes, stalking them, harassing them . . . to convince them to sign union cards.”⁸

The U.S. Supreme Court has acknowledged that the so-called card-check process is “admittedly inferior to the election process” for determining representation.⁹ While it is important that an employer bargain in good faith with a majority-supported union, it is essential that federal law ensure the union has properly demonstrated such majority support. Moreover, as Mr. G. Roger King, Senior Labor and Employment Counsel at the HR Policy Association, testified on behalf of the Coalition for a Democratic Workplace at a July 25, 2019 Full Committee hearing on H.R. 2474, advocates of the bill overstate the prevalence of the problem of employer election interference:

[B]argaining orders are available today to unions if they can establish that employers have committed numerous and severe unfair labor practices or objectionable conduct during the critical pre-election period. [A] very small percentage of unfair labor practice cases ever reach the Board or courts for decision. In FY 2018, nearly 80% of unfair labor practice charges were either resolved by way of settlement, at the regional board level, or at the administrative law judge stage, or withdrawn, with Board Order comprising only 2% of the disposition of such charges. Stated alternatively, representatives of organized labor have continually, incorrectly, overstated both the number of cases

⁷H.R. REP. NO. 113–583, AT 7 (2014).

⁸*Id.* at 6.

⁹NLRB v. Gissel Packing Co., 395 U.S. 575, 603 (1969).

where severe election misconduct occurs and misrepresented the type of alleged employer conduct that is at issue in such cases.¹⁰

Card-check union certifications do not only undermine the rights of American workers. They also represent rank hypocrisy on the part of House Democrats. Not only is every Member of Congress elected in a secret-ballot vote, but a secret-ballot vote is also how House Democrats select their own leadership.¹¹ Moreover, as part of the negotiation over the enactment of the United States-Mexico-Canada (USMCA) trade agreement, Democrats have pressured the Trump administration to ensure enforcement of a new Mexican law that guarantees workers in that country the right to a secret-ballot election to determine union representation.¹² Democrats are seeking to deprive their own constituents, American workers, the same right they seek to protect for Mexican workers.

The undemocratic system of card-check union certification has been previously rejected by Congress. In 2007, following Committee approval, the Democrat House passed the *Employee Free Choice Act*,¹³ which automatically certified a union as the bargaining representative without employer consent or a secret-ballot election if the employer received authorization cards from a majority of the bargaining unit, even without an unfair labor practice charge against the employer. However, the bill failed a cloture motion in the Democrat Senate by a vote of 51–48. Moreover, card-check remains unpopular. 2015 polling by the Opinion Research Corporation (ORC) showed that 79 percent of union households, 81 percent of Democrats, and 81 percent of independents support the right to a secret-ballot election to determine unionization.¹⁴ Committee Democrats are ignoring the will of the American people, including their own voters and union households, to push legislation increasing the coercive power of union leaders.

ELIMINATING EMPLOYEES' RIGHT TO PRIVACY

Under H.R. 2474, during the unionization process, workers have no say in whether the union receives several pieces of personal contact information, including home address, home phone number, cell phone number, personal email address, work email address, work shifts and location, and more. The bill makes it an unfair labor practice for an employer to fail to turn over this information to the union within two days after the Board orders an election, and the list must be provided in a searchable electronic format. At a May 8, 2019, Subcommittee on Health, Employment, Labor, and Pensions hearing on H.R. 2474, Richard Trumka, a Democrat-invited

¹⁰*Protecting the Right to Organize Act: Modernizing America's Labor Laws: Hearing Before the Subcomm. on Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & Lab.*, 116th Cong. (2019) (statement of G. Roger King, Senior Lab. & Emp. Couns., HR Pol' Ass'n, at 10) (footnotes omitted) [hereinafter King Statement].

¹¹Melanie Zanona & Mike Lillis, *How voting present could secure the Speakership for Nancy Pelosi*, HILL Nov. 30, 2018 ("In a 203–32 secret-ballot vote, Democrats nominated Pelosi to be their next Speaker, with three lawmakers leaving the ballot blank.")

¹²See Letter from Rep. Bill Pascrell, Jr., et al. to the Hon. Robert Lighthizer, U.S. Trade Rep. (Apr. 12, 2019), https://pascrell.house.gov/uploadedfiles/letter_mexico_labor_signed_041219.pdf.

¹³H.R. 800, 110th Cong. (2007).

¹⁴ERA HAS BROAD SUPPORT AMONG UNION AND NON-UNION HOUSEHOLDS ACCORDING TO NATIONAL POLLING, https://employeeightsact.com/wp-content/uploads/2018/07/ERA_Polling_Updatev4-1.pdf (July 2018).

witness and President of the AFL–CIO, explained unions’ intentions upon receiving this information:

It is essential to be able to communicate with them We may have to meet with them at a grocery store, any place else where you can get them. The most efficient place, the best place for them to be able to talk is at their home setting, at their home, so that you can have a real conversation with them.

Providing workers’ personal information to union organizers has led to well-documented instances of harassment and intimidation to gain support for the union. In 2017, Mr. Matt Patterson, Executive Director of Free California, a non-profit organization focused on labor and immigration issues, described one Minnesota personal care attendant’s experience with a Service Employees International Union (SEIU) organizer, as she detailed to Mr. Patterson first-hand:

Holly had just returned home from shopping, when as she escorted her patient inside prior to unloading the groceries she noticed a woman sitting in a parked car in front of the house. As Holly gathered the groceries, the woman got out and approached her: she was well dressed in a white suit and had an accent that indicated that she was not from Minnesota.

The woman identified herself as a SEIU representative, and asked if they could talk for a few minutes. Holly said she didn’t have time right now, but the woman persisted, placing herself between Holly and the front of the door and repeatedly asking her how she intended to vote in the upcoming union election.

Holly became frightened; arms full of groceries, she could hear her patient becoming agitated and distressed inside, and here was this strange woman blocking her way and demanding to know how she would ‘vote.’

Holly finally extricated herself and entered her home slamming the door behind her. But that wasn’t the end of things. Over the next weeks and months, she received multiple calls and visits from the union. I asked Holly how she would characterize the nature of these calls and visits. “Stalking, absolutely,” she told me. “They wouldn’t leave me alone!”¹⁵

H.R. 2474 also requires that employees’ information be provided in searchable electronic format, further exposing workers to having their information hacked, sold, or otherwise misused. Numerous private corporations and government agencies have been hacked in recent years, allowing the personal data of millions of Americans to fall into the wrong hands. H.R. 2474 increases the likelihood of such abuses and creates no penalties if a union allows its database to be hacked or voluntarily sells or offers workers’ information to private companies, advocacy organizations, or political campaigns for solicitation. The bill eliminates workers’ right to privacy in order to benefit labor unions.

¹⁵ Matt Patterson, *Exclusive: SEIU Skims Medicaid for ‘Dues,’* FORBES.COM, Feb. 13, 2017.

ENDANGERING THE SHARING ECONOMY

H.R. 2474 radically broadens the definition of “employee” in order to make it more difficult for workers to be classified as independent contractors. Modern workers seek opportunities as independent contractors which allow them entrepreneurial freedom and flexibility. The expansive definition of “employee” in H.R. 2474 subjects small businesses to additional litigation risk and union harassment while undermining the sharing economy that has created remarkable opportunities for workers as well as demonstrated benefits to consumers in recent years. Moreover, Committee Democrats’ unilateral attempt to rewrite the definition of the word “employee” in H.R. 2474 undermines the original intent of Congress. The Committee Report accompanying the *Taft-Hartley* amendments to the NLRA says of the word “employee”:

According to all standard dictionaries, according to the law as the courts have stated it, and according to the understandings of almost everyone, with the exception of members of the [NLRB], [employee] means someone who works for another for hire . . . [and who] worked for wages and salaries under direct supervision It must be presumed that when Congress passed the Labor Act, it intended words it used [such as employee] to have the meaning they had when Congress passed the Act, not new meanings that, nine years later, the Labor Board might think up [I]t is inconceivable that Congress, when it passed the Act, authorized the Board to give every word in the Act whatever meaning it wished.¹⁶

Instead of respecting Congress’ original, clear definition, H.R. 2474 redefines the word “employee” with the goal of subjecting more workers to unionization and more businesses to expensive litigation. The bill codifies the highly controversial “ABC” test in the California Supreme Court’s 2018 *Dynamex* decision.¹⁷ The ABC test in H.R. 2474 states that in order to be classified as an independent contractor, an individual must demonstrate: A) he or she is “free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact”; B) “the service is performed outside the usual course of the business of the employer”; and, C) he or she is “customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.”¹⁸

While the “A” prong of the ABC test essentially codifies the existing common-law standard for determining employee status, the “B” and “C” prongs are sprawling and ill-defined. They fail to define “the usual course of the business of the employer” or what it means to be “customarily engaged in an independent trade,” among other issues. A report from Littler’s Workforce Policy Institute explained the unworkable nature of the “B” and “C” prongs of the ABC test in *Dynamex*:

¹⁶H.R. REP. NO. 80-245, at 18 (1947).

¹⁷*Dynamex Operations West, Inc. v. Superior Ct.*, 416 P.3d 1 (Cal. 2018).

¹⁸H.R. 2474, 116th Cong. § 4(a)(2) (2019).

[W]hat is the “usual course of business” of a retail store? The court does not say, and it is not defined anywhere in the opinion. If we do not know what that business is, how can anyone know whether a service is or is not in the usual course of such business? The answer, presumably, is we just assume we know or get to guess based on the description “retail store” that its business is “selling” some kind of tangible goods. The court’s analysis now suggests that the “B” prong is based on assuming someone knows what a business does.

What if the retail store is part of a large chain that has its own maintenance staff that includes plumbers and electricians? Are maintenance and repairs then part of the usual business of the retail store? If so, if it still hires an outside plumber or electrician, does that create an employment relationship under the “B” prong? What if that outside plumber has his own truck, tools, advertising, and other clients? Is he then in business for himself as a “traditional independent contractor” under the “C” prong, particularly if the retail store does not “control” him under the “A” prong? What if the electrician is a retired electrician that happens to be a friend of the store manager, and offers to fix whatever electrical issue exists for a small fee? Is he an employee because the “C” prong is not met or because the “B” prong is not met, or both? These kind of practical questions have no answer in the court’s opinion.

[W]hat is telling from the court’s bare and incomplete examples is not what it says, but everything the court chooses to omit that could make the question difficult to answer. By failing to address any complex, modern, real-world examples, the court leaves unanswered several critical questions and provides little meaningful direction for courts, agencies, businesses or workers.¹⁹

The ABC test is particularly damaging in the context of H.R. 2474. During the Committee markup, Democrat amendments were adopted that make it an unfair labor practice for a business to misclassify an employee as an independent contractor under the NLRA, and which extends the bill’s civil monetary penalties and individual liability to a broad array of unfair labor practices that do not impose direct economic harm to an employee. Under these amendments, a business owner who misinterprets the vague language of the ABC test and as a result mistakenly misclassifies a worker as an independent contractor rather than as an employee could be hit with an unfair labor practice charge. Both the owner and their business could then be fined up to \$100,000. This punitive fine could put a small company unable to afford costly attorneys to interpret the vague and confusing legislative text of H.R. 2474 out of business.

The ABC test is so damaging that even the state of California—led by a Democrat governor and Democrat supermajorities in both chambers of the legislature—adopted the test with dozens of occu-

¹⁹BRUCE SARCHET ET. AL., AB 5: THE GREAT CALIFORNIA EMPLOYMENT EXPERIMENT—A LITTLER WORKPLACE POLICY INSTITUTE REPORT (Aug. 8, 2019).

pations exempted from its onerous standard.²⁰ Yet Committee Democrats adopted the ABC test in H.R. 2474 with no exemptions and far more damaging penalties for violations. The ABC test is intended to subject more workers to unionization in order to increase the power and wealth of labor unions and create more opportunities for trial lawyers to sue businesses. As applied in H.R. 2474, the ABC test will shut down thousands of small businesses, destroy the sharing economy that has revolutionized the modern economy, and ultimately kill the jobs that millions of hardworking Americans enjoy. This dangerous provision is a leading example of the Committee Democrats' vision of the "future of work."

ELIMINATING SUBCONTRACTING AND FRANCHISING

H.R. 2474 also codifies the Obama NLRB's extreme *Browning-Ferris* joint-employer standard, under which an employer can be required to negotiate with a union over the wages and working conditions of workers it does not directly control.²¹ The Obama NLRB's 2015 *Browning-Ferris* decision upended more than 30 years of precedent, requiring merely "indirect," "potential," or "reserved" control of employees to prove joint-employer status. This overly broad and vague standard has disrupted franchisor-franchisee, contracting, and other business relationships, increased risk of lawsuits and union harassment, and complicated collective bargaining for businesses and workers alike.

The standard is unclear and unreliable because it relies on abstract assumptions and after-the-fact conclusions, rather than the actual facts, events, and decisions of the situation. Mr. Zachary D. Fasman, partner in the law firm Proskauer Rose LLP, testified before the Committee in 2017 on why the prior joint-employer standard was superior to the *Browning-Ferris* standard codified in H.R. 2474:

This standard, which was based upon the actual conduct of the parties as opposed to hypothetical after the fact legal conclusions about retained but unexercised authority, afforded stability and predictability in business relationships while allowing collective bargaining between unions and the "direct" employer that actually set the terms and conditions of employment. For more than 30 years, the NLRB and the courts applied this standard by determining the actual relationship between the two businesses in question; who hired, fired, disciplined, supervised, or directed the employees.²²

Under the standard codified in H.R. 2474, businesses simply have no way to determine what level of control is necessary or appropriate to avoid joint-employer status and the additional liabilities that accompany it representing a new, government-imposed consideration that goes beyond the goal of running an effective and efficient operation.

²⁰ See 2019 Cal. Assembly Bill No. 5.

²¹ 362 NLRB No. 186 (2015).

²² H.R. 3441, "Save Local Business Act," Hearing Before the Subcomms. on Workforce Protections & Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & the Workforce, 115th Cong. 47 (2017) (statement of Zachary D. Fasman, Partner, Proskauer Rose, LLP) (emphasis in original).

The Committee has heard testimony from business owners in recent years explaining how the Browning-Ferris joint-employer standard is so troublesome. Ms. Jagruti Panwala, a Pennsylvania-based hotel owner and operator, testified in 2014 in anticipation of the Obama NLRB's decision in *Browning-Ferris* how it would undermine entrepreneurial opportunity:

Essentially, I would no longer be in business for myself. Instead of simply acting as a licensor, collecting fees, and providing guidance from time to time, the franchisor would likely feel the need to become a partner who would inherently have a lesser understanding of operating conditions than I do, and try to have disproportionate influence on business and staffing decisions If this were to happen, I would essentially become an employee of the parent corporation and no longer an entrepreneur. I would lose the equity I have built in my business overnight based on the decision of an unelected bureaucrat in Washington. To be completely honest, if these were the conditions of the franchising model before I became an hotelier, I would have never entered this business.²³

Mr. Kevin R. Cole, Chief Executive Officer of Ennis Electrical Company, explained to the Subcommittee on Health, Employment, Labor, and Pensions on behalf of the Independent Electrical Contractors in 2015 how Browning-Ferris undermines the subcontracting model and ultimately reduce opportunities for workers whose services he otherwise may have sought:

Moving forward, almost any contractual relationship we enter into may trigger a finding of joint employer status that would make us liable for the employment and labor actions of our subcontractors, vendors, suppliers, and staffing firms. In addition, as we understand it, the new standard would also expose my company to another company's collective bargaining obligations and economic protest activity, to include strikes, boycotts, and picketing This new standard also prevents us from working with certain start-ups or new small businesses that may have a limited track record. For example, my company will take on certain small businesses as subcontractors, which will often times be owned by minorities or women, and help them on certain projects. With this new standard, I'm now less likely to take on that risk.²⁴

Ms. Tamra Kennedy, President of Twin City Taco John's, testified in 2017 how the *Browning-Ferris* standard undermined her franchisor's willingness to assist her small business operation, harming her ability to create new job opportunities in her community:

²³ *Expanding Joint Employer Status: What Does it Mean for Workers and Job Creators?: Hearing Before the Subcomm. on Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & the Workforce*, 113th Cong. 28–29 (2014) (statement of Jagruti Panwala, owner, hotel franchisees).

²⁴ *H.R. 3459: "Protecting Local Business Opportunity Act": Hearing Before the Subcomm. on Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & the Workforce*, 114th Cong. 55 (2015) (statement of Kevin R. Cole, Chief Exec. Officer, Ennis Elec. Co.).

[*Browning-Ferris*] has negatively affected my business in several ways. First, my franchisor used to provide standard employee handbooks to its franchisees. But due to expanded joint employment liability, the company no longer provides me employee handbooks Now, I must hire an outside attorney to write an employee handbook for me. It cost my business \$9,000 to have outside counsel prepare my employee handbook. Not to mention, I need my attorneys to update my handbook each time the law changes Second, I no longer receive a job application from my franchisor. I must create my own application now . . . another recurring cost for which the new joint employer doctrine is responsible. A third example is that joint employment liability means I must recruit employees on my own. For years, our brand company has produced and provided its franchise owners employee recruiting kits Today, because of the fear of joint employment liability, these essential recruitment tools are no longer available to franchisees . . . creat[ing] another barrier to hiring great people, so unfortunately, I'm creating jobs in my community slower than I otherwise would.²⁵

Real-world evidence makes clear that the joint-employer standard codified in H.R. 2474 is unworkable.

Democrats claim that the *Browning-Ferris* standard was affirmed by the U.S. Court of Appeals for the D.C. Circuit in December 2018, but in reality the D.C. Circuit denied enforcement of the NLRB's *Browning-Ferris* decision and remanded the case back to the Board for further proceedings because the Board's decision was too broad and went beyond the common-law limitations of joint employment.²⁶ In September 2018, the Board published a proposed rule overturning *Browning-Ferris*, requiring substantial direct and immediate control of the essential terms and conditions of employment in order to be considered a joint employer.²⁷ If this rule is finalized, then it will restore clarity and stability for workers and businesses alike.

The joint-employer definition codified in H.R. 2474 undermines the original intent of Congress, impedes economic growth and job creation, and deprives entrepreneurial opportunities to thousands of Americans.

ELIMINATING EMPLOYER RIGHTS

In addition to undermining the rights of workers to suppress their freedom of choice and expression and extract more union dues, H.R. 2474 also harms employers by curbing their freedom of speech, freedom of contract, and right to privacy, among other protections. These deliberate limitations are a blatant attempt to tilt the playing field, so employees are only presented the unions' perspective on organizing and collective bargaining, remaining un-

²⁵H.R. 3441: *Save Local Business Act: Hearing Before the Subcomms. on Workforce Protections & Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & the Workforce*, 115th Cong. 26-27 (2017) (statement of Tamra Kennedy, President, Twin City T.J.'s, Inc.).

²⁶See *Browning-Ferris Indus. of Cal., Inc. v. NLRB*, 911 F.3d 1195, 1200 (D.C. Cir. 2018).

²⁷See *The Standards for Determining Joint-Employer Status*, 83 Fed. Reg. 46,681 (proposed Sept. 14, 2018).

aware of any of the potential risks while employers are obstructed from legitimate interactions and communications with their own employees.

H.R. 2474's codification of the Obama NLRB's "ambush election" rule harms employees and employers alike by shortening the time between an election petition being filed and the union election taking place. Under this rule, elections take place in as few as 11 days, down from a median of 38 days prior to the rule going into effect in 2015. In a 2017 hearing on the ambush election rule, Mr. Seth Borden, a partner with McGuireWoods LLP, explained how the ambush election rule benefits unions at the expense of fairness and clarity for workers and employers:

The changes in the 2015 Rule changes were, at best, a proposed solution in search of a problem. To the extent they were intended simply to increase union success in organizing, they did so by limiting employer free speech rights protected by Section 8(c) of the [NLRA] and infringing on the Section 7 rights of employees to refrain from union representation. Postponing resolution of important legal issues until after an election only serves to enhance union electoral success by allowing them to leverage employer uncertainty and risk. Take, for example, the issue of whether an individual or group of individuals are "employees" covered by the NLRA or rather "supervisors" exempted by Section 2(11). How is an employer to communicate lawfully with these purported supervisors without knowing whether or not the Board will ultimately find them to be covered or exempt? The employer's choice is either (a) to decline to communicate with these individuals to the maximum extent allowed, and thereby deny these workers, and the workers they supervise, the fullest array of information and discourse protected by Section 7 of the Act; or (b) to risk potentially unlawful communications with them which could have the consequence of overturning the results of an election. It is the lack of certainty at the outset of the process that creates these untenable options—all of which create legal exposure for the best-intentioned employers and infringe upon the rights of the employees to seek a prompt, conclusive determination on the issue of representation.²⁸

Slashing the time between petition and election creates a scenario in which unions are stealthily able to talk to workers for weeks or months about organizing a union while employers are given just a few days to educate workers on the alternate perspective. This scheme is clearly intended to benefit union leaders and organizers but does so at the expense of workers who are subsequently less informed about a decision with enormous impact on their livelihoods and families.

²⁸ *Legislative Reforms to the National Labor Relations Act: H.R. 2776, Workforce Democracy and Fairness Act; H.R. 2775, Employee Privacy Protection Act; and, H.R. 2723, Employee Rights Act: Hearing Before the Subcomm. on Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & the Workforce, 115th Cong. (2017) (statement of Seth H. Borden, Partner, McGuire Woods LLP).*

Worse, not only does H.R. 2474 shorten the window in which employers are able to communicate their perspective, it also imposes new burdens on doing so. The bill codifies the Obama Department of Labor's (DOL) 2016 "Persuader Rule," which functionally eliminated the LMRDA's "advice exemption" by requiring employers and their attorneys to report to DOL any agreement or arrangement they have that may pertain to unionization, even if the attorney will have no direct contact with employees. While this rule was halted by a federal district court decision²⁹ in November 2016 and later rescinded by the Trump administration,³⁰ H.R. 2474 codifies it in order to stifle employer free speech and create yet another unfair advantage for union organizers.

In a 2016 hearing on the Persuader Rule, Mr. William Robinson III, a member of Frost Brown Todd LLC and former President of the American Bar Association, explained how the rule infringes on the attorney-client privilege and will ultimately harm well-meaning small businesses:

The privilege of client attorney confidentiality associated with litigation is essential to the proper functioning of the American legal system. They ensure that clients can obtain the advice they need to fulfill their legal obligations. The best interests of clients, not lawyers, are the overriding concern and focus at stake here. . . . As our Supreme Court has explained, "[i]ts purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." . . . The employers most effected will be the many, many small businesses that provide the largest share of jobs in the United States. Large corporations may be able to turn to their own in-house legal departments for legal advice on labor relations issues. As employees of their client, in-house counsel are not subject to proposed Rule. The large corporations that they advise trigger no reporting requirement when they consult their in-house counsel. . . . Small businesses, on the other hand, will have no such option. Their dilemma will be to either act without legal advice, or take the risk that any legal question they ask, and any action they disclose, to their outside legal counsel will ultimately have to be disclosed to the Department of Labor. In short, the right of small business to receive confidential legal advice on labor relations matters will be gone.³¹

The Persuader Rule is made even more harmful by H.R. 2474. Because the bill significantly increases penalties for unfair labor practices and allows the NLRB to levy fines of up to \$100,000 in each instance, it is even more important that employers have the benefit of legal counsel before responding to union organizing ef-

²⁹ Nat'l Fed'n of Indep. Bus. v. Perez, 2016 WL 8193279 (N.D. Tex. Nov. 16, 2016).

³⁰ Rescission of Rule Interpreting "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 83 Fed. Reg. 33,826 (July 18, 2018).

³¹ *The Persuader Rule: The Administration's Latest Attack on Employer Free Speech and Worker Free Choice*: Hearing Before the Subcomm. on Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & the Workforce, 114th Cong. 95-96, 98-99 (2016) (statement of Wm. T (Bill) Robinson III, Member, Frost Brown Todd LLC).

forts. The Persuader Rule's disclosure requirement contained in H.R. 2474 discourages and penalizes this conduct. In a 2016 hearing on the Persuader Rule, Mr. Joseph Baumgarten, Co-Chair of the Labor and Employment Law Department at Proskauer Rose LLP, explained how the Rule exposes employers to NLRA violations:

Given the Department's position that the scope of the reporting obligation extends to all labor relations advice or services, not just persuader activities, many lawyers will simply decline to provide services which could conceivably be deemed "persuader activity" out of fear of triggering the reporting obligation as to all of their clients. Conversely, employers may eschew seeking counsel for these types of communications if they have to report their agreements with counsel, as well as the fees and the details of such agreements—clearly chilling the free flow of communications necessary between a client and his attorney. This is critical—as the NLRB has strict guidelines on the scope and nature of communications to employees during the bargaining process. Without counsel to assist in the drafting of these communications, it could easily lead to entirely unintended unlawful behavior by employers that, in fact, interferes with the bargaining process—an entirely perverse result from a statute that is intended to promote the process.³²

The Persuader Rule codified in H.R. 2474 is a perversion of the original intent of the LMRDA, stifles the free speech of small businesses by subjecting them to unnecessary additional government oversight, and exposes them to costly financial penalties for unintentional violations of the NLRA.

Unfortunately, the ambush election rule and Persuader Rule are not the only provisions of H.R. 2474 that infringe on the free speech rights of employers.

Even though the federal government has no business determining when, why, or how an employer can meet with his or her own employees in his or her own workplace, the bill also bans employers from holding required meetings with their own employees in their own workplace to discuss unionization during an organizing campaign. In a July 25, 2019 Full Committee hearing on H.R. 2474, Mr. G. Roger King, Senior Labor and Employment Counsel at the HR Policy Association, testified on why banning these meetings is unnecessarily invasive:

[T]here is no evidence to support the conclusion that employers can unduly influence employees to oppose unionization in such meetings. Further, an employer is considerably restricted in what it can say in such meetings. For example, election objections can be successfully pursued by a union or unfair labor practices charges could be successfully filed against an employer if, in such meetings, the employer threatens employees who support unionization,

³²Id. at 48 (statement of Joseph Baumgarten, Co-Chair, Lab. & Emp. Law Dep't, Proskauer Rose LLP).

or the employer promises better benefits to employees if they oppose unionization. Further, the faulty premise that such meetings seriously impede a union's ability to win an election is specious at best, particularly due to the ability of employees to communicate through social media with unions and also among themselves using a wide array of options. Indeed, an employee's ability today to go online to obtain facts and information about the issues of union representation is greater than ever. In summary, these meetings have virtually no bearing on the success or lack thereof of the union movement and should not be made unlawful. Finally, it needs to be noted that unions, unlike employers, have the right to visit employees at their homes and engage in campaign activity in such settings.³³

Worse, H.R. 2474 not only eliminates an important opportunity for employers to communicate to their employees, it also prevents employers from presenting their case before the NLRB, undermining the First Amendment's guarantee of the right to petition the government for redress of grievances. Shockingly, the bill eliminates employers' standing before the NLRB regarding questions of union representation, despite the fact that employers face enormous consequences and are often the source of the most direct and complete knowledge necessary to make those decisions. This overtly one-sided provision requires that the Board only hear from the union when making determinations about employee or supervisor status, makeup of the bargaining unit, and other important questions. Rather than preserving the fair system at the core of America's rule of law, H.R. 2474 requires that the government hear only from a labor union that has a vested interest in enriching itself as a result of the decisions the Board will make.

Finally, H.R. 2474 undermines the freedom of contract by requiring that a third-party panel determine the binding terms of a collective bargaining agreement if a union and employer reach an impasse negotiating their first contract that is not solved in mediation. Third-party arbitrators have no stake in the success of the business and are underinformed about important details of the company's finances. Moreover, H.R. 2474 requires that the arbitration panel consider factors unrelated to the employer's financial health, including employees' cost of living, employees' "ability to sustain themselves, their families, and their dependents on the wages and benefits they earn from the employer," and "the wages and benefits other employers in the same business provide their employees." The cost of living in a given region, the number of dependents a business' employees have, and the wages and benefits of a major competitor does not determine the ability a small business to make payroll and yet arbitrators would be required to take those factors into account in determining a binding two-year contract on which neither the employer nor the employees are ever given an opportunity to vote. The mandatory binding arbitration provision of H.R. 2474 is intended to solely reward union interests and intransigence in the bargaining process and could bankrupt countless small businesses, killing tens of thousands of jobs.

³³ King Statement, *supra* note 10.

Biased and discredited provisions such as ambush elections, the Persuader Rule, banning certain meetings, eliminating employer standing before the NLRB, and imposing binding mandatory arbitration are all intended to intimidate and muzzle employers to clear the way for unions to more easily organize workers and collect dues. These radical provisions in H.R. 2474 are a blatant attempt to rig the rules in favor of unions in response to workers' overwhelming rejection of union membership in recent decades. These anti-employer provisions in H.R. 2474 lay bare the bill's true intent, which is to silence employers and minimize any potential challenge a union might face in organizing workers and collecting millions of dollars in additional union dues.

PROMOTING AND SUSTAINING ECONOMIC INJURY

H.R. 2474 not only undermines employers' and workers' rights—but also makes it easier for unions to unilaterally inflict economic pain on workers, employers, and the economy as a whole by increasing and expanding strikes. First, the bill bans employers from permanently replacing striking workers, overturning 80 years of unanimous Supreme Court precedent and subsequently upending the recognized balance in the law, in which unions have a right to strike but employers have a right to make the decisions necessary to continue to serve their customers and remain in business. In *NLRB v. Mackay Radio & Telegraph Co.*, the Court ruled unanimously that Mackay Radio had not engaged in an unfair labor practice when it flew in replacement workers from other offices to cover the roles of workers striking at their San Francisco office, nor when the company declined to rehire four of those striking workers. In the decision, the Justices explained that taking the steps necessary to continue to do business amidst a labor dispute is within an employer's rights:

[I]t does not follow that an employer, guilty of no act denounced by the statute, has lost the right to protect and continue his business by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment, in order to create places for them.³⁴

H.R. 2474 eliminates this longstanding employer right and essentially allows a union to shut down a business for as long as it may please, under any circumstance. Worse, the bill also legalizes so-called intermittent strikes. Striking and picketing are at the core of a union's leverage at the bargaining table, but the NLRA and NLRB have appropriately placed certain limitations on these activities in order to minimize disruption to the economy. The NLRB states, "a strike may be unlawful because an object, or purpose, of the strike is unlawful."³⁵ In 1998, NLRB Acting General Counsel Frederick L. Feinstein summarized the ban on intermittent strikes:

³⁴NLRB v. Mackay Radio & Telegraph Co., 304 U.S. 333, 345 (1938).

³⁵NLRB, BASIC GUIDE TO THE NATIONAL LABOR RELATIONS ACT, GENERAL PRINCIPLES OF LAW UNDER THE STATUTE AND PROCEDURES OF THE NATIONAL LABOR RELATIONS BOARD, THE RIGHTS OF EMPLOYEES (1997).

[A] refusal to work will be considered unprotected intermittent strike activity when the evidence demonstrates that the stoppage is part of a plan or pattern of intermittent action which is inconsistent with a genuine strike or genuine performance by employees of the work normally expected of them by the employer.³⁶

H.R. 2474's legalization of intermittent strikes would subject employers to unexpected, unpredictable, and repeated work stoppages without any legal recourse. Stability and predictability are essential to a functioning business, but H.R. 2474 would wantonly discard that basic principle in order to weaponize a union's economic leverage.

Finally, H.R. 2474 repeals the ban on so-called secondary activity that was enacted in the 1947 *Taft-Hartley* amendments to the NLRA.³⁷ Secondary activity extends the pain of striking and picketing by allowing unions to target the business partners of a company they are seeking to organize. As such, businesses with no direct connection to the employer being targeted by the union will be subject to union harassment. Given the interdependent nature of companies in the 21st century economy, allowing secondary boycotts could subject nearly any employer, employee, or consumer in the country to union harassment. Coupled with H.R. 2474's other extreme provisions allowing unions to exploit more economically painful and disruptive strikes than are currently permitted, legalizing secondary activity would target and destroy countless small businesses.

H.R. 2474 seeks to restore an antiquated view of the American economy reliant on constant struggle and conflict between labor and management. A workplace landscape defined by conflict creates the most opportunity for unions to promote their goals of unionization and H.R. 2474 is singularly aimed at increasing that prospect, irrespective of the consequences for workers, employers, and the economy as a whole. In 1937, there were nearly 5,000 strikes nationwide³⁸ and while economic disruption of this magnitude undoubtedly harmed American workers by reducing overall productivity, it underscored unions' ability to dictate the direction of the economy, representing a win for unions but a long-term loss for American workers and employers. This 1930s-era vision of the economy is the "future of work" that Democrats seek to impose on modern businesses with H.R. 2474.

In a May 8, 2019, Subcommittee on Health, Employment, Labor, and Pensions hearing on H.R. 2474, Mr. Philip A. Miscimarra, Partner at Morgan Lewis & Bockius LLP and former Chairman of the NLRB, explained how the consequences of H.R. 2474's expansion of strikes will be even more painful in the 21st century because American businesses and workers are competing in an increasingly globalized and technologically-advanced economy:

[T]he biggest problem with the PRO Act is the expansion of economic weapons and economic injury, which have

³⁶ OFF. OF THE GEN. COUNSEL, NLRB, REPORT OF THE GENERAL COUNSEL (Sept. 1, 1998) (quotation marks and citations omitted), <http://www.lawmemo.com/nlrb/gcreport.htm>.

³⁷ 29 U.S.C. 158(b)(4).

³⁸ BLS, ANALYSIS OF STRIKES IN 1937 (1938).

been the engine driving collective bargaining under the NLRA. Increasing the scope of these economic weapons, and making them more destructive, will have a destabilizing impact on U.S. employees, employers, the general public, and unions. This is especially true in the global economy that exists today, which was unimaginable when the NLRA was enacted in the 1930s during the Great Depression. . . . [H.R. 2474] does not recognize the significant risks to U.S. employment that are already posed by automation, artificial intelligence and other dramatic advances in technology. Inevitably, the PRO Act's expansion of employment-related costs and conflict will magnify increased investments of every business in new technology rather than people. For this reason, the PRO Act will not enhance employment policy. To the contrary, it will place U.S. employees at a more severe disadvantage, in comparison to new technology, with the greatest negative impact on many of the most vulnerable employees, including minority members, employees in manufacturing, and high school graduates who lack college degrees, among others. This will produce additional spillover negative consequences on families, communities, state and local governments, and the unions who hope to benefit from this legislation.³⁹

The right to strike and picket provides federally-protected leverage for unions in labor-management relations and theoretically exists to win concessions that ultimately leave workers better off. But the strike provisions in H.R. 2474 are so radical that they will leave workers worse off. Allowing unions to harass and disrupt businesses to the extent permitted in H.R. 2474—including picketing and boycotting businesses that unions are not even trying to organize—does not empower workers. It merely increases the costs, burdens, and risks of investing in American workers and expands the pain of union confrontation to affect nearly every single business and consumer in the country.

Decades of balance in American labor law have allowed the economy to flourish and provide workers with higher wages and greater opportunities. The future of work in the modern economy should be aimed at harmonizing relationships between workers and businesses and ultimately making the United States a more attractive place to do business than our global competitors like China. H.R. 2474 does the opposite, sacrificing economic stability that leads to progress and growth in order to promote economic strife while enriching and empowering labor unions at the expense of employers, workers, and consumers.

PUNITIVE AND ONE-SIDED CIVIL PENALTIES

Finally, H.R. 2474 weaponizes enforcement of the NLRA in a one-sided manner that punishes employers while relaxing legal restrictions on unions. As described above, the bill increases the

³⁹*Protecting the Right to Organize Act: Deterring Unfair Labor Practices: Hearing Before the Subcomm. on Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & Lab.*, 116th Cong. (2019) (statement of Philip A. Miscimarra, Partner, Morgan Lewis & Bockius LLP).

range of unfair labor practices for employers, such as making it an unfair labor practice to fail to turn over employees' personal information to a union or misclassifying employees as independent contractors, while allowing unions to engage in previously illegal activity such as secondary boycotts and intermittent striking.

In addition to unjustly expanding the list of unfair labor practices considered violations of the NLRA, the bill imposes costly monetary civil penalties, individual legal liability, and a private right of action against employer unfair labor practices only, while leaving remedies for unfair union labor practices untouched. Not only does this clearly biased approach disrupt existing equal protection and enforcement under the law, it is also a solution in search of a problem. In a May 8, 2019 hearing on H.R. 2474, Mr. Miscimarra explained why civil monetary penalties are unnecessary for the Board to enforce the law:

During each of the past several years, approximately 20,000 unfair labor practice charges have been filed with the NLRB, and as noted below, roughly 95 percent of these cases are resolved within 3–4 months—with relief being provided in cases involving probable violations. In most cases, the up-front investigation takes 90–120 days, resulting in a finding that roughly 60 percent of the cases lack merit (resulting in dismissal or withdrawal of the charge, which represents the end of the case, without any further proceedings or appeals); and with a finding that 40 percent of the cases have probable merit. In the cases found to have probable merit, the NLRB's Regional Office successfully works out settlements in roughly 90 percent of the cases, usually in the same 90–120 day timeframe, which represents the end of the case—including on Board-required remedies—without any further proceedings or appeals. In the fiscal year ending September 30, 2018, the Board successfully settled 97.5 percent of the unfair labor practice cases found to have probable merit. In total, the Board successfully accomplishes final, binding resolution of roughly 95 percent of all unfair labor practice charges after an up-front investigation that usually occurs within 90–120 days after the charge is filed.⁴⁰

Put simply, few unfair labor practice charges ever make it to the point at which the Board would assess monetary penalties, were H.R. 2474 to become law. In addition, Mr. Miscimarra explained how the Board is already empowered to ensure enforcement of its orders to remedy unfair labor practices:

Not only can the Board devise remedies consistent with its authority under the Act, the Board has the authority in appropriate cases to seek interim injunctive relief under Section 10(j). Moreover, the Board's orders are subject to enforcement in the courts. When any party violates a court's enforcement of an NLRB order, that violation is subject to potential civil and criminal contempt

⁴⁰Id.

proceedings and penalties, including potential fines and imprisonment.⁴¹

H.R. 2474 discards the original intent of the NLRA to remedy rather than punish wrongdoing. Even more egregious is the bill's wanton disregard for doing so fairly. Section 8 of the NLRA outlaws unfair labor practices committed by unions, and the NLRB has explained union unfair labor practices in detail.⁴² H.R. 2474 imposes fines on both a business and a business owner of as much as \$100,000 for a minor offense such as unintentionally misinterpreting the bill's complicated definition of "employee." Amazingly, unions and union officers face no such liability or financial penalty for unlawful activity such as acts of violence on the picket line, threats of violence on non-striking employees, or threatening employees that they will be fired unless they pay the union hundreds of dollars. H.R. 2474 risks bankrupting small businesses unable to afford a team of lawyers to interpret complicated federal labor laws but levies no additional penalties or punishments on powerful, coercive, multimillion-dollar labor unions. While H.R. 2474 contains a litany of discriminatory changes that curb employee and employer rights in order to enrich and empower unions, perhaps no single provision underscores its outrageous one-sided nature as its imposition of costly monetary penalties for minor employer unfair labor practices while leaving union unfair labor practices, including union violence, untouched.

The above examples represent just a few of the most egregious provisions of H.R. 2474. There are many others, ranging from a requirement that the NLRB give unfair labor practice charges against employers preference over charges against unions, to allowing the prevailing party in a civil action to collect punitive damages based on the gross income of the employer.

UNION FAILINGS

Democrats claim that union density has plummeted in recent years because of political attacks against unions and NLRB decisions that make it more difficult to organize workers. Chief among these so-called attacks are right-to-work laws, which allow workers to decide for themselves whether to join and pay a union and which have been passed in five states since 2012, bringing the total number of states with right-to-work laws to 27. This and other criticisms ignore the basic truth that federal labor law has not changed, irrespective of political attacks and NLRB decisions as employees maintain the right to organize and remain free to decide for themselves whether to become union members and the vast majority of workers have chosen not to pursue unionization.

In reality, the union membership rate continues to plunge because of unions' own failings. Unions have failed to evolve to meet the needs of a 21st century workforce resulting from a lack of accountability and transparency that has fostered corruption while union bosses have failed to dedicate adequate resources and attention to organizing efforts. If workers believed unions were in their

⁴¹*Id.*

⁴²NLRB, BASIC GUIDE TO THE NATIONAL LABOR RELATIONS ACT, GENERAL PRINCIPLES OF LAW UNDER THE STATUTE AND PROCEDURES OF THE NATIONAL LABOR RELATIONS BOARD, UNFAIR LABOR PRACTICES OF LABOR ORGANIZATIONS (1997).

best interest and union advocacy and representation were worth paying for, then the nation would see more workers attempting to organize unions and voluntarily choosing to be union members, paying hundreds of dollars per year in union dues. No business, no law, and no NLRB decision has forced workers to abandon unions.

As the Committee has considered H.R. 2474 this Congress, the United Auto Workers (UAW) union has remained embroiled in a terrible scandal involving the abuse of workers' union dues that has resulted in more than a dozen people charged, including two former UAW Vice Presidents.⁴³ Among the many offenses of top union officials is a violation of the *Labor-Management Relations Act* by accepting illegal payments from the companies with which the union was negotiating. Moreover, union officials used workers' hard-earned union dues on lavish personal expenses such as a \$30,000 party that featured strolling models sparking attendees' cigars.⁴⁴ While union executives were kept "fat, dumb, and happy" according to federal investigators, rank-and-file autoworkers were kept in the dark about how their union leaders were spending their hard-earned union dues.⁴⁵ An Assistant U.S. Attorney wrote in a sentencing memorandum stemming from the investigation that "there was a culture of corruption inside the senior leadership of the United Auto Workers union."⁴⁶ It should come as no surprise, then, that the UAW lost more than 35,000 members in 2018, representing an 8 percent decline of its overall membership.⁴⁷

Although H.R. 2474 should require unions to reaffirm their commitment to the workers they purport to represent by requiring greater transparency and improving accountability, unfortunately the bill fails completely in this regard. Over the past decade, unions successfully lobbied their political allies in the Obama administration to rescind regulations that increase financial transparency⁴⁸ and are now calling on their political allies in Congress to enact radical national labor laws such as H.R. 2474 to increase their coercive power.

Perhaps unions' single biggest failure has been the lack of attention and resources dedicated to the very reason they claim to exist: to organize and represent workers. Mr. G. Roger King, Senior Labor and Employment Counsel at the HR Policy Association, testified at a July 25, 2019, hearing on H.R. 2474 and quantified unions' lack of focus on organizing efforts:

[U]nion organizing and the number of petitions filed by unions with the National Labor Relations Board have fallen nearly 63% from 5,000 in 1997 to 1,854 in 2017. In FY

⁴³ Paul A. Eisenstein, *Feds charge former UAW vice president with money laundering and bribery*, NBC NEWS, Nov. 6, 2019.

⁴⁴ Press Release, U.S. Atty's Off., E. Dist. of Mich., Former FCA Executive and Wife of Former UAW Vice President Charged in Scheme to Pay Off UAW Officials (July 26, 2017); Robert Snell, *FCA training funds used for UAW exec's pricey '14 party*, DET. NEWS, Feb. 2, 2018.

⁴⁵ Snell, *supra* note 45.

⁴⁶ Robert Snell, *Court records: Fear of factory floor fed UAW corruption*, DET. NEWS, Nov. 5, 2018.

⁴⁷ OFF. OF LAB.-MGMT. STANDARDS, U.S. DEP'T OF LAB., FORM LM-2 LABOR ORGANIZATION ANNUAL REPORT, <https://olms.dol-esa.gov/query/orgReport.do?rptId=698886&rptForm=LM2Form>.

⁴⁸ OFF. OF LAB.-MGMT. STANDARDS, U.S. DEP'T OF LAB., 2010 ANNUAL REPORT 9-10 (Jan. 2011) (Obama administration rescinding regulations requiring unions to report parties buying or selling union assets of \$5,000 or more and requiring unions to file separate financial disclosures for union-controlled trusts such as strike funds and workforce development programs), https://www.dol.gov/olms/regs/compliance/annualreports/highlights_10.pdf.

2018, the number of petitions filed dropped even further to 1,597, the fewest number in over 75 years. Perhaps most telling, as the rate of private sector employment has increased, the number of NLRB elections has decreased precipitously. Further, when examining data from the U.S. Department of Labor Bureau of Labor Statistics, the lack of union attention to union organizing is even more evident. In FY 2018, there were 110.5 million potential private sector employees available for organizing in the country under the National Labor Relations Act. The number of employees petitioned-for, in that same year, according to NLRB statistics, was only 73,109. Accordingly, unions only sought to represent .066% of potential new members in this country.⁴⁹

Despite a failure to recruit substantial numbers of new union members, labor unions continue to be flush with revenue, thanks in part to their ability to force millions of workers in union shops to pay dues and fees against their will. As of 2012, labor unions received more than \$14 billion in dues from collective bargaining agreements.⁵⁰ This begs the question of where unions are spending their ample wealth. The lack of resources dedicated to organizing efforts was delineated by a Splinter News analysis of the AFL-CIO's 2018–2019 internal budget:

[T]otal organizing spending . . . accounts for less than a tenth of the budget. The percentage of the budget dedicated to all organizing activities is about the same as the portion dedicated to funding the offices of the President, Secretary-Treasurer, Executive Vice President, and Executive Councils and associated committees. The largest portion of the budget—more than 35 percent—is dedicated to funding political activities.⁵¹

In addition to dedicating massive sums to political activity instead of organizing new workers, unions have also spent generously to advance ideological causes. As mentioned previously, from 2010 through 2018 unions sent more than \$1.6 billion in member dues to hundreds of progressive political advocacy organizations, including Planned Parenthood and the Progressive Democrats of America.⁵² Not only are these expenditures a departure from unions' core function, they are also not representative of the beliefs of union membership, as more than 40 percent of union households voted Republican in the most recent presidential election.⁵³ Moreover, recent polling shows that the vast majority of union households, Democrats, and independents believe unions should be required to receive opt-in permission from employees before using

⁴⁹ King Statement, *supra* note 10.

⁵⁰ NATIONAL INST. FOR LAB. REL. RES., LABOR UNIONS RECEIVE \$14 BILLION IN DUES PER YEAR FROM CBAS (Mar. 31, 2012).

⁵¹ Hamilton Nolan, AFL-CIO Budget is a Stark Illustration of the Decline of Organizing, SPLINTER NEWS, May 16, 2019.

⁵² CTR. FOR UNION FACTS, *supra* note 4.

⁵³ Philip Bump, Donald Trump got Reagan-like support from union households, WASH. POST, Nov. 10, 2016.

their dues for purposes other than collective bargaining.⁵⁴ Labor leaders themselves recognize this lack of focus on unions' core purpose. The late Hector Figueroa, an influential former leader within the SEIU, chided unions for abdicating their responsibilities:

For too long, too many unions have avoided the tough work that needs to be done to organize nonunion workers, to convince our own members that it's in their interest to expand our ranks, and to retool our organizations by putting resources into building power.⁵⁵

Labor unions are not incapable of demonstrating value to workers. Too many are simply unwilling to put in the work necessary to do so, instead focusing their efforts and resources on other priorities such as advancing a one-sided political agenda.

UNIONS AND AMERICAN PROSPERITY

Democrats also claim that H.R. 2474 is necessary because the decline of unions has harmed lower- and middle-income Americans. Specifically, Democrats continue their tired arguments about stagnant wages and rapidly worsening income inequality. They claim that strengthening the coercive power of labor unions and weakening the rights of business owners, as H.R. 2474 does, will empower workers to earn higher wages and a greater share of total income. While unions have the ability to bargain collectively for better wages or benefits, it is simply not the case that workers are worse off today than they were when the union rate was higher in the 20th century.

First, wages are not stagnant, and unions' decline has not made Americans poorer. According to the Bureau of Labor Statistics (BLS), wages and salaries in the private sector increased more than 3 percent in 2018.⁵⁶ In lower-wage industries, wages grew a remarkable 4.4 percent in 2018, suggesting that lower-income workers are seeing substantial benefit from recent economic growth.⁵⁷ Median household income, a reflection of middle-class living standards, reached another record high in 2018, rising to \$63,179.⁵⁸ Going back further, in 2017 dollars, the typical American household earns over \$1,000 more per month today than it did in 1975.⁵⁹ The union membership rate in 1975 was more than double the rate in 2018.⁶⁰

Moreover, economic growth and opportunity continue to allow poor Americans to move into the middle-class and middle-class Americans to become wealthy. The poverty rate for people who worked full-time, year-round in 2018 was just 2.3 percent, accord-

⁵⁴ ERA HAS BROAD SUPPORT AMONG UNION AND NON-UNION HOUSEHOLDS ACCORDING TO NATIONAL POLLING, https://employeeightsact.com/wp-content/uploads/2018/07/ERA_Polling_Updatev4-1.pdf (July 2018).

⁵⁵ Hector Figueroa, *The Labor Movement Can Rise Again*, N.Y. TIMES, July 12, 2019.

⁵⁶ BLS, COMPENSATION COSTS FOR PRIVATE INDUSTRY WORKERS UP 3.0 PERCENT IN 2018 (Feb. 4, 2019).

⁵⁷ JAMES PETHOKOUKIS, AM. ENTERPRISE INST., WAGES RISING: THE US ECONOMY IS NOW WORKING BEST FOR LOWER-WAGE WORKERS (Mar. 13, 2019).

⁵⁸ U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2018 (Sept. 10, 2019).

⁵⁹ MARK PERRY, AM. ENTERPRISE INST., CENSUS DATA RELEASED TODAY SHOW CONTINUED GAINS FOR MIDDLE-CLASS AMERICANS AND LITTLE EVIDENCE OF RISING INCOME INEQUALITY (Sept. 12, 2018).

⁶⁰ MEYER, *supra* note 1, at 22.

ing to Census data.⁶¹ According to analysis of Census data by Mark Perry at the American Enterprise Institute, the portion of high-earning households is growing while the portion of middle-income and poor households are both shrinking. In inflation-adjusted 2018 dollars, from 1967 to 2018 the percentage of U.S. households earning between \$35,000 and \$100,000 fell from 53.8 percent to 41.7 percent and the portion making less than \$35,000 fell from 37.2 percent to 27.9 percent, while the portion making more than \$100,000 per year rose from 9 percent to 30.4 percent.⁶² The union membership rate fell from 27.8 percent in 1967⁶³ to 10.5 percent in 2018.⁶⁴ In summarizing his analysis, Mr. Perry debunks Democrat claims of a worsening middle class:

America’s middle class did start largely disappearing in the 1970s, but it was because they were moving up to higher-income groups, not down into a lower-income category. And that movement was so significant that between 1967 and 2018, the share of American households earning incomes above \$100,000 more than tripled. . . . [P]rogressive politicians like Sen. Bernie Sanders and Sen. Elizabeth Warren claim that America’s middle class has been declining, disappearing, collapsing, losing ground, vanished, stagnated, etc. But the Census Bureau data on household income over time displayed above demonstrate conclusively that those assertions are incredibly and verifiably wrong.

In addition, the steady decline of unions has not entrenched a permanent upper-class gaining wealth at the expense of lower- and middle-income Americans. Rather, Americans move constantly between income brackets throughout the course of their lives. Thus, not only are the poor and middle-class better off than they were decades ago, those groups are also unlikely to include many of the same individuals from one decade to the next. According to research from Washington University Professor of Social Welfare, Mark Rank, and Cornell University Professor, Thomas Hirschl, looking at 44 years of longitudinal data for individuals ages 25 to 60, 39 percent of Americans will spend at least one year in the top 5 percent of the income distribution, 56 percent will do so in the top 10 percent, and 73 percent of Americans will do so in the top 20 percent of the income distribution. Of the 12 percent of Americans who will experience a year in the top 1 percent of income, just 0.6 percent will do so in 10 consecutive years.⁶⁵

Income inequality has also remained relatively stable over the 25 years between 1993 and 2017 while the union membership rate declined. The share of income earned by the top 20 percent stayed between 48.9 percent and 51.5 percent from 1993 to 2017, while the income share of the top 5 percent stayed between 21 percent and 22.6 percent. The “Gini index” measuring income inequality on a

⁶¹ U.S. CENSUS BUREAU, *supra* note 59.

⁶² MARK PERRY, AM. ENTERPRISE INST., THREE CHARTS BASED ON TODAY’S CENSUS REPORT SHOW THAT THE US MIDDLE-CLASS IS SHRINKING . . . BECAUSE THEY’RE MOVING UP (Sept. 10, 2019).

⁶³ MEYER, *supra* note 1, at 22.

⁶⁴ BLS, UNION MEMBERS—2016 (Jan. 26, 2017).

⁶⁵ Mark Rank, *From Rags to Riches*, N.Y. TIMES, Apr. 18, 2014.

scale of 0 (perfect equality) to 1 (complete inequality) has remained between 0.46 and 0.48 since 1993.⁶⁶ While different methodologies can result in varying measures of income inequality, at the very least it is clear that the decline in union membership has not coincided with a massive increase in inequality in recent decades as Democrats claim.

Finally, workers' share of income has remained constant, and compensation growth continues to align with productivity growth. Democrats claim that workers' share of total income has fallen, and that employees' compensation growth has not kept pace with their productivity growth as the union rate has declined in recent decades. However, when considering only net income rather than *gross* income, and excluding self-employment income (as it cannot reasonably be attributed to labor nor capital), labor's share of income has remained remarkably consistent, rising just slightly from 68.5 percent in 1948 to 68.8 percent in 2014, according to a 2016 analysis from the Heritage Foundation.⁶⁷ Similarly, claims that workers' compensation growth has not kept pace with their productivity growth compare the compensation of the limited category of private sector "production and non-supervisory employees" covered by the BLS payroll survey to the productivity growth of all employees, including government workers, the self-employed, and others excluded from the BLS payroll survey. These comparisons alleging slowing compensation growth also exclude most performance-based compensation such as commission, bonuses, and stock options. An "apples-to-apples" comparison for employees in the non-farm business sector shows that from 1973 to 2014, average compensation grew by 78 percent while average productivity grew by 81 percent—tracking much more closely than Democrats claim.⁶⁸

The state of the American economy is sound. However, public policy reforms can help increase economic growth and opportunity, providing more Americans the dignity of work and allowing them to build stable middle- or upper-middle-class livelihoods. But the Democrats' bleak picture of an unfair economy that works only for the wealthiest Americans while leaving behind the rest of the workforce is simply false. The decay of unions has not created an unfair economy and it has not left workers worse off. Moreover, there is no evidence that passing a law to make it easier for unions to force more workers into one-size-fits-all collective bargaining agreements which limit opportunity and innovation while siphoning hundreds of dollars per year from worker paychecks will result in more jobs, higher wages, or greater economic opportunity than exists today. To the contrary, the best way to improve the lives of workers and their families is to continue to grow the economy which is precisely what individual liberty and the free enterprise system have achieved over the last four decades as the union membership rate has fallen.

⁶⁶ PERRY, *supra* note 60.

⁶⁷ JAMES SHERK, HERITAGE FOUND., LABOR'S SHARE OF INCOME LITTLE CHANGED SINCE 1948 (May 31, 2016).

⁶⁸ JAMES SHERK, HERITAGE FOUND., WORKERS' COMPENSATION: GROWING ALONG WITH PRODUCTIVITY, HERITAGE FOUND. (May 31, 2016).

DEMOCRAT AMENDMENT IN THE NATURE OF A SUBSTITUTE

Chairman Scott's Amendment in the Nature of a Substitute (ANS) contains several additional alterations which further worsen an already ruinous bill. First, the ANS requires employers to maintain existing terms and conditions of employment pending an agreement with the union. This provision could lock a small business into rigid contract terms that are unaffordable over the long-run as the company's financial situation changes. Collective bargaining agreements are periodically renegotiated to reflect changing needs, market conditions, and bargaining priorities. The ANS locks in costly provisions, increases unions' myriad opportunities for coercion and reduces their incentives to renegotiate a contract, no matter what that means for the employer. This provision of the ANS is another way in which H.R. 2474 radically skews the playing field in favor of union bosses and against employers.

The ANS also overturns the NLRB's recent ruling in *Johnson Controls, Inc.* which allows many workers to vote for the first time ever on the union representing them. As previously stated, more than 90 percent of workers represented by a union under the NLRA have never voted for that union, because once a union is voted in, it never stands for a recertification election. In the interest of union democracy and accountability, the Board ruled in *Johnson Controls* that an employer could withdraw recognition of a union within 90 days prior to the expiration of a collective bargaining agreement if it had evidence the union has lost majority support of the bargaining unit. If the workers wish to retain the union as their representative, then the union simply needs to refile a petition for a new representation election within 45 days and win an election to retain recognition, which is feasible if the union maintains the support from the workers as it claims.⁶⁹ Instead of strengthening union democracy, the ANS to H.R. 2474 deprives workers an opportunity to vote on the union that claims to represent them.

Further enhancing H.R. 2474's invasion of worker privacy, the ANS specifies that employees' private personal information provided to the union must be in searchable electronic format. For Committee Democrats, it's not enough to force workers to have their private, personal information shared with a union organizer and be subject to harassment and intimidation in their homes against their will. The ANS makes it such that workers also have to fear that information being hacked and easily misused. Countless government agencies and private companies alike have been hacked in recent years, risking Americans' privacy and security. The ANS to H.R. 2474 provides workers' private, personal information in searchable electronic format to labor unions, entrusting the same entities that have failed to evolve from the 1950s and are plagued by corruption and self-dealing with protecting private, personal information from 21st century hackers. Significantly, H.R. 2474 contains no restrictions on unions volunteering or selling this data to private companies, political campaigns, or other organizations and providing it to be searchable online makes it even easier for those organizations to harass and solicit workers. This provision

⁶⁹ 368 NLRB No. 20 (2019).

of the ANS makes one of the worst provisions of H.R. 2474 even more susceptible to abuse.

In addition to giving unions access to workers' private information, the ANS essentially gives union access to employers' private resources as well. The ANS codifies the Obama NLRB's 2014 ruling in *Purple Communications, Inc.*, that employees have a statutory right to use workplace email to discuss activity protected under the NLRA, including union organizing, even if the employer does not allow comparable non-business uses of the email system.⁷⁰ An employer's email system belongs first and foremost to the employer.

Prior to the Obama administration, the Board had held for decades that employees did not have a right to use an employer's equipment for union organizing efforts provided the employer did not discriminate against NLRA-protected activities while allowing other comparable non-business uses. The invention of email did not change that basic principle. Moreover, requiring that workers be allowed to use an employer's email system for union organizing creates compliance confusion for businesses that must grapple with competing interests such as monitoring email for security intrusions and for other legitimate purposes having nothing to do with the NLRA while also avoiding surveillance that impedes workers' Section 7 rights under the NLRA.⁷¹ Employees have several other methods by which to communicate about unionization that do not involve the employer-provided email system, including social media, texting, and in-person conversation. Moreover, H.R. 2474's mandate that unions receive reams of workers' personal contact information makes the use of email even more unnecessary. This provision of the ANS undermines employers' rights and exposes them to additional compliance risks for little benefit to the employees.

Finally, the ANS codifies the Obama NLRB's *Specialty Healthcare* "micro-union" ruling that the Board must find that the petitioned-for bargaining unit is appropriate if the union demonstrates that the employees share a "community of interest," unless any excluded employees share an overwhelming community of interest with the proposed unit.⁷² This new provision allows unions to gerrymander bargaining units, creating micro units, to increase their likelihood of success when they are unable to convince a workplace of the benefits of unionization. In December 2017, the Board overturned *Specialty Healthcare* and returned to the traditional community-of-interest standard.⁷³ In September 2019, the NLRB clarified in the *Boeing* decision that the "overwhelming community of interest" standard used in this ANS is insufficient.⁷⁴ Instead, the Board set forth a clear three-factor test for determining an appropriate bargaining unit: (1) whether the members of the petitioned-for unit share a community of interest with each other; (2) whether those excluded from the proposed unit have meaningfully distinct interests that outweigh similarities with the unit; and (3) any bargaining unit guidelines specific to the given industry.⁷⁵ This

⁷⁰ 361 NLRB 1050 (2014).

⁷¹ See *id.* at 1068 (Miscimarra, Member, dissenting).

⁷² 357 NLRB 934 (2011), *overruled by* PCC Structurals, Inc., 365 NLRB No. 160 (2017).

⁷³ See PCC Structurals, Inc., 365 NLRB No. 160 (2017).

⁷⁴ 368 NLRB No. 67 (2019).

⁷⁵ *Id.* slip. op. at 3.

clear, concise, easy-to-understand standard makes sense for employers and employees alike—but not for union bosses. The “micro-union” provision in the ANS is another attempt by Committee Democrats to rig the playing field to make it easier to unionize workers and collect dues, even when the union lacks majority support.

H.R. 2474 as originally introduced is a disturbing intrusion on employee and employer rights. The last-minute changes added by the ANS worsen the bill, further eroding rights in the workplace and empowering unions to more easily coerce workers into unionization.

ADDITIONAL DEMOCRAT AMENDMENTS

At the Committee markup of H.R. 2474, Democrats offered and passed four amendments, all of which undermine employee and employer rights in order to rig the system even further in favor of unions. The first, offered Rep. Frederica Wilson (D-FL), makes it an unfair labor practice for an employer to misclassify an employee as an independent contractor. In August 2019, the NLRB ruled in *Velox Express, Inc.*, that misclassification does not on its own constitute a violation of the NLRA because it does not infringe on employees’ exercise of their Section 7 rights.⁷⁶ The Fair Labor Standards Act already imposes large penalties on employers for violations that arise when an employer misclassifies workers,⁷⁷ and the Internal Revenue Service may hold employers liable for the employment taxes owed,⁷⁸ making this amendment’s additional layer of red tape redundant and unnecessary. However, Committee Democrats seek to make it as risky and difficult as possible to classify workers as independent contractors in order to subject more workers to unionization. This amendment, supported by every Committee Democrat present, reverses *Velox Express*, adding to H.R. 2474’s expansion of potential employer unfair labor practices while rewarding coercive labor union tactics by repealing the ban on secondary boycotts and permitting disruptive intermittent strikes.

The second Democrat amendment, offered by Rep. Andy Levin (D-MI), allows union elections to be conducted electronically, through certified mail, or at a location other than one owned by the employer. Currently, the details of a union election such as time and place are agreed upon by the union and the employer or else determined by an NLRB Regional Director.⁷⁹ Elections are administered and overseen by NLRB officials who ensure election integrity and prevent wrongdoing and the Board has explained in detail the process by which employees are able to vote in secret by secure paper ballot.⁸⁰ Moreover, the Board currently lacks the technology

⁷⁶ 368 NLRB No. 61 (2019).

⁷⁷ 29 U.S.C. § 216(b) (employer who violates the Act liable for back wages and liquidated damages in equal amount).

⁷⁸ See 26 U.S.C. § 3509 (employer liability for certain employment taxes).

⁷⁹ NLRB, BASIC GUIDE TO THE NATIONAL LABOR RELATIONS ACT, COLLECTIVE BARGAINING AND REPRESENTATION OF EMPLOYEES, THE REPRESENTATION ELECTION (1997).

⁸⁰ NLRB, DESCRIPTION OF ELECTION AND POST-ELECTION REPRESENTATION CASE PROCEDURES (Form NLRB-5547) (2015).

to conduct electronic voting.⁸¹ The risk of hacking, fraud, and abuse is one of the primary reasons that states do not allow electronic voting for elected office and the risk is the same for union elections—perhaps greater when union bosses, who do not have a confidence-inspiring track record when it comes to crime, fraud, and corruption, have so much to gain. This amendment, supported by every Committee Democrat present, introduces yet another opportunity for union fraud and abuse and for organizers to harass workers.

The third amendment, offered by Rep. Josh Harder (D-CA), expands H.R. 2474's monetary civil penalties for employer unfair labor practices to include unfair labor practices that do not cause direct economic harm. Representing another attack on business owners, this amendment distorts labor law even further from the careful balance that has been struck for more than 70 years, in which wrongdoing is remedied rather than punished. In combination with Rep. Wilson's amendment making it an unfair labor practice for an employer to misclassify an employee, this amendment allows the NLRB to impose a fine of as much as \$100,000 on a business and business owner alike for accidentally misinterpreting the vague, confusing "ABC" test to determine who qualifies as an "employee" under the NLRA. Such a significant fine on many small businesses and small business owners is easily enough to bankrupt them. In an attempt to punish employers and empower union bosses to organize more workers, this amendment, supported by every Committee Democrat present, could kill countless small businesses and many thousands of jobs.

Finally, the fourth Democrat amendment, offered by Rep. Lori Trahan (D-MA), prohibits employers from engaging in an "offensive" lockout, which is a lockout the employer initiates prior to the beginning of a strike. Offensive lockouts are an important and allowable tool for a company, so it is not at the mercy of the union's decision to strike. H.R. 2474 already repeals the longstanding ban on disruptive intermittent strikes and damaging secondary boycotts, subjecting nearly every business in America to union harassment. Under this amendment, the government provides exclusive powers to the union, rather than business owner, to decide when to allow access to his or her own business. This amendment makes it such that only a union can take action in the event of a collective-bargaining impasse, representing another indication that the Democrats' vision of the future of work is a return to the 1930s when rampant, destructive strikes made doing business nearly impossible for many Americans. Notably, this amendment, allowing third-party unions to control the fate of private businesses, was supported by every Committee Democrat present.

These four additional amendments adopted by Committee Democrats place more restrictions on the rights of employees and employers alike in order to minimize barriers and challenges to union power. They increase punishments on employers and expose workers to further fraud and harassment while advancing the ultimate goal of H.R. 2474 to increase the coercive power of labor unions in

⁸¹See, e.g., Secure Electronic Voting Service, RFI-NLRB-01 (request for information June 9, 2010) (NLRB seeking industry solutions regarding the capacity, availability, methodology, and interest of industry sources for procuring and implementing secure electronic voting services).

order to unionize more workers and collect millions more in union dues.

REPUBLICAN AMENDMENTS

Recognizing the fundamental flaws of H.R. 2474, Committee Republicans offered 31 amendments during the Committee markup to protect worker and employer rights and improve union transparency and accountability.

Rep. Rick Allen (R-GA) offered an amendment to protect workers from being forced to join and pay a union as a condition of employment, stripping the provision of H.R. 2474 that overturns state right-to-work laws. Right-to-work laws ensure the basic freedom of speech and association guaranteed by the First Amendment with 27 states having passed right-to-work laws, including five since 2012, experiencing greater economic growth than their forced-union counterparts.⁸² This amendment in no way impacted the right to organize or bargain collectively, yet every Committee Democrat present voted against the simple proposition that no worker should be forced to pay hundreds of dollars per year to a third-party political organization as a condition of employment.

Rep. Allen offered another amendment to protect workers' rights by ensuring they would be able to revoke their union authorization, leave the union, or end dues deduction at any time. Currently, many collective bargaining agreements place arbitrary restrictions on when and how employees are able to opt out of belonging and paying dues to the union in their workplace. This amendment in no way impacted the right to organize or bargain collectively and the Supreme Court has upheld the right of workers to refrain from joining a union.⁸³ Yet every Committee Democrat present voted against giving workers the right to exercise this freedom free from senseless union-imposed limitations.

In order to ensure that workers are fully informed of their rights within a union, Rep. Glenn Thompson (R-PA) offered an amendment requiring that the notice of the NLRA rights required to be posted in a workplace under H.R. 2474 contain information about workers' right to refrain from union participation and to decertify a union. Unions, intent on maintaining as many dues-paying members as possible at any cost, seldom fully inform workers of their right to opt out of, or decertify, a union even though these are fundamental workers' rights protected under the NLRA. Although this amendment in no way impacted the right to organize or bargain collectively, every Committee Democrat present voted against this commonsense proposal to ensure that workers are made fully aware of their labor rights.

In order to protect democracy in the workplace, Rep. Phil Roe (R-TN) offered an amendment replacing the provision of H.R. 2474 that allows card-check union certifications with one requiring that unions win a majority of votes cast in a secret-ballot election in

⁸²NATIONAL INST. FOR LAB. REL. RES., RIGHT TO WORK STATES BENEFIT FROM FASTER GROWTH, HIGHER REAL PURCHASING POWER—WINTER 2019 UPDATE (Jan. 11, 2019).

⁸³*See, e.g.*, *Comm. Workers of Am. v. Beck*, 487 U.S. 735, 745 (1988) (“Taken as a whole, [NLRA] § 8(a)(3) permits an employer and a union to enter into an agreement requiring all employees to become union members as a condition of continued employment, but the “membership” that may be so required has been “whittled down to its financial core.”) (citation omitted).

order to be certified as the exclusive bargaining representative. The right to a secret-ballot for union certification in no way impacts the right to organize or bargain collectively. Rather, it simply minimizes the opportunity for union organizers to harass and intimidate. Secret ballots are supported by the majority of union households and Congressional Democrats have fought for secret ballots for workers in Mexico. Nevertheless, every Committee Democrat present voted against Rep. Roe's amendment to ensure secret-ballots for American workers.

In another effort to promote workplace democracy, Rep. Roe offered an amendment to trigger automatic secret-ballot union recertification elections once a union-represented bargaining unit turned over by at least 50 percent. Currently, once a union is certified, it never stands for re-election unless workers successfully petition for a decertification vote. As of 2015, 94 percent of workers represented by a union had never voted for that union to represent them, the vast majority having inherited a union that was voted on years before they began working at the unionized business.⁸⁴ This amendment in no way impacted the right to organize or bargain collectively, yet every Committee Democrat present voted against allowing workers to vote on the union that claims to represent them.

Rep. Roe's third amendment protected workers' right to vote on important workplace decisions affecting their livelihoods by requiring separate secret-ballot majority votes to ratify a collective bargaining agreement or pension plan, or to participate in a multiemployer pension plan. Union leaders negotiate on behalf of a broad group of workers, but deals they negotiate do not necessarily work best for each individual worker. Workers should not be pressured, coerced, or misled into accepting contract terms. This amendment in no way impacted unions' right to organize or bargain collectively as it merely ensured that workers are given the ability to express their opinions of the terms negotiated for them. Every Committee Democrat present voted against giving workers a stronger voice in the workplace.

In order to discourage unions from using illegal foreign labor to expand their reach into American workplaces, Rep. Jim Banks (R-IN) offered an amendment requiring that any showing of interest submitted by a union on behalf of a worker be accompanied by proof that the worker is legally authorized to be employed in the United States. Illegal aliens should not be working at American companies and should not be able to decide whether other, legal workers are forced to pay hundreds of dollars a year from their paychecks to a labor union. This amendment in no way impacted the right to organize or bargain collectively yet every Committee Democrat present voted against the proposal to verify the legal status of workers that unions are attempting to organize.

Rep. Dusty Johnson (R-SD) offered an amendment to allow employers to reward employees with performance-based raises, bonuses, and other compensation that exceeds the terms of their collective bargaining agreement. This amendment merely ensured that a collective bargaining agreement serves as a floor rather than

⁸⁴ SHERK, *supra* note 3.

a ceiling, allowing employees to be rewarded for excellent work. Although the amendment would not have allowed employees to bypass the collective bargaining process nor impacted the right to organize or bargain collectively, every Committee Democrat present voted against allowing workers to earn more money than their union permits.

H.R. 2474 requires employers to give unions reams of workers' personal information but shockingly contains no restrictions on how unions can use that information nor any protections from having that information fall into the wrong hands. In an attempt to protect employee privacy, Rep. Dan Meuser (R-PA) offered an amendment making it an unfair labor practice for a union to fail to protect the personal information of an employee turned over to the union during an organizing drive, to use that information for any reason other than a representation proceeding, or to use it after the conclusion of the representation proceeding. This amendment in no way impacted the right to organize or bargain collectively as it merely ensures that unions have a legal incentive to protect workers' private, personal information. Regardless, every Committee Democrat present voted against this amendment to protect employee privacy.

In order to protect small business employees from being subjected to undeserved and disruptive union harassment, Rep. William Timmons (R-SC) offered an amendment striking H.R. 2474's legalization of secondary boycotts and adding a provision creating a private right of action for employees of employers who face a secondary boycott, allowing them to sue for actual damages and a civil penalty of \$500 per day. H.R. 2474 allows unions to boycott and picket employers they are not even seeking to organize, simply because that company does business with an employer the union is seeking to organize which radically expands the scope and economic pain of union harassment to include employees who have nothing to do with the union. This amendment merely helped employees at third-party businesses to be free to work and earn a living without being subjected to union harassment and in no way impacted the right to organize or bargain collectively yet every Committee Democrat present voted against this commonsense worker protection amendment.

Rep. James Comer (R-KY) offered an amendment to protect third-party employers and employees from union harassment by striking the provision of H.R. 2474 that legalizes secondary boycotts. Rep. Comer's amendment simply maintained the status quo that has existed for more than 70 years, in which a union cannot strike or boycott against a business it is not actively negotiating with or attempting to organize. Although the existing ban on secondary boycotts minimizes the economic and reputational damage of union harassment on uninvolved third parties and seeks to ensure labor peace, every Committee Democrat present voted against this amendment.

In the interest of protecting employers' ability to serve their customers, Rep. Fred Keller (R-PA) offered an amendment striking the provision of H.R. 2474 that bans employers from permanently replacing striking workers and that legalizes intermittent strikes by unions. This amendment preserved current law in which work-

ers are allowed to engage in genuine strikes so long as the strikes are not part of a plan or pattern intended to maximize uncertainty and disruption. Moreover, it maintains the status quo, upheld by the Supreme Court 80 years ago, that employers are allowed to replace striking workers permanently in order to keep their business running.⁸⁵ This amendment in no way impacted the right to organize or bargain collectively yet every Committee Democrat present voted against this amendment in order to allow unions to inflict widespread economic pain and disruption.

Rep. Elise Stefanik (R–NY) offered an amendment to preserve workers’ ability to benefit from the flexibility of independent-contractor status by striking the flawed and biased ABC test from H.R. 2474. Although millions of American workers prefer independent-contractor status because of the entrepreneurialism, choice, and scheduling flexibility that it allows, the ABC test dramatically expands the definition of “employee,” significantly narrowing independent-contractor status. Independent-contractor status allows small businesses to subcontract specialized tasks and has created unique innovations such as the sharing economy, but in an effort to minimize independent-contractor status and subject more workers to unionization, every Committee Democrat present voted against this amendment.

Rep. Steve Watkins (R–KS) offered an amendment to protect workers from being forced into risky and unreliable multiemployer pension plans against their will by prohibiting mandatory arbitration agreements that include multiemployer pension participation. Multiemployer pension plans are woefully underfunded by \$638 billion, placing workers at risk of relying on retirement funds that may not be available when workers need them. H.R. 2474 allows an unelected panel of arbitrators to determine a binding two-year contract for workers, which may include participation in a multiemployer pension plan, without those workers ever voting to approve or reject the terms of the contract. Third-party arbitrators should not be able to force workers into retirement plans that may not be there for them when they retire. Regardless, every Committee Democrat present voted against this amendment to protect workers from being forced into underfunded and unreliable multiemployer pension plans.

Rep. Tim Walberg (R–MI), Ranking Member of the Subcommittee on Health, Employment, Labor, and Pensions, offered several amendments to protect workers’ rights. His first amendment struck the ambush election provision of H.R. 2474 that significantly narrows the time between a union filing an election petition and that election being held. Ambush elections deprive employers from having sufficient opportunity to communicate their perspective to employees about potential risks of unionization, leaving employees underinformed before making such a critical decision. Rep. Walberg’s amendment ensured at least 14 days between the filing of an election petition and the pre-election hearing taking place, ensuring ample time for employees to hear both sides before voting on unionization. This amendment in no way impacted workers’ right to organize or bargain collectively, and it is in their best in-

⁸⁵ See *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 345 (1938).

terest to be fully informed about the costs and benefits of unionization, yet every Committee Democrat present voted against this amendment.

Rep. Walberg's second amendment ensured that workers are fully informed before signing a union authorization card by requiring that the card be accompanied by a written notice specifying that it will be used to certify the union as the employee's exclusive representative; clarifying the employee's right to opt out of union membership and to refrain from paying for non-bargaining expenses; and detailing total monthly dues and fees charged by the union. This amendment in no way impacted unions' right to organize or bargain collectively, however every Committee Democrat present voted against this amendment, opposing the effort to ensure workers are fully informed before deciding whether or not to sign an authorization card.

Rep. Walberg's third amendment encouraged businesses to combat human trafficking in the supply chain by ensuring that actions taken to do so will not be considered evidence of a joint-employer relationship. Companies often impose restrictions, requirements, and protective steps on their supply chains to combat human trafficking but under H.R. 2474, these actions or agreements could trigger joint employment, subjecting these businesses to additional union harassment, litigation risk, and threatening the future of these worthwhile initiatives. This amendment merely ensured that combatting human trafficking will not subject businesses to additional liability and union harassment and although it did not impact workers' right to organize or bargain collectively, every Committee Democrat present voted against it.

Rep. Bradley Byrne (R-AL) also offered two amendments to protect businesses from facing legal liability and union harassment for employees they do not directly control. Rep. Byrne's first amendment struck H.R. 2474's "indirect control" joint-employer standard and replaced it with a requirement that businesses exercise "direct" and "immediate" control over the essential terms and conditions of employment in order to be considered joint employers. This clear, commonsense standard provides immediate certainty for employers and employees alike, rather than H.R. 2474's broad, vague standard that relies on after-the-fact assessments of business decision-making. Rep. Byrne's amendment would reduce frivolous, unnecessary litigation and union harassment while ensuring that employees can more fairly organize and bargain collectively with the employer that actually controls their terms and conditions of employment, but every Committee Democrat present voted against it.

Rep. Byrne's second amendment encouraged businesses to pursue corporate social responsibility (CSR) initiatives by ensuring that these initiatives, including those that impose requirements on third parties such as those found in supply chains, are not used as evidence of a joint-employer relationship. As part of CSR initiatives, corporations encourage business partners to enact beneficial policies such as higher wages and stronger benefits for their own employees. Under H.R. 2474's definition of joint employment, corporations could be considered employers of their business partner's employees simply because of their CSR initiatives, discouraging or preventing them from implementing these guidelines that often

benefit workers. Even though Rep. Byrne's amendment would benefit workers by ensuring that businesses are not subject to union harassment and litigation because of CSR initiatives, every Committee Democrat present voted against it.

Rep. Lloyd Smucker (R-PA) offered several amendments to ensure fairness under the law and to protect worker's rights. His first amendment equally applied H.R. 2474's civil penalties and punitive damage assessments for employer unfair labor practices to union unfair labor practices. H.R. 2474 departs from the longstanding intent of the NLRA by punishing rather than remedying wrongdoing and if Congress is to endorse this radical change, then it should do so equally, regardless of whether the labor law violation is committed by an employer or a labor organization. Although this amendment merely ensured equality under the law and without impacting the right of employees to organize or bargain collectively, every Committee Democrat present voted against this amendment.

Rep. Smucker's second amendment protected workers by making it an unfair labor practice for a union to take any action that seeks to keep a union member from working or that punishes a union member for working during a labor dispute. Currently, unions can fine or punish union members who choose to earn a living for their families rather than participate in a union strike. Union members, just like non-members, should be free to earn a living rather than forced to picket against their will. This amendment would have merely protected workers from being punished for choosing to work without impacting workers' right to organize or bargain collectively, yet every Committee Democrat present voted against this amendment.

Rep. Smucker's third amendment protected workers from being forced to fund political speech against their will by requiring unions to receive express consent before using a worker's union dues for purposes other than collective bargaining. Rather than being forced to endure a lengthy and confusing process to keep from funding speech with which they disagree, in 2018, the Supreme Court upheld this fundamental protection for public employees and private sector workers deserve the same right.⁸⁶ While this amendment would in no way diminish unions' freedom to engage in the political process or spend dues to fund causes and candidates they support, nor would it impact the right to organize or bargain collectively, every Committee Democrat present voted against allowing workers to control how their own hard-earned union dues are spent.

In another attempt to preserve equal protection under the law, Rep. Brett Guthrie (R-KY) offered an amendment striking the provision in H.R. 2474 that eliminates employers' standing before the NLRB regarding questions of union representation. Currently, both the union and the employer present their case before the Board regarding questions pertaining to union organizing, but H.R. 2474 provides that only the union is able to make its case before the Board on questions such as the makeup of the bargaining unit, which workers are supervisors rather than employees subject to union organizing, and more. This one-sided provision undermines

⁸⁶See *Janus v. Am. Fed'n of State, County, & Mun. Emp., Council 31*, 138 S. Ct. 2448 (2018).

an employer's right to petition the government and deprives the Board of an important source of information. As it merely ensured that employers are able to make their case to the federal government throughout that process, Rep. Guthrie's amendment would in no way impact the right to organize and bargain collectively, but rather than uphold equal protection under the law, every Committee Democrat present voted against this amendment.

Rep. Mark Walker (R-NC) offered an amendment stripping the Obama DOL's Persuader Rule from H.R. 2474, to help protect employers' freedom of speech and ensure that employers and attorneys are not forced to disclose to the federal government arrangements that do not involve any direct communication to the employees. These arrangements are subject to the attorney-client privilege, which is why the American Bar Association opposed the Obama Persuader Rule. Regrettably this commonsense amendment to defend employers' freedom of speech and the attorney-client privilege was voted down by every Committee Democrat present.

Rep. Russ Fulcher (R-ID) offered an amendment with two provisions to protect workers' voting rights. The first sought to codify a "vote-and-impound" procedure for union decertification elections when the union has levied an unfair labor practice charge against the employer for interference, so that the election is not delayed or prevented by frivolous charges. Under vote-and-impound, the votes are cast and impounded while the charge is resolved. If the charge is upheld, the Board conducts a revote, but if the charges are dismissed, the votes are counted, and the results stand. The second provision in the Fulcher amendment allowed workers a 45-day window to petition for an election in the event of an employer's voluntary recognition of a union. Currently, upon voluntary recognition, a union can be certified as the employees' exclusive bargaining representative without ever winning a secret ballot election. This amendment would in no way diminish the right to organize or bargain collectively as it merely ensured that workers are able to vote on the union seeking to represent them. Rather than uphold fundamental workplace democracy, every Committee Democrat present voted against this amendment.

Rep. Virginia Foxx (R-NC), Ranking Member of the Committee, offered five amendments to protect the rights of employees and a sixth amendment to rename the bill with a more accurate title. Rep. Foxx's first amendment revoked the exclusive bargaining status of a union that engaged in or encouraged acts of violence. The amendment also prevented the NLRB from reinstating employees who are fired for engaging in violence. Currently, because of a loophole in the *Hobbs Act*, unions can commit acts of violence without federal criminal repercussion so long as those acts are in pursuit of "legitimate" labor ends.⁸⁷ Rep. Foxx's amendment ensured that unions are punished for acts of violence regardless of their end goals and that employers, employees, and customers are not forced to employ, work, or do business with former employees who may pose a continuing threat of violence in the workplace. Rather than supporting an important effort to combat workplace violence, every Committee Democrat present voted against this amendment.

⁸⁷United States v. Enmons, 410 U.S. 396 (1973).

H.R. 2474 requires a massive invasion of employee privacy, potentially exposes the information to hackers and unauthorized third parties, and subjects employees to harassment and intimidation from union organizers coming and going from work, at home, and in public. Rep. Foxx's second amendment protected employee privacy by striking the provision of H.R. 2474 requiring employers to turn over reams of employees' personal information to union organizers, in searchable electronic format, without employees having any say in the matter instead specifying that employees can select the one form of contact information they wish to share with a union. While it in no way impacted the right to organize and bargain collectively, every Committee Democrat present voted against this amendment to protect worker privacy.

Rep. Foxx's third amendment protected union members' private health insurance plans from a government takeover of health care, as House Democrats have proposed in H.R. 1384, the *Medicare for All Act of 2019*. This Medicare-for-All bill, which a majority of House Democrats have cosponsored, forces every American into a government-run health insurance plan, thereby eliminating generous union-negotiated private health plans which is why Rep. Foxx's amendment codified health insurance as a mandatory subject of collective bargaining notwithstanding any other legislation, protecting private union health plans from Medicare-for-All. Rather than protect unions' right to negotiate private health insurance plans for its members, all Committee Democrats present expressed their support for Medicare-for-All by voting to reject this amendment and allowing union workers to be forced into a government-run health plan.

Rep. Foxx's fourth amendment sought to protect workers' right to decide their own employment contract by striking the section of H.R. 2474 stating that in the event of a first-contract bargaining impasse, following mediation, a panel of arbitrators determines a binding two-year collective bargaining agreement. In so doing, H.R. 2474 empowers a third-party panel with determining a collective bargaining agreement with substantial implications for workers' livelihoods without workers ever having the opportunity to vote to accept or reject the terms. Depriving employers and employees alike the opportunity to determine the terms of their first contract short circuits the bargaining process, undermines freedom of contract and risks subjecting employers to costs they cannot afford and employees to undesirable employment terms. Although Rep. Foxx's amendment ensured that employers and employees alike can determine the terms of a collective bargaining agreement for themselves, every Committee Democrat present voted against this amendment rather than allow workers to keep control of their own wages and benefits.

Rep. Foxx's fifth amendment allowed workers to hold their unions accountable by providing greater financial transparency in union spending by codifying union reporting requirements under the LMRDA that were rescinded by the Obama administration and allowing workers to see with greater detail how their union dues are being spent to more easily uncover potential conflicts of interest within union leadership. These transparency measures would reduce the risk of union corruption and help ensure that unions are

meeting the needs of their members. Instead of giving workers more information about how their hard-earned dues are spent, every Committee Democrat present voted to protect union leaders from accountability by voting against this amendment.

Finally, Rep. Foxx's sixth amendment renamed H.R. 2474 the "Socialist Solutions for Labor Unions Act," to more accurately reflect the true purpose and consequence of the bill. By voice vote, Committee Democrats rejected this amendment to more accurately title the bill.

CONCLUSION

H.R. 2474 attempts the most radical rewrite of federal labor law in more than 80 years. This misguided, disturbing, and reckless legislation disrupts decades of precedent that has promoted labor peace by striking a reasonable and appropriate legal balance between labor and management. At the expense of worker rights and economic freedom, H.R. 2474 is structured to bail out the failing labor union business model that is being widely rejected by American workers in the modern economy. If labor unions would adapt to the needs of a 21st century workforce and dedicate more attention and resources to organizing and representing workers, then they would not need to demand that their political allies in Congress enact socialist solutions like H.R. 2474. Rather than adjust their model and improve transparency and accountability to better serve workers, union leaders are seeking to enact radical legislation that returns America to the chaotic and adversarial labor regime of the 1930s. H.R. 2474 is a win for union leaders but a loss for workers, employers, and America's economy and global competitiveness.

Under H.R. 2474, millions of workers who do not wish to be classified as traditional employees, let alone represented by a union, lose freedom and flexibility and are subject to union organizing. Their private, personal information would be shared with a union against their will and potentially exposed to hackers and other third parties, while being subjected to harassment and intimidation. A union would not be subject to accountability for misusing workers' private, personal information or allowing it to fall into the wrong hands. In addition, a union could be certified as the workers' exclusive representative, banning workers from representing themselves at work, without ever voting for that union or the union ever winning a fair secret ballot election. If an election were to be held, then it could happen in as few as 11 days, without employers ever given an equal opportunity to communicate their perspective to the workers or to the NLRB, and ballots could be cast electronically or by mail, subject to fraud or tampering. Virtually any contact that the employer has with an attorney about the organizing effort would be disclosed to the federal government.

Once a union is certified, workers would be forced to pay hundreds of dollars per year in union dues, even if they do not want or need union representation, and the union could use those dues to support political causes and candidates the workers oppose, such as Medicare-for-All that would eliminate private health insurance for workers and their families. The union would bargain on workers' behalf, but in the event of an impasse, a third-party panel

would impose a binding contract on the workers and the employer without allowing either party any say in the matter. Throughout that bargaining process, the union could harass, boycott, and picket countless other businesses in the workers' community and beyond. In the event of an unintentional or minor violation of complicated federal labor law, the employer and the business owner could both be hit with fines as high as \$100,000, and these legal missteps are made more likely because employers would be forced to disclose private arrangements with attorneys to the federal government. Coupled with damage assessments and an arbitration-imposed contract, such an unprecedented penalty would be enough to completely shut down many small businesses, ultimately depriving countless employees of their jobs. This is the reality of H.R. 2474, with every Committee Democrat voting at the markup supporting the legislation.

H.R. 2474 is not a win for workers, employers or the modern American economy. It only benefits union bosses, trial lawyers, and American competitors like China who will benefit from the many ways this bill makes it much harder to invest in a strong American workforce. H.R. 2474 is a backwards-looking wish-list of proposals aimed at leveraging the power of the federal government to foist labor unions on workers and employers throughout the country. The bill does nothing to meet the needs of workers, employers, or the 21st century economy and for these reasons, and those set forth above, we strongly oppose the enactment of H.R. 2474 as reported by the Committee on Education and Labor.

VIRGINIA FOXX, *Ranking Member.*

DAVID P. ROE, M.D.

GLENN "GT" THOMPSON.

TIM WALBERG.

BRETT GUTHRIE.

BRADLEY BYRNE.

GLENN GROTHMAN.

RICK W. ALLEN.

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MARK WALKER.

JAMES COMER.

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