

November 20 2023

The Honorable Charles Schumer  
The Honorable Mitch McConnell  
The Honorable Bernie Sanders  
The Honorable Bill Cassidy  
United States Senate  
Washington, D.C. 20510

The Honorable Mike Johnson  
The Honorable Hakeem Jeffries  
The Honorable Virginia Foxx  
The Honorable Robert “Bobby” C. Scott  
United States House of Representatives  
Washington, D.C. 20515

Cc: Members of Congress

Re: NLRB Joint Employer Rule CRA

Dear Members of Congress:

The undersigned organizations write to share our opposition to the Congressional Review Act (CRA) challenge to the National Labor Relations Board’s 2023 Joint Employer Rule.

Millions of workers in precarious and subcontracted work depend on the joint-employer doctrine to protect their right to organize under the NLRA. In labor-intensive and underpaid industries like retail, hospitality, fast food, janitorial, construction, and delivery, workers hired through intermediary subcontractors like staffing agencies and specialized contract firms are effectively deprived of their labor rights because the law fails to recognize who their employers are. They provide work central to the hotels, retail operators, fast food chains, construction contractors, delivery companies, and other corporations that rely on their labor, but are unable to hold those employers accountable when their labor rights are violated. While this harms a broad range of workers, it has particularly damaging impacts for women, Black workers, immigrants, people of color, and people with disabilities who disproportionately hold precarious, low-paid jobs.

The Board’s new rule reaffirms that, under the NLRA, a worker may be jointly-employed when more than one entity shares or co-determines the essential terms and conditions of their work. What matters is not the corporate structure or what the companies call the work relationship; what matters is who has the power to control the essential terms of employment, like pay, discipline, and health & safety on the job.

Now, large corporations and industry trade groups are pushing Congress to vote for a CRA resolution to overturn the rule. Despite the claims made by these self-interested groups, the joint employer rule is a simple and necessary course correction that:

- Rescinds the misguided 2020 rule, which improperly narrowed the NLRA’s coverage and unmoored the legal standard from the common law, by requiring workers to show that a business had “substantial direct and immediate control” over the essential terms of employment;

- Grounds the legal analysis in the common law, building on the Obama-era *Browning-Ferris* decision that the 2020 Trump rule overrode;
- Affirms that companies are liable for committing unfair labor practices (such as terminating workers for exercising their right to organize) and required to bargain with their workers as joint employers, where they control the essential terms and conditions of employment;
- Accounts for forms of control that are “indirect” and “reserved,” as well as direct and actually exercised, in determining whether or not there is an employment relationship; and
- Recognizes that the “essential terms and conditions of employment” include workplace health and safety, and direction as to how to complete the work, as well as control over pay and discipline.

This rule is a major step toward safeguarding the labor rights of millions of workers in subcontracted employment, ensuring that corporations cannot skirt the law simply by outsourcing responsibility for their workers. Should a CRA to overturn this rule be brought to the floor, we strongly urge all Members of Congress to vote No.

Sincerely,

A Better Balance

AFL-CIO

American Federation of State, County, and Municipal Employees (AFSCME)

APALA

Asian American Pacific Islander Civic Engagement Collaborative of New Virginia Majority

Bruckner Burch PLLC

Care in Action

Caring Across Generations

Center for Economic and Policy Research

Center for Law and Social Policy

Cincinnati Interfaith Workers Center

Clearinghouse on Women's Issues

Communications Workers of America (CWA)

Community Legal Services, Philadelphia

Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces

CRLA Foundation  
Demand Progress  
Demos  
Economic Policy Institute  
Endangered Species Coalition  
Equal Rights Advocates  
Feminist Majority Foundation  
Impact Fund  
International Brotherhood of Teamsters  
Japanese American Citizens League (JACL)  
Jobs to Move America  
Jobs With Justice  
Justice & Accountability Center of Louisiana  
Justice at Work  
Justice in Motion  
Kentucky Equal Justice Center  
KIWA  
Lawyers' Committee for Civil Rights Under Law  
Legal Aid at Work  
Long Beach Alliance for Clean Energy  
National Advocacy Center of the Good Shepherd  
National Center for Law and Economic Justice  
National Council for Occupational Safety and Health  
National Domestic Workers Alliance  
National Education Association  
National Employment Lawyers Association  
National Employment Law Project (NELP)  
National Institute for Workers' Rights

National Organization for Women  
National Partnership for Women & Families  
National Resource Center on Domestic Violence  
National Women's Law Center  
New Jersey Association on Correction  
North Carolina Justice Center  
Northwest Workers' Justice Project  
Public Justice Center  
Restaurant Opportunities Centers United  
Santa Clara County Wage Theft Coalition  
Service Employees International Union  
Shriver Center on Poverty Law  
TechEquity Collaborative  
The Leadership Conference on Civil and Human Rights  
The Legal Aid Society  
The Women's Employment Rights Clinic (WERC) at Golden Gate University (GGU)  
Transport Workers Union of America  
UAW  
United Brotherhood of Carpenters and Joiners of America  
United Food and Commercial Workers International Union (UFCW)  
Women Employed  
Worker Justice Center of New York  
Worker Power Coalition  
Workers Defense Action Fund  
Workplace Fairness  
Workplace Justice Lab at Rutgers University  
Workplace Justice Project at Loyola Law Clinic  
Worksafe

Young Invincibles