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PROTECTING EMPLOYEES' RIGHTS:

ENSURING FAIR ELECTIONS

AT THE NLRB

Tuesday, May 23, 2023

House of Representatives,

Subcommittee on Health,

Employment, Labor, and Pensions,

Committee on Education and the Workforce,

Washington, D.C.

The subcommittee met, pursuant to call, at 10:18 a.m. 2175 Rayburn House Office Building, Hon. Bob Good [chairman of the subcommittee] presiding.

Present: Representatives Good, Walberg, Allen, Banks, Smucker, Bean, Burlison, Houchin, Foxx, DeSaulnier, Courtney, Norcross, Mrvan, McBath, Hayes, Omar, and Scott.

Staff present: Cyrus Artz, Staff Director; Mindy Barry, Deputy Communications Director; Jackson Berryman, Speechwriter; Michael Davis, Legislative Assistant; Cate Dillon, Director of Operations; Isabel Foster, Presd Assistant; Sheila Havenner, Director of Information Technology; Trey Kovacs, Professional Staff Member; Hannah Matesic, Director of Member Services and Coalitions; Audra McGeorge, Communications Director;

Dhrtvan Sherman, Minority Staff Assistant; Kyle deCant, Minority Senior Labor Policy Counsel; Ilana Brunner, Minority General Counsel; Stephanie Lalle, Minority Communications Director; Kota Mizutani, Minority Deputy Communications Director; Veronique Pluviose, Minority Staff Director; Banyon Vassar, Minority Deputy Director of Information Technology.

Chairman Good. The Subcommittee on Health, Employment, Labor and Pensions will come to order. I note that a quorum is present. And without objection, the Chair is authorized to call a recess at any time. The Subcommittee is meeting today to hear testimony on protections for employee's rights, by ensuring fair elections at the National Labor Relations Board.

Good morning everyone, especially to our witnesses. Thank you for being here, and welcome to today's hearing. The National Labor Relations Board was created by Congress to serve as a fair and neutral arbiter in resolving labor disputes between employers and employees.

Sadly, the Biden administration has twisted it into a partisan attack dog for big labor interests. It wasn't supposed to be like this. In 1935, Congress passed the National Labor Relations Act to protect against unfair labor practices that existed at that time, and to supervise fair union elections.

It created the NLRB with a clear purpose in mind. First, to be strictly nonpartisan, consisting of three impartial government members. Second, to be a quasi-judicial body, meaning it would base its rulings on formal records and administrative proceedings, and case law. Third, and finally, to act as an independent federal agency.

However, this is not how President Biden's NLRB functions today. The Biden administration started its historical politization of the agency when it fired Trump-nominated and Senate-confirmed General Counsel Peter Robb. No General Counsel had ever been fired in the 70-year history in the position until Biden came along.

Robb was replaced by the hyper-partisan Jennifer Abruzzo, whose nomination forced a tie-breaking vote in the Senate. This, for a position that in years past was filled by neutral government employees. Abruzzo's roots as a union lawyer are in direct contrast with the agency's tradition.

And as you would expect, Abruzzo has continued the politization and weaponization of the NLRB. In an April 2022 memorandum, Abruzzo urged the Board to overturn a longstanding precedent regarding employer free speech. The precedent upheld an employer's right to hold meetings and educate workers on unionization.

Speech, which is protected by the First Amendment in the plain text of the law. She argued that employer education was actually "licensed to coerce". Typical of left-wing activists, the NLRB did not want to allow workers to hear multiple perspectives, and make their own informed decisions.

Abruzzo also fired a brief challenging the secret ballot process. She argued that signed authorization cards would be sufficient to qualify a union as the exclusive employee representative without giving employees the opportunity to actually vote.

Card check, as it is called, is not a substitute for the electoral process, and the history of authorization cards is ripe with abuse from union organizers. Although private union membership has fallen to the lowest level since 1983, Abruzzo and the NLRB habitually overstate unionization movements to gen up mass interests from their complicit media allies.

For example, this administration would have you believe that every Starbucks in America is unionized, when only 304 of over 9,000 stores currently are unionized, or about 3 percent. Not only have a limited number of Starbucks actually unionized Starbucks stores, but employees have already begun to reconsider their decision to join a union, and filed the petitions to remove Workers United in several Starbucks stores.

All told, this administration's actions flip on its head the D.C. Circuit Court of Appeals declaration that, "Employees pick the union. The union does not pick the employees." The NLRA guarantees people the right to organize, but it stops there. It doesn't coerce people into organizing.

Fundamentally, the NLRB's mass union drive turns on the question of choice. Do employers have a choice in what they can say to their employees? Do employees have the option not to join a union? Americans want options. We want to choose our physicians, our schools, our employment relations, and polling suggests that an overwhelming majority of union households support having more freedom to join or not to join.

And 67 percent support the choice to resolve questions concerning union representation by secret ballot elections. Small businesses have been hit hard for the last several years, thanks to the Biden's shutdown of the economy over the China virus, crippling small businesses across Virginia's 5th Congressional District and the country.

The last thing American businesses need right now is for unelected bureaucrats to further undermine their efforts to survive. And we are here today to discuss several important pieces of legislation. My Small Business Before Bureaucrats Act supports small business owners over anti-choice NLRB bureaucrats.

It does this by finally updating the jurisdictional limits that govern when the NLRB can intervene in a business's affairs. Another key reform is the Employee Rights Act, introduced by Representative Allen, which gives employees more control over their personal data, guarantees the right to vote by secret ballot, and empowers them to decide how they spend their hard-earned paycheck.

I look forward to discussing my legislation, Representative Allen's legislation, and other policy solutions with our expert witnesses today. Hopefully, we can reach a consensus on reversing the NLRB's disastrous political turn, and on protecting Americans' right to earn a living as they see fit. With that I yield to our distinguished Ranking Member.

Mr. DeSaulnier. Thank you, Mr. Chairman. And I'll begin on your ending. It's my

hope that in spite of our differences we can reach some conclusions that will help American workers. I remain hopeful that we can have a bipartisan agreement that Congress support American workers. Nothing is more important.

However, I worry sometimes that our differences will be used in hearings like this, as an opportunity to undermine American workers and labor unions, and strip workers of their voice in the workplace. As a former small business owner in the service industry, having owned and managed restaurants for over 30 years, I know how important my workers were to my success.

You're not successful in the restaurant business as an independent restaurant owner without good relations with your workforce. As a former union member, I know just how critical labor unions have been, and continue to be for workers and their families, and our economy. Not just for members of labor unions, but for workers who benefit from labor unions who are not a member.

It was workers in the labor movement who built the middle class by giving employees a voice on the job. And some of our nation's greatest advances for workers from the 40-hour work week to the minimum wage have been made possible by the American labor movement.

Today unions continue to organize and bargain for better working conditions for both union and non-union working Americans. Research consistently shows that when workers can exercise their right to organize, they have access to livable wages, better benefits, and a safer workplace.

Moreover, unions help fuel economics mobility for underserved workers by narrowing the racial wealth gap and gender wage gap, which are right now are amongst the highest in our history in this country. The need for labor unions has come to focus particularly as workers seek to reject the unfair working conditions that were worsened

by the COVID-19 pandemic.

In fact, according to a Gallup poll last August, more than 70 percent of Americans approve of unions, the highest approval rating since 1965. And in 2021, unions won 76 percent of all representation elections, the highest number of victories in nearly two decades.

Workers, whether they are in the union or not, continue to turn to unions to secure the working conditions they deserve. Yet even as we see major unionizing campaigns across the country, organizing workers continue to face a slew of unfair labor practices by employers who take advantage of a weakness in our federal labor law.

Now, let me comment that that's not all employers. As a former employer, I want the bars the Chairman has alluded to, to be fair, for good employers, as well as not, for employers who take advantage of the situation. Between 2016 and 2021 alone, more than 80 percent of employers conducted antiunion campaigns during union elections, including firing, organizing, closing stores and reducing pay.

Under President Biden, the National Labor Relations Board has taken key steps to hold these bad employers accountable for violating workers' rights, by undoing the dangerous precedent set by the Board under the previous administration. For instance, the Board restored the longstanding process for determining whether a bargaining unit is appropriate,after the Trump administration made it easier for bad employers to gerrymander elections against the workers and unions. And the NLRB has ensured that union elections can be conducted by mail-in ballot after the previous administration suspended more than 100 elections during the pandemic, rather than allow the use of mail ballots during the pandemic.

The NLRB General Counsel, Jennifer Abruzzo, is undertaking a historic effort to restore labor law's promise of full freedom of association. This includes ending the union

busting tactic of captive audience meetings where employers force workers to listen to anti-union propaganda, or else face discipline and termination.

But the responsibility of protecting workers' rights also falls on us, Congress. That is why we must pass the Protecting Rights to Organize Act, or the PRO Act, which would secure the most significant upgrade to U.S. labor laws in nearly 80 years, to help good employers and good employees, and to punish unscrupulous employers who take advantage of the weakness all too often in our system for the workforce.

The PRO Act would finally set penalties for employers,- bad employers, who violate workers' rights, require workers whose rights have been violated- to temporarily be reinstated while their cases are pending, and ensure unions can collect fair share dues from all workers who are obligated to be represented.

We must also continue working to address the severe underfunding that has left the NLRB without the resources it needs to respond to the surge in worker organizing.

In closing, I want to remind my colleagues of one of my favorite Republican Presidents, and his quote, Dwight D. Eisenhower said in 1952, when our economy was booming, and more than 1 in 3 private sector workers were unionized, and the American GDP was at historic levels, and everyone, all Americans, benefited.

President Eisenhower said, "Only a fool would try to deprive working men and women of the right to join a union of their choice." What President Eisenhower understood then, and what we cannot forget now, is that labor unions are our most effective tool to ensure that all workers, union and non-union, have a voice in the workplace.

Anyone who believes we can simply count on the good faith of every employer, particularly employers who are unscrupulous, to uphold their responsibility to workers is ignoring the reality that workers face every day and is ignoring American history. These

workers are counting on us to guarantee their right to form a union, negotiate for a better working condition.

Today I hope we can together, in spite of our differences, work to help to deliver on that responsibility. Mr. Chairman, I yield back.

Chairman Good. Thank you, Ranking Member DeSaulnier. And I will now turn to -- I'm sorry. Pursuant to Committee Rule 8(c) all members who wish to insert written statements into the record may do so by submitting them to the committee clerk electronically in Microsoft Word format by 5:00 p.m., 14 days after the date of the hearing, which is June 6, 2023.

Without objection, the hearing record will remain open for 14 days to allow such statements, and other extraneous material referenced during the hearing to be submitted for the official hearing record.

Now we will turn to the introduction of our distinguished witnesses. Our first witness is Mr. Philip Miscimarra, who is a partner at Morgan Lewis, and former Chairman of the NLRB under President Obama and President Trump.

Our second witness is Mr. Aaron Solem, who is a Staff Attorney with the National Right to Work Defense Foundation. Our third witness is Ms. Angela Thompson, who is the General Counsel at the Communication Workers of America. And our fourth witness is Mr. Cecil Leedy, who is an electrician by trade, and a former small business owner from Tampa, Florida.

He now serves on the Board of Directors of LEW Electrical Services. So again, thank you for all the witnesses for being here today. We look forward to your testimony. And pursuant to Committee rules I would ask that each of you limit your oral presentation to a five-minute summary of your written statement. I'd like to also remind the witnesses to be aware of your responsibility to provide accurate information to this Subcommittee,

and we will first recognize Mr. Philip Miscimarra, and if you may proceed.

**STATEMENT OF MR. PHILIP A. MISCIMARRA, PARTNER, MORGAN LEWIS, BETHESDA, MARYLAND**

Mr. Miscimarra. Chairman Good, Ranking Member DeSaulnier and other members, it's an honor to be here. I'm a partner at Morgan Lewis and Bockius and I previously served as Chairman and a Board member on the National Labor Relations Board. I'm a fan of the NLRB.

My career does not go all the way back to 1935 when Congress adopted the National Labor Relations Act, but I've spent 40 years making the Act my primary focus. And I respect the NLRB Chairman, the other Board members, the General Counsel, and the Agency's talented career professionals.

Everybody agrees the NLRB has four responsibilities. First, Congress created the NLRA and only Congress can change it. I stated in my confirmation hearing labor law policy originates with Congress, not with members of the NLRB.

Second, the NLRB is constrained by the Constitution. Third, the NLRB must be neutral. Fourth, employee free choice is the bedrock underlining the NLRA. Vince Lombardi used to say winning isn't everything, it's the only thing. In the NLRA Congress did make employee free choice everything.

Unfortunately, several NLRB developments have been inconsistent with these responsibilities. One problem involves pending cases where the General Counsel argues employers inherently violate the law merely by discussing union issues at work. These cases violate the First Amendment, and they ignore a provision that Congress added in 1947, Section 8(c), which restored employer free speech rights that the NLRB previously tried to take away.

A second problem is equally inexplicable. The NLRB is prosecuting cases that claim its unlawful for union representation to depend on an NLRB conducted election. Instead, the General Counsel argues every employer must immediately recognize a union that states it receives signed cards from a majority of employees.

The only exception would be the rare case where an employer can prove that good faith reasons indicate the union does not have majority support. On this front three years ago, Congress adopted the USMCA government trade with Mexico, which requires employees in Mexico to be protected by "a secret ballot vote", whenever a union demands representation.

This makes it unimaginable that the NLRB in this country is prosecuting claims premised on U.S. employees no longer having any secret ballot election protection, except in very rare cases. A third problem involves significant irregularities, ballots not being counted, and secret arrangements for union supporters to vote privately at NLRB offices, which were documented last August in a number of NLRB elections.

Nobody knows how widespread these problems are, and some were only disclosed by an NLRB insider who invoked whistleblower protection. I'll end with one final point. This Committee and others in Congress worked hard to produce the National Labor Relations Act.

John F. Kennedy was a House member in 1947 on this Committee, who worked on the Taft-Hartley Amendments. He wrote his own supplemental minority report supporting the change, which became Section 8(c) Restoring Employer Free Speech Rights in the Workplace.

By 1959 he was Senator Kennedy, he chaired the Conference Committee that approves the Landrum-Griffin Act amendments, and he emphasized the importance of the NLRB secret ballot elections, including election campaigns where "both parties can

present their viewpoints."

These statements were made by one of the country's most passionate labor advocates, and he became President of the United States. It's hard to believe the NLRB now applying the same law claims NLRB secret ballot elections should not even occur, except in rare cases, and employer discussions about unions are inherently unlawful.

My friends and former colleagues at the NLRB have important work to do. Congress makes the rules, and everyone, including the NLRB needs to follow them. Thank you, and I welcome any questions.

[The statement of Mr. Miscimarra follows:]

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Chairman Good. Thank you, Mr. Miscimarra. And now we recognize Mr. Aaron Solem for your testimony.

**THE STATEMENT OF MR. AARON SOLEM, STAFF ATTORNEY, NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, SPRINGFIELD, VIRGINIA**

Mr. Solem. Thank you for the opportunity to appear before you today. I've been practicing labor and Constitutional law for over a decade on behalf of the individual employees at the National Right for Legal Defense Foundation. Since its inception in 1968 the Foundation provides free legal aid to employees, who wish to exercise their rights to refrain from joining or assisting labor organizations, and to freely choose whether or not to be represented by such organizations.

Now the principal purpose of the National Labor Relations Act is to protect employee free choice. The Act gives employees an equal right to choose to join a union, and to refrain from joining a union. Former Chairman Miscimarra did an excellent job in his oral testimony and his written testimony describing the Joy Silk regime, that the General Counsel is attempting to bring back.

But I want to address what happens during a card check drive, and how hard it is for employees to get a secret ballot election to certify a union. In a card check, an employee can be cornered by a unionizer at work or home. It can be one organizer, but sometimes it's more, two or three. They present a card to the employee asking them to authorize the union to become the monopoly representative.

But there are many documented cases where employees are threatened, pressured, harassed and tricked into signing cards. Union organizer may cajole the employee by telling them that the card is just for more information, or just for an

election. The organizer can tell them that a majority of employees have already signed and that the other employees will know if they don't sign.

Worse, organizers have made threats of violence to employees who may not wish to sign. This is a coercive conduct that would not occur when someone is looking over a secret ballot at a NLRB conducted election. For example, the following activity is not allowed in Board conducted secret ballot elections.

Prolonged conversations with prospective voters in the polling area by union or employer representatives. Electioneering among employees waiting in line to vote, speech making by a union or employer to mass groups within 24 hours of the election. A union or employer keeping a list of employees who have voted as they enter the polling place other than the official eligibility list, and a union or employer handling ballots.

But similar conduct occurs by union organizers at every single card check campaign, a place where the union confronts an employee with the option to sign an authorization card is the functional equivalent of the ballot box of the polling place. When an employee signs or refuses to sign an authorization card, he or she is not likely to be alone. This decision is made in the presence of like I said, one or more union organizations.

This will also likely occur after, it could occur after a union mass meeting. In either event, the employee's decision is not secret as in a board-conducted election, because the union knows who signed and who did not. Now the General Counsel is working hand in hand with the Board to ensure that it is easy to get a union in through card check, but hard to get the union out.

After a union is recognized, if employees want to exercise their right to a secret ballot, they are barred by the Board's proposed rule, which brings back in full force the voluntary recognition bar. This means that an employee cannot file a decertification

election for six months and up to one year after voluntary recognition.

Similarly, if the union and employer sign a contract, the contract bar will bar decertification election for up to three years. After a card check and a mandatory recognition under the Joy Silk regime, there may be a bar for employees seeking election for up to four years.

Similarly, the Board is bringing back the repudiated and heavily criticized blocking charge policy. Under the blocking charge policy, a union can block an election simply by filing an unproven, meritless charge to halt an election. The prior Board, under the leadership of Chairman Ring, modified the blocking charge policy to remove its worst excesses, and ensure that most decertification elections proceed to a prompt vote.

The blocking charge reforms have been a success. Most of the employees I represent can now file and promptly receive timely decertification elections. The reforms have not been perfect, but bringing back the blocking charge policy will be a massive loss for employee free choice, the principal purpose of the Act.

So in closing, card checks, mandatory recognitions, election bars and blocks undermine an employee's right to refrain from unionization. This Committee should take action to ensure every employee receives a secret ballot, and unions can no longer unilaterally halt the certification elections from occurring. Thank you.

[The statement of Mr. Solem follows:]

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Chairman Good. Thank you Mr. Solem. And now we will recognize Ms. Angela Thompson for your testimony.

**STATEMENT OF MS. ANGELA THOMPSON, GENERAL COUNSEL, COMMUNICATIONS WORKERS OF AMERICA, WASHINGTON, D.C.**

Ms. Thompson. Good morning, Chairman Good, Ranking Member DeSaulnier, and members of the Subcommittee. Thank you for the opportunity to testify. My name is Angela Thompson, and I'm a General Counsel for the Communications Workers of America.

Before I became a labor lawyer, before I was CWA's lawyer, I was a proud member of the CWA as a customer sales and service representative for Bell Atlantic in a call center in New Jersey. I used the educational benefits under our union contract to get a master's degree, which set me on the path to my current career. But even before that, I was a little black girl living in poverty in rural Illinois, moving between housing projects and trailer parks.

I doubt I would be here today with you were it not for stability and opportunity provided by my mom thankfully getting a good union job. I am concerned by the misguided idea that somehow the Board's efforts to fulfill its statutory mission to engage workers to organize in a fair and efficient way are invalid or wrong.

To the contrary, we should make the process of forming a union easier, not harder. I want to highlight some specific actions that the Board is taking to ensure that employer interference and bureaucratic red tape do not stand in the way of workers' decision to organize.

Since the Act was passed, workers have always been able to obtain union recognition

based on a showing of majority support within their workplace, and not exclusively through a Board election.

The Board and its General Counsel are currently working to make it easier to designate a union representative, if that's what a majority of workers want. Attacks on voluntary recognition are also an attack on ability of responsible employers to run their businesses as they see fit.

For example, Microsoft remained neutral and allowed workers to make their own decision about whether or not to join the union when videogame workers at its ZeniMax Studios announced that they were organizing. The company swiftly recognized ZeniMax Workers United CWA after a neutral third party confirmed that a majority workers favored joining the union.

There are many reasons why a company might choose to voluntarily recognize a union. And the idea that the Board would establish policies designed to deter employers like Microsoft from remaining neutral, is not only an intrusive way of micromanaging how companies run their businesses, but is also contrary to the commands of the Act.

Also, the Board is reassessing the legality of coercive mandatory captive audience meetings that employers force employees to attend in order to disseminate aggressive antiunion propaganda. Decisively prohibiting this type of coercion would go a long way in restoring worker freedom in representation elections.

There is an implicit right protected by the Act to refrain from receiving information supporting, or opposing, the decision to engage in collective bargaining. I agree that it is inherently coercive and unlawful for employers to force workers to attend antiunion meetings and to discipline them for failing to do so.

One issue preventing the Board from conducting free and fair elections is a lack of funding. Although the recent increase in funding will allow the Board to continue its

critical operations, and prevent furloughs, the Board remains understaffed after almost a decade of flat funding.

The lack of timely decisions by an understaffed Board can have a chilling effect on organizing efforts. I am alarmed by the 22 percent cut to nondefense discretionary spending in the Default on America Act. A funding cut for the Board of that magnitude would wipe out last year's increase twice over, and prevent the Board from timely fulfilling its statutory duties.

The biggest problem standing in the way of free and fair representation elections is employer interference with worker decisions. Employers are charged with violating the law in nearly 42 percent of all union organizing campaigns, which makes free and fair elections impossible.

For example, Apple illegally fired five workers who supported a union organizing drive in Kansas City. This came after Apple interrogated workers regarding their support for the union, promised improved working conditionsif they declined to support the union, and threatened workers with worsened workplace conditions if they continued to organize.

Despite the intent of the Act, in most organizing drives, workers face extreme intimidation from employers and hired antiunion consultants. As such, the most important thing that Congress can do to ensure free and fair representation elections is to act to prevent employer intimidation by passing the Protecting the Right to Organize Act.

The PRO Act comprehensively restores the Act to fulfill its purpose of protecting the rights of the workers to combat power imbalances by engaging in collective bargaining.

In closing, I urge the Subcommittee to support the Board's ongoing efforts to fulfill its statutory mission as mandated by Congress, and to provide the Board with the resources

and tools needed to better ensure that the rights of all workers to decide whether or not to organize free from employer intimidation are protected.

Thank you for the opportunity to testify before you today. I look forward to any questions you may have.

[The statement of Ms. Thompson follows:]

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Chairman Good. Thank you, Ms. Thompson. And now we will recognize our final witness, who's actually been a small business owner. Mr. Leedy, you may begin.

**STATEMENT OF MR. CECIL LEEDY, BOARD OF DIRECTORS, LEW ELECTRICAL SERVICES, TAMPA, FLORIDA**

Mr. Leedy. Thank you, Chairman Good, Ranking Member DeSaulnier, and members of the Subcommittee. It is my privilege to testify here today on the hearing of Protected Employee Rights and Ensuring Fair Elections in the NLRB.

My name is Cecil Leedy, and I'm the Founder of LEW Electrical Services, a small contractor in Tampa, Florida. I'm here today on behalf of Independent Electrical Contractors, as the 2023 National President, and my local chapter Florida West Coast, based in Clearwater.

The Independent Electrical Contractors is an association of 52 chapters with almost 4,000 members, and we are training 16,000 apprentices this year. My grandfather, and my father, were both electricians in the coal mines of Pennsylvania. My father relocated to Florida, and ultimately started an electrical contracting company.

After graduating from college on a Saturday, I started work on Monday morning. Last year, January of 22, my three children bought me out, and I now work for them. IEC is deeply concerned about the efforts of the NLRB to impose policies that would restrict the ability of the merit shop electrical contractors, like mine, from being able to have open conversations with their team about prospects of joining a union or voting to be represented by one.

Communications with employees is critical in any business, especially a small merit shop electrical contractor. Merit shop contracting firms have daily conversations with

their employees about safety, customer service, best practices, and how to improve the operation, and mine is no exception.

Sometimes included in these conversations we'll discuss issues as they relate to the merit shop philosophy when compared to the union model. We take time to explain to our employees that the team, merit shop, and what it means to their careers within the company and the industry.

We talk about the opportunities that merit shop contractors offer their team to progress in their careers based on the quality of their work and the potential to quickly advance in the industry as it aligns with their career aspirations.

Whether that means taking on additional responsibility to mentor or oversee apprentices, or advance into the position of foreman, estimator, project manager, they have the ability to progress in their careers as they desire.

Unfortunately, the NLRB is seeking to pursue policies that would limit the ability of merit shop contractors to maintain this level of open communication as protected by the First Amendment of the Constitution, seeking to limit the ability of merit shop contractors to provide their perspective, and their side of the story to their workforce flies in the fact of common sense.

When confronted with the question of what it means to be an electrician within a union, or a merit shop setting, employees should naturally have access to the pros and cons of each in order to assess what's best for them. IEC takes issue with the notion that businesses should somehow not be permitted to engage in this conversation with those that they employ.

IEC has also concerns about the NLRB seeking to implement policies leading to the elimination of the secret ballot. For union elections, we adamantly believe in the freedom of our electricians to decide for themselves which career path is best for them.

However, should employees want to consider union representation, we believe they have the right to decide this within the confines of the secret ballot process free from coercion, intimidation, as secret ballot is the hallmark of our democracy through which important decisions are made without undue influence by others.

The same should be the case for the workers choosing between union representation and the merit shop. We hope the NLRB abandons its efforts to both limit employer speech, and eliminate the secret ballot for union elections. Thank you, and I look forward to taking any questions.

[The statement of Mr. Leedy follows:]

********COMMITTEE INSERT********

Chairman Good. Thank you so much Mr. Leedy for your testimony. Under Committee Rule 9, we will now question witnesses under the five minute rule. I will wait to ask my questions at the end, and therefore we will recognize Congressman Walberg from the great State of Michigan for five minutes.

Mr. Walberg. Thank you, Mr. Chairman. From the great State of Michigan, and sadly, former right to work state. I thank the witnesses, each of you, for being here today. The National Labor Relations Act, and subsequent amendments provide a level playing field between employers and union leaders.

The National Labor Relations Board was created to maintain the balance Congress established in the law, protect worker free choice, and serve as an unbiased judge over labor disputes. So Mr. Miscimarra, recently, and it's good to see you again.

Mr. Miscimarra. Nice to see you again Congressman.

Mr. Walberg. Recently the Board ruled against employers who have attempted to limit divisive political speech, and create a harmonious working environment through their uniform and book policies. How does weakening employer's ability to enforce neutral standards aimed at fostering harmonious workplace effect, harm employees who have no interest in engaging with political or social labor speech?

Mr. Miscimarra. Well thanks for asking that question, Congressman Walberg, and I have strong feelings about this area because the case that you've mentioned I participated in the case when I served on the NLRB called William Beaumont Hospital. And in that case it was an acute care hospital. The actors in the hospital were in the labor delivery room, and there was a full-term healthy baby that was delivered, and then unexpectedly died.

And it turned out the investigation in that case revealed that the baby's death resulted from the failure of employees to cooperate with one another, and to provide

assistance when requested. Even in that context, my counterparts on the Board concluded that the hospital's code of conduct, which stated that physicians and employees had to foster harmonious interactions and relationships.

That's the quote that you used. That was found to violate federal law, even in the context of acute care hospital with a baby whose tragic death resulted from the failure of employees to cooperate with one another.

And I think this is an area where at least under current law, in a case called Boeing, in which I participated in, when the Board is dealing with facially neutral work rules or employment policies, or employee handbook provisions, the NLRB under a Boing standard considers two things.

One is the possibility that a particular rule might impede or obstruct protected conduct under the National Labor Relations Act, and that's very important to consider. But the second thing that the Board would consider under the Boeing standard is the rational and reasonable legitimate justification associated with a particular rule.

The Board has currently invited supplemental briefing and public briefing on the possibility of changing the Boeing standard, and possibly going back to the same type of standard that resulted in the invalidation of the hospital's code of conduct that I described.

I think that would be a mistake, and this is a very important area.

Mr. Walberg. Yeah. I appreciate that. Let me ask you, in looking at recent memoranda, and NLRB's agenda items, it's clear that General Counsel Abruzzo is disregarding the plain text of the NLRA and Supreme Court precedent in order to tilt the scales in favor of unions and undermine employee free choice and employer rights.

Can you discuss the kinds of reforms, briefly as possible, this Committee should consider to ensure the NLRB respects the laws Congress has enacted, and restore balance

to NLRB?

Mr. Miscimarra. Well, I think, Congressman Walberg, and I'll make this short, it's very important. There's a range of cases where Board members and the General Counsel may disagree, but we're talking about with respect to the current Board and the two issues that I mentioned in particular, restrictions on employer speech, and also the Board's actions in other areas to really be very aggressive in ways that are directly contrary to either statutory language, or what Congress has done.

I think it does a disservice, particularly because of the time associated with litigating those issues. There is some options that are available to Congress. There's the Employee Access to Justice Act, or EAJA, that for small employers the small businesses can provide a remedy if the government's position is not substantially justified. I think that would make some sense for Congress to explore.

The other thing is the courts are now, I think, going to get into the Act, and there are two recent Supreme Court cases, one of which suggests parties, when they're dealing with constitutional issues before an agency don't have to wait for the agency proceedings to be completed before they can get relief in Federal District Court, but I think it's an issue that requires attention, both by Congress, as well as the courts.

Mr. Walberg. Thank you. My time has expired and so I yield back.

Chairman Good. Thank you, Congressman Walberg. And we will now recognize Congressman Courtney from Connecticut for five minutes.

Mr. Courtney. Great, thank you Mr. Chairman, and thank you to the witnesses for being here today. Mr. Good in his opening remarks, cited some polling on unions. I'd like to add to that discussion by just pointing out that really the longest standing poll measurement of unions in our country is the Gallup poll, which starting in 1937, tracked approval of labor unions.

And the most recent Gallup poll recorded an almost record number of 71 percent approval rating by the American people. And when Mr. Miscimarra was working at the NLRB, that was at 48 percent, so in my opinion, I cite that just because that shows that Gallup is not, sort of, you know, putting its finger on the scale, but clearly, we're at a moment right now where for probably a lot of reasons we could discuss and debate, the American people now recognize that actually unions are important.

I personally believe it's because we are also living in a time of record income inequality. You know, every international measurement shows that we have the highest level of income inequality of any developed nation. The UN came out with a report that verified that recently.

And we are also seeing a shrinking middle class, which I think is a red flashing signal about the stability of a democracy which I think a strong middle class is essential. Again, I have a question for Ms. Thompson, but before I get into that I wanted to just sort of follow up on Mr. Miscimarra's comments regarding the Starbucks case,

and just want to remind my colleagues and state for the record that this was actually discussed in great depth in last Congress. We had a full committee hearing, and during that hearing the former NLRB Chairman, Mark Pearce, explicitly stated and reminded us that there is a pending Inspector General investigation that's still ongoing, which is a good thing.

The IG's office is the gold standard, in terms of a neutral, independent evaluation, and the NLRB itself also has procedures for resolving election objections, many of which in those cases are also pending right now regarding the Starbucks organizing drives. If there's merit to these allegations, then the IG and the agency will inform us, and has the power to address them, but it's not our job to intervene in pending cases.

Ms. Thompson, along some of the same lines, my colleagues on the Republican

side have complained about -- the NLRB's use of mail ballots in the election process, expressing concerns that voter participation is lower than it is when an election occurs on an employer's premises.

However, data from the NLRB reveals that participation in mail ballot elections actually has dramatically increased in the last three years. So, mail ballots enable voters a safe, flexible way to vote outside the building of where their employer may have conducted an antiunion campaign, but we still have a 10-year-old appropriations rider that prevents the Board from even considering the use of safe, electronic voting.

How would lifting that rider protect workers' freedom of association?

Ms. Thompson. Sure. Thank you for that question. Lifting the rider on electronic elections. Now that many workers are increasingly working remotely, providing an option to hold electronic elections would mean that elections could be held securely and efficiently. Ensuring that the elections can be held is especially important, giving the ongoing funding crisis, in an efficient manner, that continues to stand in the way of counting elections for the Board to protect worker's rights.

And we know that these elections can be done electronically in a way that is safe and secure, via electronic means, because we've got the example of the National Mediation Board, of successfully conducting union representation elections in that way for nearly two decades.

Mr. Courtney. Well, thank you for that answer. You're absolutely right. The technology is there. This is not some impossible question of cybersecurity or anything, and again agencies have already used that method in other places. And again, having an election which does not take place, you know, where you actually have a party that's contesting the election.

That's like saying we should hold elections for Congress in Democratic party

headquarters. I don't think my friends would really appreciate that, nor would we the other way. You should have neutral systems, so that people can, again comply with the spirit and the letter of the National Labor Relations Act for free and fair elections, devoid of any pressure.

Mr. Miscimarra, I just want to,- as somebody who was actually at- the Board, we're at a point right now where the NLRB's field offices are 50 percent lower in terms of staffing, than they were in 2002. We just gave a small boost to the budget. Do you support having more funds available to staff offices, you know, in complaints with past patterns?

Mr. Miscimarra. Well I'm supportive of the NLRB personnel, and it's true that the Board's funding was flat. I think it was 274 million dollars for, you know, many, many years, and the Board did just get an increase. You know, I think there's a balance between supporting the agency, and the agency does very, very important work, especially in the field offices, but I don't mean to discount what happens in Washington, D.C.

By the same token, you know, the Board has made some choices in terms of policy issues that I think most people, or many people would regard as peripheral to the focus of the National Labor Relations Act that has ended up causing the Board to end up addressing a significant number of issues, and significant resources, both in the cases of --

Mr. Courtney. Well, I don't think cutting staff is the way to deal with policy disputes.

Mr. Miscimarra. I'm not suggesting that.

Mr. Courtney. I know my time has expired and I yield back.

Chairman Good. Thank you very much. Now we'll recognize Mr. Allen from the great State of Georgia.

Mr. Allen. Thank you, Mr. Chairman. And thank you to our witnesses for being here with us today to talk about this important issue. Mr. Miscimarra, every member of Congress is elected by secret ballot. House Democrats elect their own caucus leadership by secret ballot, and Democrats held up the U.S. MCA trade deal to guarantee that workers in Mexico have the right to a secret ballot.

But apparently Democrats do not think that is the right that should be afforded to American workers. The Democrat's PRO Act, and the NLRB General Counsel, are working to overturn the precedent that protects their worker's right to decide union representation by secret ballot vote.

The union fails to get enough votes in an initial secret ballot election, the PRO Act will make it easier for unions to organize by disputing the election results, and claiming the employer wrongfully interfered. My bill, The Employee Rights Act, guarantees workers the right to vote on questions of union representation by secret ballot.

Can you discuss why secret ballot elections are more reliable gauges of employee free choice when compared to card check organizing campaigns?

Mr. Miscimarra. Well, I think that experience has shown that the secret ballot elections, and the secrecy associated with everybody's vote is really a cornerstone on the National Labor Relations Act, and we live in a democratic society. And you don't have to take my opinion because the Supreme Court in two different cases, one that was decided in 1969, and one was decided in 1974.

Both concluded that secret ballot elections were the preferred method of evaluating employee sentiments regarding union representation. Conversely, the Supreme Court in both of those cases indicated that authorization cards or signed cards or petitions, are admittedly inferior to secret ballot elections.

And you mentioned the USMCA, and I mentioned that in my opening statement. I

think that it's surprising to me that the agency that Congress has charged with conducting secret ballot elections would then move in a direction of making secret ballot elections occur only in a very small number of cases.

Mr. Allen. All right. Well thank you. Mr. Solem, in the 117th Congress, then President AFL-CIO Richard Trumka, testified to this Committee that unions need employees' private, personal information so unions can confront them, "At home or at the grocery store."

House Democrats PRO Act would require that unions were given this information, including home address, cell phone number, personal email address, and more. Do you think workers want to be confronted by union organizers at home, or in public at the grocery store?

Mr. Solem. Thank you for the question, Congressman. My answer is no. I don't think employees want to be confront at home or at the grocery store, especially the employees that I represent. They simply want to refrain from unionization. Now, it's important to note that this kind of information that's given out by the NLRB when it comes to cell phones, email addresses, there's no limitation on the use. It can be used by unions, third parties who are strangers to the workplace, for any reason.

As we know, over the past few years there's been multiple examples of people's personal information being misused.

Mr. Allen. Right.

Mr. Solem. Placing this out there could increase that risk.

Mr. Allen. Well, data privacy is an important subject in this country right now, and it's a bipartisan issue. Is it pro-worker to force them to be subject to this against their will, or would they value the ability to choose what information is shared with the union, which my bill The Employer Rights Act, allows?

Mr. Solem. That would enhance employee free choice, allowing employees the opportunity to opt out. Obviously, the purpose of the National Labor Relations Act is employee free choice. Sharing your personal information with a union that you may not want harms it, so yes.

Mr. Allen. And as you know, my home state of Georgia is a right to work state. This seems to be very common sense labor law to me, as it allows Georgians to provide for their families without being forced to pay union membership dues as a condition of their employment.

Yet the Democrat's PRO Act would supersede right to work laws in 27 states in order to force Americans into paying union dues. Unions often claim they need to be able to force workers to pay union dues, in exchange for their representation. Can you explain the flaws in this argument?

Mr. Solem. The flaw in that argument is that it's not free rider, it's a forced rider problem. So the employees that I represent are represented by unions that they don't want, and they have never asked for. So instead of being taken on a free ride, they're taken on a forced ride.

Now, as we've discussed today earlier in our written testimony, if they want to get rid of the unions it's very hard because of the NLRB's various blocks and bars, most of which are a non-statutory.

Mr. Allen. Okay. Mr. Chairman, I yield back.

Chairman Good. Thank you, Mr. Allen. And we will now recognize the gentlemen from the state where my family is from, Mr. Norcross, from the great State of New Jersey.

Mr. Norcross. Thank you. It's good to be here today, and to have a conversation about giving Americans the choice. I think it's remarkably important. I see our one area that we should be focusing on is understanding what the American worker and the

employer want to do collectively.

Cecil, as you would understand, as I went from steel tips to wing tips, I'm an electrician by trade, who did the four-year apprenticeship program. So understanding the construction industry, and what goes on, is something that is near and dear to me as I've worked in it for 47 years.

The construction industry, by its very nature, is different. We get sent to a job. You start from the ground up. You finish it, you move on. This is something that we've experienced through the history of the United States. Jobs are very specific for one single project. But in 2020, the last administration, the Trump administration issued a rule making it more difficult to ensure that there's that stable bargaining group, that the people that are working on that construction job are being part of one group.

So, when there are attempts to decertify, and they happen, that literally changes the way that the rules are being laid out, and tilts the playing field. The Biden administration proposed to rescind that rule. So, Ms. Thompson, let me ask you, the NLRB rule that is being proposed here, why is that different in the construction industry?

Because essentially what can happen is that each construction site gets blended together with nothing more than people from different areas coming together. Could you explain to us why that is important about leveling the playing field?

Ms. Thompson. Sure, sure. So as you said, you know, construction is different from many other industries, in that jobs are specific to a single project, or often very short term. The legal framework is somewhat different. So the 2020 rule made no sense, honestly, because it would allow for election petitions to be filed against the union as soon as agreement is reached.

And given the short nature of construction work, this system could basically force unions into an unending cycle of decertification petitions, even if there's no genuine

reason to believe that the union lacks majority support.

Mr. Norcross. So, we talk about the blocking charge, and that's the basis for one of the other changes that the Trump administration made. What it essentially says if there is a vote coming up, and there's an unfair labor practice, what would happen previously is things would stop until that happened.

What changed is they allowed the election to go on even with that unfair labor practice, and then we'll settle it later. The whole idea is nothing different than if we have an election in the United States, we immediately say it wasn't fair, let's go back. That is what we did. Exactly my point.

We don't turn around elections. There's another time. This blocking issue that is going on literally would throw a roadblock into the ability to have a fair election. Talk to us about where the real-world implication is at, because at the end of the day, if there is an unfair labor practice that occurs by the employer, and I understand it still has to be approved, but the damage is done and an election takes place.

You're making your decision based on unfair and untrue issues. Can you explain to us why that would affect the outcome of an election?

Ms. Thompson. Sure. So, you know the Board's rulemaking would return just an additional rule as you're saying, which says that if an employer violates workers' rights during the decertification campaign, then the workers can file a charge, and pause the petition until the charge is resolved.

So, you know, there's a couple benefits to that. I mean one is just that it ensures a decertification petition won't go through under circumstances that are tainted by the employer's unfair labor practices.

You know, at a time when the workers and decision in the secret ballot election is influenced by unlawful conduct by their employer. And then also, you know, it preserves

the Board's resources as the Board could answer critical questions about how to proceed before putting lots of resources and hold an election. They can actually answer the allegations of the unfair labor practice charge before putting the election before the workers.

Mr. Norcross. I see that my time is running out. This is a rule that has been in place since the century's beginning, and it was reversing it, so we just want to level the playing field, and Chairman I yield back.

Chairman Good. Thank you, Mr. Norcross. We will now recognize Congressman Smucker from the Commonwealth of Pennsylvania.

Mr. Smucker. Thank you, Mr. Chairman. I appreciate you holding this hearing today. It's been a great discussion. Mr. Leedy, like Mr. Norcross, I have a background in the construction industry as well. I owned a drywall metal framing interiors company for 25 years prior to serving first in the State Senate, and then here at Congress.

And as you, I think, alluded to, or mentioned, you know, we had several hundred employees, and always believed that in order for the company to succeed -- for everyone to succeed together, we needed to create -- it needed to be a team. So, very, very proud of all of our team members, of the opportunity that we were able to provide, providing family sustaining jobs.

And then as you had mentioned, the opportunity to grow with the company as the company grew, created a lot of new opportunities for individuals whether it be foremen, project managers, estimators, and whatever it may be. And it's one of the, I think, benefits of merit shop construction, which we had, and in fact it's one of the reasons why I like ESOPs so well.

I think it's an opportunity to create that team where everyone benefits together when the company provides services that people want, and when the company does well

together. I've, you know, I was a member of Associated Builders and Contractors, participated in their apprenticeship plans, actually saw your associations apprenticeship sites as well, and the great work that's being done there.

You know, we also -- I'm a member of the Ways and Means Committee. We've been looking at the labor force participation rate in the country, which has not yet quite come back to where it was pre-pandemic. And we need to do a better job of connecting people with the jobs that are out there, which is why I think construction provides so many great opportunities.

I was through a number of union organizing campaigns myself in our company, and I saw a lot of bad behavior by union members. You know, we had vandalism on our sites, we had a lot of coercion and threats and so on. And then I've also seen some really good union business managers who were there to just simply offer another choice for employees.

And I know most companies are great. Understand that relationship with their team members is really important, and then there could be bad company owners as well. And so, when I first went to the State Senate I fought unions a lot in my life as a construction company owner, and then went to the State Senate and worked with union representatives there on a bill that I thought was beneficial.

So it could be good and bad on either side. I think the most important concept is that employees should have a choice, and should be able to get the information that they need to make those choices. And so, I think is it Mr. Solem?

Mr. Solem. Solem.

Mr. Smucker. Solem. I'm sorry. Mr. Solem, you know, you talked about the secret ballot elections. I think, you know, it's a fundamental principle in a democracy, and I think it's so important. Why is it that we would move to a system that moves away from

that when employers are making, or employees are making a very important decision about what they want their workforce to look like? Why are we seeing a trend to, you mentioned a card election, why would that be?

Mr. Solem. Thank you for your question. I mean just to speak about the importance of the secret ballot first. You know, the secret ballot protects privacy. It ensures that no one knows how you voted. It protects against intimidation. And finally, it is final.

During a card check campaign someone could be solicited time and time, and time again, until they finally give in and they say oh, I'll just sign the card. And so, a secret ballot election puts it at the end. The reason you're seeing a turn away from the secret ballot, and towards something like mandatory recognition is that unions are afraid of elections, just like they're afraid of elections into certification elections, just like they want to bring back the blocking charge policy, just like they want to have recognition bars.

The purpose of the Act is employee free choice, and all of these things undermine it.

Mr. Smucker. Thank you, and I'm already out of time. Thank you, Mr. Chairman.

Chairman Good. Thank you, Mr. Smucker. And now we will recognize Mr. Mrvan from Indiana for five minutes.

Mr. Mrvan. Thank you, Mr. Chairman. First, I want to use a couple minutes and talk about the success of the Bluebird Corporation in Georgia, and their ability to unionize. And why that's important, or needs to be said, is because of the investments that were made through the administration in the last Congress in the Infrastructure Bill, in the Chips and Science Act, and also in the Inflation Reduction Act.

There were incentives to that corporation, to that company that makes electric

busses, that receives funding. They just recently voted 697 to about 435 to unionize, to make sure those members in a free election were able to decide to have better pay, to have mental health care and to have pensions.

And so there are success stories of investments that we have made here in Congress. And through the administration, the State of Georgia will absolutely have spending over 51 million dollars in the transition of diesel busses to electric vehicles, and that will be over 1,300 people who work there, a better way of life, and which one of the reasons why I'm here.

So, to the United Steelworkers, and that organization, I want to say that collaborative effort is something that will better those people's lives. Mr. Solem, I have a quick question. You had talked about access to members' information when it comes to cell phones or at the grocery stores.

Walk me through the right of an employer to be able to hire either a law firm, or an antiunion consultant, to work within a workspace. What rights do they have? And what rights do the employees have if they don't want to have that confrontation?

Mr. Solem. Congressman, I don't represent employers. I represent individual employees who simply exercise their rights under the Act. I think that question would probably be better given to a management attorney.

Mr. Mrvan. So, with all your experience in 10 years, have you ever seen or heard of employers hiring a management consultant, that they did not want to have a union?

Mr. Solem. Well obviously, that happens.

Mr. Mrvan. Then the answer is yes.

Mr. Solem. I can't talk to you about, you know, what rights employers have because I don't represent employers.

Mr. Mrvan. Right.

Mr. Solem. But the employees that I represent often want to hear both sides of an election. They want to hear from their employer. In fact --

Mr. Mrvan. So those management consultants can speak to employees at the workplace?

Mr. Solem. Yes.

Mr. Mrvan. Do they have access to their information?

Mr. Solem. I have no clue about that. I mean you can assume so.

Mr. Mrvan. So we can assume so.

Mr. Solem. But I don't know what individual --

Mr. Mrvan. So in a fair election, the employers, and also these management consultants who are there to make sure there isn't a union, have access to people's address, to people's cell phone numbers, but what you're saying is unions shouldn't have that because it's a right of privacy?

Mr. Solem. Well, the union is a third party who doesn't represent anyone, yes in elections.

Mr. Mrvan. So are the consultants.

Mr. Solem. The consultants are, as far as I understand, agents of the employer, so it is different. Your employer already has the access.

Mr. Mrvan. An agent would be a third party.

Mr. Solem. Right.

Mr. Mrvan. Because they're not an employee, or management of that place, so it's a third party who has access to that same information. My only point is that in order to have a fair election we have to look at the other side, and so we constantly want to make sure that we have a fair and balanced election.

My next question would be, the House Democrats introduced the PRO Act earlier

this year in an effort to provide comprehensive labor law reform. Based on what you have seen in your career defending the right to organize, which provisions in the bill strike you as the most urgently needed?

Ms. Thompson. Sure. Thank you for that. And just I just wanted to respond quickly to the previous colloquy and say that the union is the workers organizing themselves to represent themselves. But to your point of the PRO Act, I think that there's a couple of things that, there's lots of good stuff in there, so everybody read it and vote for it. It's great stuff. But there's a couple of things in particular that I think are really important.

You know, employers don't face civil penalties for unfair labor practice violations, so it kind of makes the Act not as effective as it could or should be. Employers can violate the law with impunity, and in fact they do. And I mentioned, as I mentioned in my testimony, the employers are charged with violating the law in nearly 40 percent of organizing campaigns.

And yet, the punishment could be as low as posting a notice somewhere in the building, you know, over the trash can in the break room to tell people, which I mentioned because it literally happened in a case I had where it's like there's one copy by the trash can in the break room, after someone was terminated.

So, the second thing I'd say was banning mandatory captive audience meetings is crucial. The power imbalance of the boss, you know, lecturing and intimidating employees with anti-union propaganda, while employees can face discipline for leaving, makes elections inherently unfair if you're sort of captured by that kind of coercion and intimidation in the workplace.

Mr. Mrvan. I thank you very much. With that I yield back, Chairman.

Chairman Good. Thank you, Mr. Mrvan. We'll stay in the Hoosier State, and

recognize Mr. Banks from Indiana.

Mr. Banks. Thank you, Mr. Chairman. In 2006, unions spent 427 million dollars on political activities and lobbying. But in 2020, that number jumped to nearly 800 million dollars. Several million dollars that these unions have given away to groups like Planned Parenthood and the Center for American Progress. Ms. Thompson, why are labor unions funding pro-abortion groups like Planned Parenthood?

Ms. Thompson. I'm sorry. Would you repeat your question?

Mr. Banks. Why do unions like yours donate money to Planned Parenthood, a pro-abortion group?

Ms. Thompson. I mean, unions donate money based on, I mean, we're an organization of members. Right? And our members express, you know, a desire to fight for certain things. You know, they --

Mr. Banks. What is the relationship between a labor union and supporting pro-abortion causes? I'm just curious.

Ms. Thompson. I mean our members receive services from Planned Parenthood. I mean, it's actually pretty simple. I mean we, you know, it's like our members are actual human beings.

Mr. Banks. What about groups like the Center for American Progress, which is in support of gun control causes? What's the relationship between labor unions, giving millions of dollars to gun control causes?

Ms. Thompson. So what's the relationship between labor unions and gun control?

Mr. Banks. Like what is your interest as a labor union, in supporting gun control?

Ms. Thompson. I mean gun control laws affect our members. I mean this is an issue that's going to affect our members. I mean these are all societal issues that our members have to, you know, interact with on a daily basis.

Mr. Banks. Do you believe -- I'm just curious. Do you believe most of your union members support gun control?

Ms. Thompson. I haven't talked to every union member. I know the members in my unions --, I'm sorry, excuse me. I know the members in my union.

Mr. Banks. But your union gives money to -- no, it's my time. Ma'am, it's my time. Your union gives millions of dollars. Your, and other unions give millions of dollars to causes that support gun control. Should I assume that that means that most of your members support gun control?

Ms. Thompson. I wouldn't assume anything. I would find out. I would dig around and find the facts. I can't tell you. I don't have a piece of paper that tells me exactly how many members support gun control. It's an issue that comes up in our unions. It's something that affects our members, and so we try to fight for things that are going to make our members' lives better.

And everyone, you know, part of union democracy is doing something that helps, you know, the majority of the members might want. And so, when people are --

Mr. Banks. It's really interesting. So your union, you're admitting that your union has a direct link to pro-abortion.

Ms. Thompson. No.

Mr. Banks. And gun control causes, that's what you just said.

Ms. Thompson. No.

Mr. Banks. You give -- your union gives money to groups that support those causes.

Ms. Thompson. No. You're saying that we donated money to those things, and I'm saying that, without being able to actually call our Secretary Treasurer's Office and verify that, perhaps that is true. I actually don't know whether what you're saying is true

or not, to be perfectly honest. So I would not say that we support those organizations.

Mr. Banks. Well it was interesting you defended it. I mean I think I mean that's obvious. Mr. Solem, I mean what is the relationship between labor unions, political giving, to causes like Planned Parenthood and gun control causes? I mean why would a labor union funnel money to causes like that?

Mr. Solem. Labor unions are political organizations thathave become more political over time. And in fact, I would say that, that is what you were speaking about, why lots of rank and file members are alienated from their unions because the national group doesn't represent what are their individual views.

The employees I talk to often want to get rid of unions in part because they find them divisive in the workplace, but also too political.

Mr. Banks. I mean stunningly your colleague to your left just defended these left wing causes, and talked about they're funneling. I mean, admitting that labor unions funnel money to these causes because they are left wing political causes.

Ms. Thompson. When you asked me questions, I answered them.

Mr. Banks. I mean my dad is a lifelong member of a union. He does not support gun control or abortion, and he votes as a pro-life voter, and a voter who supports the Second Amendment. I think when he like, many other union members, be appalled to hear the answer of your colleague on the panel that defending these left wing causes?

Mr. Solem. I assume so. And that's why, I can't speak to you dad's views, but lots of the employees that I represent want to decertify unions because they're far too political, and also they want to exercise their right to work. They want to be able to work without contributing to an organization that is political.

Mr. Banks. Are labor unions becoming more and more so a fundraising arm of the Democrat party?

Mr. Solem. I don't know about that, but I don't know about more so, but over time unions have become very political. Unions give most of their money, when thry contribute to politicians, to Democratic politicians. But you know, the individual employees I represent care about issues, they care about their ability to exercise their rights under the Act.

Mr. Banks. Yeah. It's very troubling. I yield back Mr. Chairman.

Chairman Good. Thank you, Mr. Banks, for your questions, and now we will recognize Ms. Hayes from Connecticut.

Mrs. Hayes. Thank you, Mr. Chairman. Before I begin my questions, I just wanted to say for the record that use of terms like China virus that we heard in the opening are inaccurate and xenophobic. And it leads to a rise in anti-Asian hate, and has no place in this discussion.

I thank the witnesses for being here today. Nationwide, petitions for union representation increased 63 percent between 2021 and 2022. In Connecticut, the National Labor Relations Board reported a 44 percent increase in total cases over the same period.

Between 21 and 22, the number of union members in Connecticut increased by 6 percent. However, non-union jobs increased faster, causing the percentage of workers belonging to a union to drop slightly from 14.6 percent to 14.2 percent. Since the beginning of the year, the NLRB has received 15 charges of unfair labor practices in my district, a majority of which were filed in the food service and healthcare sectors.

This has not deterred anyone from exploring unionization. Last week the NLRB received two petitions for representation in the City of Danbury, one of the largest cities in my district. I have been in workplaces where I voted against unionizing, and I have been in workplaces where I voted in favor of unionizing. Every worker deserves the right

to decide whether they want to unionize and collectively bargain.

I'll also say that unions are made up of people, and we would have meetings to lay out our legislative agendas, and decide the issues that we wanted our union to support. So those are not decisions that are made at the top. Union members live and work in their communities, and they care about the things that affect them and their families.

Unfortunately, the policies enacted by the previous administration have denied workers the opportunity to consider the potential benefits of unionizing fairly. The NLRB is currently engaging in rulemaking to overturn a Trump rule that effectively invited a decertification campaign whenever a union was recognized on the basis of majority support without an election.

In 2019, the House adopted my amendment to the PRO Act, which would restore prior law and give a newly recognized union one year to focus on bargaining, and-- proving itself to the workers without fending off an immediate anti-union campaign.

Ms. Thompson, I know Mr. Norcross touched on this briefly, but one of the most damaging decisions by the Trump administration's NLRB was a final rule enacting unnecessary delays in the procedures between when the workers file a petition, and when the election happens. Can you explain why this is, and how anti-union campaigns use time and delay to their advantage?

Ms. Thompson. Sure. So, you know, delay is always going to hurt the union. It's an opportunity for employers to be able to be able to run aggressive anti-union campaigns, including captive audience meetings, committing unfair labor practice charges, and other things, while the workers are trying to decide, you know, how they wanted to vote in an election.

So, unfortunately, anything that adds additional time also adds an additional

opportunity for workers to be coerced and threatened at their workplace by the people who have the power to hire and fire them, about what they, you know, about the elections that they were trying to make a decision about.

And so, it's very difficult for workers to sort of maintain their solidarity under constant, --when they're constantly embattled by anti-union propaganda, some of which is not true. And most of which is not true, by their employers.

Mrs. Hayes. Can you explain a little bit more about how these captive audience meetings, and the requirement for employees to attend goes beyond free speech, and in fact can discourage unionization?

Ms. Thompson. Sure. So, a captive audience meeting, you know, where you're being told by the person that hires and fires you, you have to show up to this meeting, and you have to whenever they decide, or how often they decide to have them, and listen to anti-union propaganda.

I mean, it's not very difficult to understand how difficult it would be to have to be subjected to that on a daily basis, but it's also you're being told by people, often higher up, people you may have never seen before. People you didn't realize would come to your little shop, your little store, and come talk to you.

And the first time they do that it's explained to you that exercising your rights, your federally protected rights under the National Labor Relations Act is something that you shouldn't be doing because you don't actually need, -you shouldn't do that, and these folks who -- are responsible for your employment are also trying to explain to you how you should not exercise your federal statutory rights. It could be very scary for people.

Mrs. Hayes. I'm sorry. My time has expired. I just want to remind everyone in this room that the unions are made up of employees. I apologize for going over. I yield back.

Chairman Good. Thank you, Representative Hayes. And now we will recognize Representative Houchin also from Indiana.

Ms. Houchin. Thank you, Mr. Chairman. Thank you to the witnesses for your testimony today. I appreciate your time. A couple of things I'd like to note before I get to my questions. I was a state employee in Indiana. And every election cycle without fail the Public Employees Union would send out their voting recommendations for candidates on the ballot.

Without fail, 100 percent of the candidates promoted by the union were Democrats. Most, if not all of which, held views substantially different than my own. At the beginning of my tenure I was required to pay unions dues, which went directly to support the election of candidates I opposed.

Thankfully, our Governor, Mitch Daniels, abolished public sector unions, and Indiana has been better for it. As you may know, Indiana also adopted right to work legislation in 2012, making us the 23rd state in the country to do so. We have seen a nearly 15 percent increase in manufacturing employment, according to the Bureau of Labor Statistics.

Meanwhile, during the same timeframe, non-right to work states raised their manufacturing employment by a mere half a percent. Seeing these numbers are encouraging, as I consider workforce policy, and how we can protect employees from forced unionization.

However, I've met with several business leaders concerned that the NLRB is abusing the unionization process we have. So I've got a question for Mr. Miscimarra. NLRB General Counsel Abruzzo is essentially seeking to eliminate employee voting in NLRB union representation elections.

The Supreme Court has twice rejected mandatory union recognition based on

authorization cards as the primary way to resolve questions concerning representation. Can you discuss why the Supreme Court has consistently rejected the imposition of mandatory union recognition based on union authorization cards?

Mr. Miscimarra. Thank you for the question, Congresswoman. And either the Supreme Court's answer to that question is that the most important feature of the National Labor Relations Act is employee free choice, and with the emphasis on the word free.

And the Supreme Court, in both of the cases that address this issue, found that secret ballot elections are the preferred method of ascertaining employee sentiments about unions, and that authorization cards were admittedly inferior. And that's been borne out in lots and lots of courts of appeals decisions as well.

And the experience of the NLRB in general, has been very good conducting secret ballot elections. Congress gave the NLRB two things to do, one of which is to conduct secret ballot elections, which are superior to authorization cards, and for that reason both the courts and I think, common sense, suggests that the appropriate way to address labor policy here is to have secret ballot elections whenever possible.

Mrs. Houchin. Thank you. And just continuing on that point. For nearly 90 years the primary manner of exercising employee rights has been under the NLRA, has been the opportunity to vote in secret ballot elections to determine whether employees have union representation. General Counsel Abruzzo is seeking to deny employees this right, despite federal courts and the NLRB itself, long preferring the use of secret ballot elections to determine whether a majority of employees could support union representation.

My next question is for Mr. Leedy. The NLRB General Counsel wants to silence employers, and ensure workers only hear the union perspective during an organizing

campaign. As a small business owner for more than 30 years, can you explain how important it was for you to have direct communication with your employees?

Mr. Leedy. Excuse me. Thank you for the question. I felt left out. We are a service company, so communication is critical with our employees. Being a service company on the industrial level, I need that person to answer that phone at two o'clock in the morning and take that service call.

So communication is critical. And we have spoken to our team about the benefits of the merit shop, and I have nothing against unions. Like I said, my father and grandfather were members of the union, and you know, the unions certainly have a place, but you know, it's certainly not for everyone.

Ms. Houchin. Thank you. I think employee choice is clearly an issue the Department is not willing to adequately protect, so I'm certainly grateful we're here considering these issues today. Thank you, and I yield back.

Chairman Good. Thank you, Ms. Houchin. And now we'll recognize Representative Omar from Minnesota.

Ms. Omar. Thank you. Ms. Thompson, my Republican colleagues are claiming that the General Counsel's efforts to render captive audience meetings unlawful is somehow undermining employers' free speech rights. Frankly, their claim just doesn't add up.

Let's talk about these captive audience meetings in more detail, and get a sense of just whose rights are being violated. Last Congress, Michelle Eisen, a Starbucks worker, testified before this Committee, and talked about some of her experiences with these meetings. She detailed employees being forced to attend meetings in hotel conference rooms, far from their place of employment, meetings many of these workers have to find and pay for transportation for said meetings.

She then described having to sit in these rooms with high-ranking members of corporations as far up as the President of Starbucks North America, who they had only just met, where they talked for nearly an hour and told them that they should be ashamed for asking anything more from the company.

Ms. Eisen described these meetings as one-sided-, with only employers speaking. And despite the fact that some union organizers were Starbucks employees, were actually in the room, they weren't given a chance to say their piece. Ms. Thompson, please tell us, what does --it sound like Ms. Eisen is describing?

Does it sound like her rights were being violated? Or the free speech of the employers were violated?

Ms. Thompson. Thank you. Thank you. Thank you for the question. Yeah. I mean the right to speak is different than the right to coerce and threaten, so I can speak about different things. I can express my opinion about unionization, and the Act. But that's very different than coercing or threatening employees, making them feel like their jobs are at stake.

Making them feel like if you don't show up to this meeting to receive this anti-union information that you're going to be disciplined, even though you have a statutory right not to receive it. You know, we've heard a lot about employees not wanting to engage in union activity. Maybe they don't want to engage in anti-union activity, which is also a right they have that's protected under the Act.

Ms. Omar. And as you understand it, the First Amendment, does it guarantee anyone the right to free speech, or does it guarantee an audience to that speech?

Ms. Thompson. I'm sorry. Can you repeat that for me?

Ms. Omar. As you understand it, does the First Amendment guarantee a person the right to free speech, or does it guarantee them also to an audience?

Ms. Thompson. Yeah. I mean well that's the issue, right? You can speak, and then if people want to hear you, they'll come. But if the employer is basically telling workers you'll come because I told you to come, and if you don't come, you're fired. And that's a different thing altogether.

Ms. Omar. Your testimony earlier today is a powerful evidence of how the right to organize has helped your own family and families across this country. And I can relate myself as a former union member, and as someone who's gone on strike. Many of my constituents can relate as well.

I'd like to share a story I heard recently about a union drive at a local REI. These Minnesotans share with our office that they deserve a say in how their workplace is run. They just wanted the opportunity to participate fully in their workplace and communities. They feel, and I agree, that all workers deserve the right to get a seat at the table, and collectively bargain.

But it's seemingly ignored by on the other side of the aisle, judging by what my Republican colleagues have said against the PRO Act, and in favor of bills to weaken the right to organize. Can you tell this Committee why the labor movement, and being in a union, has meant so much to you, and why it's resonating with so many millions of workers at this moment?

Ms. Thompson. Right, right. So I mean for me it was a difference between housing instability,being on the verge of being homeless at numerous times during my childhood, and not having that. It was the difference between being able to have a coat in the wintertime and shoes, or not being able to afford those things.

It was a difference between my mom being able to buy eggs and milk or eggs or milk, and these things were really, really important, and transformative. I think the other interesting,-- for my story, is that you know, my mother is a white woman, and when she

had a job, they didn't know about me. I show up. And they fire her when they figure out that her daughter is black.

And she was out of work in a very small town for a very long time. And the union difference was that the next job when she got her union job, people might not have liked that, but they couldn't fire her for it. She was protected by her union contract, and her union family, and it made all the difference in the world, and it's part of why I'm here today.

Ms. Omar. Thank you for sharing that. It's a difference between being powerful and powerless. Right, so thank you, and I yield back.

Chairman Good. Thank you Representative Omar, and now we will recognize Representative Burlison from Missouri.

Mr. Burlison. Thank you Chairman. Thank you for this hearing. I kind of, I just want to kind of get down to how did we get here where we have a situation in America where we have what I think is the rights of association being violated, the rights of freedom of speech being violated.

Where you literally have situations where workers who are morally abhorrent to things like abortion, or let's say gun control rights, right? And yet they're required to pay money just to have a job. Just to have a job. You know, the America at the founding, people had freedom of assembly. But how did we get to this point where we are allowing businesses, through the coercive force of government, to coerce people into joining an association that they philosophically disagree with?

Mr. Solem, what's the history here, and I think it began with the Sherman anti-trust laws, right?

Mr. Solem. I don't know if I can go back that far. But essentially federal law, the National Labor Relations Act, Section 883.

Mr. Burlison. The Wagner Act.

Mr. Solem. The Wagner Act, right, allows an employer in a union to agree to a contract that would require the forced payment of dues and fees. Now as you said, this violates an employee's fundamental right to the right to work, the right to earn a living, because if they don't pay they can be fired as a condition of employment.

Mr. Burlison. Right. The irony is that this place creates a lot of downstream problems, because originally the Sherman Anti-Trust Act said it was illegal for people to collude on pricing. And they did that because they were trying to stop businesses from colluding on pricing, but the outcome was that unions were also colluding, and therefore illegal, therefore we passed the Wagner Act, right?

And the Wagner Act then creates further downstream problems because it said not only after the election occurs can you join a union, but you're required to. You have no right to be removed from that union. I'm getting heads that are nodding in the back. The follow-up to that was the Taft-Hartley Act, which was the Act that said states could, you know, evoke a law that erases basically the course of part of it.

So, the outcome is economic freedom for some states, and others not so much. So my state of Missouri is a closed union, or forced union shop state. Yet, we're surrounded by right to work states, and you know what I hear every day? The sucking sound of jobs leaving the State of Missouri, and going into states where workers have economic freedom.

Why are those states growing, and states like Missouri are not growing as fast?

Mr. Solem. Freedom is popular. Many businesses say that they'll only start businesses, or bring jobs to right to work states, and right to work is a proven job creator. The latest data from the National Institute for Labor Relations shows that right to work states have double the job growth of forced unionism states.

But even more important, I've been -- the economic argument for right to work laws, I think what you touched on earlier is that it's a fundamental freedom, which is what the Supreme Court ruled in Janus for Public Sector Workers, is that no one could be forced as a matter of the First Amendment in the public sector to pay dues as a condition of employment.

I worked in IT in the private sector. No one was union in IT that I can think of. And you know what benefits employees more than anything, is more job opportunities, more employers down the road. And so, no, I didn't have to like, look to some other organization or association to fight for me for my personal compensation, because the best thing that benefits an employee is competition.

And the sad part is that we chase it away when we enforce laws in our states on employers because if you're an employer, and you're looking to go to a state, why would you ever want to go to a forced union state and have to deal with not just the employees that you want to negotiate with and work with, but now you've got some third party that wants to step in and tell you how to run your business?

Mr. Solem. Well, right to work laws don't get rid of unions, but they just make it optional for those individual employees. And so there's certainly right to work states where unions flourish, but you know, it's dependent upon individual choice for those employees.

Mr. Burlison. Thank you. My time has expired.

Chairman Good. Thank you, Representative Burlison. And now we will go to Representative Scott from the wonderful great State of Virginia.

Mr. Scott. I thank my colleague from Virginia. Ms. Thompson, we've heard a lot about fair share. Isn't it true that if a union is representing a bargaining unit, everybody from the bargaining unit benefits from higher pay, safer workplace, better benefits, equal

pay for equal work, everybody gets the benefit of the union representation?

Ms. Thompson. That's correct.

Mr. Scott. And under fair share, the expectation is that everyone benefiting would contribute to the cost of hiring experts to negotiate that higher pay, and maintaining a safe workplace, the cost of representation at a grievance. If you have, even an individual grievance, and they're going to if there's somebody on staff that can represent you, the individual or an individual basis, you get that benefit, if the union member would get it, and you're not a member, you're expected to pay your fair share of those costs. Is that right?

Ms. Thompson. That's correct.

Mr. Scott. Now does a fair share require you to contribute to the annual holiday party, or summer cookout?

Ms. Thompson. No. It does not.

Mr. Scott. Does it require you to contribute to the voter registration drive, or political activities?

Ms. Thompson. No.

Mr. Scott. Does it require you to participate in the annual donation to the local food bank?

Ms. Thompson. No.

Mr. Scott. Just those responsibilities where you are getting a benefit?

Ms. Thompson. That's correct.

Mr. Scott. And if you don't have to pay those, and you get those without paying anything. That's where the idea of a free rider comes from.

Ms. Thompson. That's correct.

Mr. Scott. Okay. Can you tell us some of the ways employers are using their standing at pre-election hearings to delay union elections?

Ms. Thompson. Sure, sure I can talk about that. So, you know, the Act,-- so it is the Board's responsibility to determine after the employees have filed a petition for an election, whether the unit that they're petitioning for is an appropriate unit. And what often will happen is that the employer will be seeking the appropriate- unit -from their perspective, not from the employee's perspective, which results in incredible amounts of delay, and litigation before the Board over who should be in or out of the bargaining unit.

When the reality is that the workers are determining,- should be determining for themselves,- whether or not they want to be represented by a union, and then what group of folks are interested in being represented, versus the employer having control of that, and interjecting themselves.

Mr. Scott. And under that, what we call gerrymandering the unit, you can find places within the work site where you know there is not union support, and add them to the bargaining unit. Is that right?

Ms. Thompson. Correct. Correct.

Mr. Scott. Affecting the outcome of the election.

Ms. Thompson. That's correct.

Mr. Scott. Now what about unfair labor practices such as firing an employee for organizing a union? You mentioned some of the sanctions could be as low as, what is the maximum sanction for intentionally singling somebody out, and just firing them for organizing the union? What's the maximum penalty?

Ms. Thompson. I mean typically the Board has had a make whole remedy, so you would receive back pay, and then an offer of reinstatement. There are certain other charges that might be included in that, attempting to look for work, expenses, and other expenses could be added to that that are the consequences, the direct and foreseeable harms from the termination.

Mr. Scott. Well, when they get sent, when they get ordered back pay, when does that take place?

Ms. Thompson. I mean after the,-- I mean years later, after the litigation has reached its completion, and then the order has been enforced in a case of incompliance. So, oftentimes, it is many, many years later.

Mr. Scott. And if the person went and found another job paying as much or even more than they were making, does that get deducted from the sanction?

Ms. Thompson. Yeah. I mean right. If they get another job. And to be frank, I mean part of what the harm here is removing somebody who sensibly was a union supporter from the workplace. And that's been done. And now they're gone, and they may not want to come back.

Mr. Scott. Well and there's no sanction because the sanction is back pay, and if they made as much as they were making, there's no back pay to make up?

Ms. Thompson. Right. The sanction would be a posting saying we fired somebody, and we won't do it again.

Mr. Scott. And what message does that send everybody else?

Ms. Thompson. That the employer can fire you with impunity. Even though the law protects you, the delay in receiving your remedy could be such that you're devastated by, what happened.

Mr. Scott. Thank you. And that is remedied in the PRO Act with a civil fine if they fire somebody for organizing. Thank you, Mr. Chairman.

Chairman Good. Thank you, Representative Scott. We're going to stay on this side and go to Representative McBath from Georgia for five minutes.

Mrs. McBath. Thank you, Chairman Good, Ranking Member DeSaulnier, your staff, and to our witnesses for making today's hearing possible. And I have read your

testimonies. The real way I really believe to empower American workers and ensure fair elections at the NLRB is not to villainize our unions. The way that union members are being talked about by my Republican colleagues could make someone watching at home forget that they're talking about our friends, and our neighbors.

I'd like to remind everyone that these are real people that we are, as members of Congress, have sworn an oath to protect and to serve. They're the people who live in our neighborhoods, and you see these folks at the grocery store every week. You see them out and about in our communities.

They keep the power on, and our trains moving, and they don't deserve to be unfairly painted in such a negative light. Thankfully, the American people strongly disagree with my Republican colleagues on this issue. At the same time when our current HELP Chair purposefully went on record to say that he doesn't support our unions when asked by a witness, a majority of Americans would say just the opposite if they were asked that same question.

According to an annual Gallup poll last year, 71 percent of Americans actually approve of our labor unions. The highest percentage since Gallup began recording this measure in 1965. Another example of American support for unions is the massive case load increase at the NLRB for union representation petitions.

There's been a 53 percent increase from fiscal year 2021 to 2022 overall, and 108 percent increase just in my home state of Georgia. It's so important that we provide this agency with the funding that they need to handle this increase, and ensure that every American can appropriately exercise their rights in the workplace.

The right to organize for better pay and working conditions is exactly that. It's a right. One guaranteed under federal law, and we must do everything that we can to empower workers to make sure that these decisions that they're making for themselves,

they are making them without a legal bias.

Workers in states like mine with so-called right to work laws, they're proven to be paid less for the same work, and they have fewer benefits compared to states without these laws. It's clear that when unions are allowed to compete fairly, and workers are given the correct information about what organizing really means, they will make the choice that benefits them, and their families the most.

Employees of the Bluebird Corporation in my home state of Georgia, recently voted 697 to 435 in favor of joining the United Steelworkers, a historic organizing victory in the south. So as a major recipient of federal funds, it's incredibly important that companies like this engage in good faith at the bargaining table for their employees.

Ms. Thompson, now that the workers have been successful, they will begin the process of negotiating their very first contract. Can you describe the challenges of bargaining for initial contracts, and how the PRO Act would help these workers get the compensation and the benefits that they rightfully earned?

Ms. Thompson. Sure. Thank you so much for that question. Yeah. So we often see situations where, you know, workers vote to form a union, and then the employers simply go through the motions when they're bargaining their first contract without truly seeking to reach an agreement, with the hopes that they will be able to decertify the union a year later through the frustrating the workers during that first year of contract negotiations.

And so, you know, workers have taken, you know, they've gone through the organizing campaign. They've designated their collective bargaining representative, and then you know, a year later they're still working on the same terms and conditions that caused them to organize in the first place.

So, under the PRO Act, if an employer and the union have not reached an

agreement within 90 days of bargaining, or mutually agreed upon longer period, then the parties proceed to mediation, and then to binding arbitration. So, it's a process with a demonstrated record of success in the collective bargaining context.

That means that workers will have the chance to vote on a legitimate first contract in a timely manner after organizing the union.

Mrs. McBath. Thank you, and congratulations again to the workers in Fort Valley on their success, and I yield back.

Chairman Good. Thank you, Representative McBath, and now we will recognize Chairman Foxx from North Carolina.

Mrs. Foxx. Thank you Mr. Chairman. And I thank our witnesses for being here. For this very important hearing. Mr. Miscimarra, we almost need to put you on the payroll because we bring you in so often, you're such a great witness. Thank you for being here.

NLRB General Counsel Abruzzo claims that the National Labor Relations Act prohibits an employer from discussing labor unions with employees during paid working time. Is the General Counsel's position supported by law, or court precedent?

Mr. Miscimarra. It's supported by neither in my opinion, Chairwoman Foxx. You know this is an area where number one, the Constitution is in play, and number two, Congress makes the rules. And the NLRB has indicated in my opening statement, embraced exactly the view that is now being articulated by the General Counsel in a case that was decided in 1946.

And Congress, the very next year, added Section 8(c) to the Act, which specifically protects the expression of views, argument or opinion, in the workplace unless it contains coercive language, or an unlawful threat. And so, that was the -- what Congress did after the NLRB embraced this view.

And not only did Congress add Section 8(c) to the Act, but the reason they added Section 8(c) to the Act, is that type of contend based restriction clearly is violative of the First Amendment, and the Supreme Court, in a number of cases, and many Courts of Appeals decisions have also held the same thing.

Mrs. Foxx. Thank you very much. Let me ask you another question. The NLRB recently issued a decision in the Lion Elastomers case that protects union supporters who make racially or sexually offense statements, or engage in offensive conduct at work. Even though the same conduct would result in discipline or discharge based on federal and state equal employment laws.

Is there anything in our federal labor laws that indicates they are more important than Title VII of the Civil Rights Act, and other laws that require employers to protect employees from offensive conduct at work?

Mr. Miscimarra. Thanks for that question, Chairman Foxx. The law does not make the National Labor Relations Act more important than other federal laws that deal with anti-discrimination and anti-harassment. And the Supreme Court in a case called Southern Steamship held that an agency like the NLRB has the responsibility of enforcing all federal laws.

And the very recent decision that you just described, Lion Elastomers, really takes racially and sexually offensive conduct, and gives it special protection that is I think contrary to the Act, and also contrary to the responsibilities that the Board has to enforce all laws.

Mrs. Foxx. One more question. It appears that NLRB is now protecting the right of union supporters to make racially and sexually offense statements at work. So, while you've alluded to this, I'd ask you if you want to say anything else, while the General Counsel contends employers have no right to discuss union issues at work, is this

dissimilar treatment justified?

Mr. Miscimarra. Well I don't think that it is, and the one thing that you mentioned is whenever there is racially or sexually offense language at work, that doesn't just -- it's not just something that the employer wants to control. Number one, the employer has an obligation to provide a harassment free and discrimination free workplace.

And that kind of workplace benefits all employees in the workplace, union members, non-union members, it doesn't matter. And that's one of the reasons why this is such an important area because workplaces and norms at work have changed since the 1950's.

And I think the NLRB is really looking backward in this area, rather than forward.

Mrs. Foxx. Thank you. Mr. Solem, recently employees at several Starbucks stores have filed petitions to remove Workers United. I understand the National Right To Work Legal Defense Foundation is providing free legal services to Starbucks employees in New York who filed a petition for a vote on removing Workers United as the employee representative.

Why are these employees seeking to remove their union after just one year of representation?

Mr. Solem. Thank you for that question, Chairwoman Foxx. And yes, I and a few of my colleagues represent Kevin Cesar, who is a petitioner at the Starbucks roastery in New York City, recently filed a petition. Now I want to add that his petition is actually supported by a majority of his employees.

So under the General Counsel's Joy Silk theory, if it applied to decertification petitions, Starbucks should be required under the Act to withdraw recognition. If you apply her theory to decertification petitions. But to answer your question as to why these employees want to get rid of -- want to decertify the union, is Mr. Cesar has stated he's

found the union divisive in the workplace.

He's found it too political, too interested in other issues, and also there's been statements that most of the employees who organized the union have left Starbucks. Now, there's been reports in recent days that Workers United was paying SALTS, or paying people directly to work for Starbucks in order to organize. I don't know if that was the case there, but according to employee statements, most of the ring leaders at that store who organized the union have left.

Mrs. Foxx. Thank you. I'm sorry, Mr. Chairman, for going over, but Mr. Leedy please don't feel lonely. We're really grateful to have you here. I yield back.

Chairman Good. Thank you Chairman Foxx, and now we recognize our Ranking Member from California, Mr. DeSaulnier.

Mr. DeSaulnier. Thank you, Mr. Chairman, and to the Chairwoman, a gold star for being on time. I hope you still have some of those. I really want to thank the Chairman, and all the members and the witnesses. And I want to go back to I think we've got a consensus here, it's always interesting to get it.

Maybe I'm being too optimistic in the current circumstances. That this is a balance. We want American workers to be successful. We want American employers to be successful. But getting the balance right is really important. And our perspectives are different.

Ms. Thompson, maybe just follow up a little bit on the American Steel decision in gerrymandering, and not making it balanced. How do you feel like the NLRB got that right? And why is that a good, efficient decision to get this balance?

Ms. Thompson. Right. Thank you for that question. So, you know, American Steel Construction prevents gerrymandering by employers of bargaining units. You know, it returns the focus of unit appropriateness, the analysis, to use Section 7 interests of the

workers who petitioned to form the union.

You know, the prior rule focused on workers who were not part of the petition for a unit, so it was the interest of all of the workers outside of the petition for a unit who didn't say they wanted to have the union, but now we have to consider each and every one of those folks, how they feel about the union that they've never spoken to.

They may not even be anti, we haven't gotten to them yet in this. And I think it's really important to, you know, to remember that, you know, workers who are not part of the petition for a unit. if they were overwhelming, you know, community of interest with the excluded workers, that's one thing.

But if it's just that the employer doesn't like the unit that's been petitioned for, oftentimes because it's a winnable unit, that that's not enough. That's not a basis for changing the Board's analysis on what is an appropriate unit.

Mr. DeSaulnier. And also, same sort of question, but on voluntary recognition. That seems to me to be logical in terms of efficiency, f there's a majority. But the Trump NLRB did not adhere to that. Any comments?

Ms. Thompson. Yeah. I mean I think voluntary recognition, I mean one thing that I think encouraging voluntary recognition does or accepting the fact that some employees want to do that, it's just the idea that we're supposed to be coming to an agreement. We're supposed to be having an agreement on the workers who have decided that they want to have a union.

The employer sees that the workers have a majority, and accepts the fact that that's what the workforce chooses to do, and it prevents a lot of frustration and consternation. With the Board's funding, you're also putting the Board in a position to have to process a lot of information that's really just meant to delay the process, and to draw it out so it can defeat the will of the workforce.

And it's just not necessary. It's an unnecessary distraction when it should be time to move on to the task of bargaining, a fair collective bargaining agreement instead, you know, stuck in a morass of fighting it out when workers have already expressed their desire to form their union.

Mr. DeSaulnier. Captive audiences. I appreciate the reference to Jack Kennedy. I was not here when he was here, in spite of my age. The world was different then in a lot of ways. Certainly we had a much more robust middle class. Our tax system was different.

I appreciate you're referencing Kennedy, and I'm referencing, quoted Eisenhower, so there is something there. But on captive audiences, and again, since you mentioned Apple, and being from the Bay area, and the struggles we're having right now with layoffs in the tech industry, a lot of dynamics there.

And there have been a lot of dynamics, having been involved in this, with trying to organize tech workers, and now the ramifications of that industry having a rise for a lot of reasons, having to lay people off. So, in that kind of circumstance, First Amendment rights, we want an honest, fair debate, but we want it to be honest and fair.

Like I think this hearing is an example of that. We have differences. So how do we make sure that there's a balance here? Why can't Apple,-- and I'm proud of Apple, as a Bay area resident, for a lot of what they've done, but they can have a discussion and not intimidate their employees. Is that not what we're trying to do?

Ms. Thompson. Right. Right. You know, thank you. So in Apple, they have something they call the daily download right, and different retailers call it different things, you know, excuse me. You know, it’s the morning meeting, the whatever you want to call it, and it's a required meeting at the start of the shift where management gives expectations for the day to their workers.

So there's a list of tasks that have to be completed, which ostensibly you can be, you know, terminated or disciplined whatever, if you're not meeting your goals, and so at the same time as you're giving instructions to people about what cashier, register they need to be in, and whether they need to clean the stock room.

You're also then saying, you know, it's bad for you to form a union, and it's going to harm the company. You should vote no. You could imagine what that sounds like. So number one, two and three were things I'm required to do today, now number four, is that required too? It feels like it is.

And so, that's one of the problems with these captives is like, you know, trying to fold it into other requirements that folks are having during the day, and making it seem like, you know, making it seem like it's just an expression of, you know, the opinion of the employer, but you're actually because of the power imbalance, it's really hard to see it other than coercion.

Mr. DeSaulnier. Thank you. Thank you, Mr. Chairman. I yield back.

Chairman Good. Thank you, Ranking Member DeSaulnier. And I have a question for all of our witnesses. I'm going to ask you all to answer a couple of questions by a show of hands, make it easy. And Mr. Leedy, then I'm going to come to you with a couple of questions specific to your experience.

How many of our witnesses would say that left to their own devices most employers would exploit or abuse their employees? Nobody would say that? Let the record show no one has said or raised their hand.

How many of our witnesses would say that most employers do not have the best interests of their workers in mind? Let the record show that nobody is raising their hand to that effect. How many would say that most employers do not want happy, satisfied, loyal employees? Anybody?

How many would say that the government, or by extension unions, must protect workers from their employers? Anybody would say that? Government or unions, actually need to protect workers from their employers? Or, how many would say that employees are not equipped to competently choose for themselves whether or not to organize?

Did anybody say that? Employees can't make that decision for themselves? Let the record show none of our witnesses raised their hand in the affirmative that they believed any of those things. So, now I'm going to turn my questions, at least to start here, to Mr. Leedy. You're from the free State of Florida.

Mr. Leedy. Yes I am.

Chairman Good. And you have a merit shop as you called it. Could you please just tell us a little bit about how you treated your employees? I think you touched on this during your testimony. And your workplace culture to discourage or disincentivize or diminish the desire for your employees to unionize?

Mr. Leedy. First of all, our employees are family. And I think that's very important. As I said before I need those people to answer the phone at two o'clock in the morning. And like any other company, and all the other electrical contractors in our association, we pay great wages with great benefits, including 401's and vacations, holidays, and a lot of extra things, paid time off, and we customize.

We're able to customize our deals with our team. For instance, I had a person named Ed, and he was an umpire in the Big Ten football, and so every Saturday he's going to Ann Arbor, or Columbus to referee a football game, and he needed Fridays off. And I said hey, I'll let you work four ten's, and he said no, four eights is good enough.

You know, I get a pretty good check on the weekend. So, my point is we customize our agreements with our people, and you know, we have to keep them happy or they're going to go somewhere else. It's as simple as that.

Chairman Good. What was your -- what's been your experience in terms of longevity, loyalty, your average employee, how long they stay with the company?

Mr. Leedy. You know, I've got people way over ten years. I've got several guys coming up upon ten years, so yeah. Maintaining your workforce is critically important, especially in today's market.

Chairman Good. You might be familiar, I've got a bill, my Small Businesses Before Bureaucrats Act, which would update the jurisdictional limits of NLRB, increasing by tenfold the revenue threshold for which small businesses would have to suffer under the control of the NLRB, and would rescue about half of those businesses currently suffering under that control.

Can you just speak to, based on your experience, any positive impact that you could see that less NLRB oversight would have on small businesses?

Mr. Leedy. Well again, I don't know much about the NLRB. I'll be honest. You know, I've heard stories. We've had issues with some of our members. One of our members came up here because the business agent came into his office to fill out an application, and he knew him, and he told him to get out and wow, that was a mistake.

So, I don't know a lot about the NLRB.

Chairman Good. Well setting aside the NLRB, how about just federal regulations generally. Federal government says hey, we're here to help you.

Mr. Leedy. No you're not. No you're not.

Chairman Good. Could you speak to how more or less federal regulation helps a business's ability to operate effectively and profitably?

Mr. Leedy. I agree with President Reagan. You know, I'm here from the federal government, and I'm here to help, you know. Holy cow. All of these new measures and things that come at us continuously, it just, you know, causes excess over burden on time

and money in every business. Every business.

Chairman Good. So would you agree that the less the government, the federal government interferes or intrudes, or imposes themselves into your business, the more harm that it does, and the more difficult it is for you?

Mr. Leedy. Absolutely. I'm a free market guy.

Chairman Good. Well thank you for your testimony today, and thank you to all of our witnesses. With that I'm going to have a few closing remarks, but before I do that, I'm going to refer back to the Ranking Member, invite him to share some closing remarks.

Mr. DeSaulnier. Thank you, Mr. Chairman, and I do appreciate this hearing. I appreciate the tone, the tenor, even though we have different perspectives, and we will argue those passionately. Since you quoted a Californian, as a Californian, and the Chairman is a Virginian, Ronald Reagan in your case, I'll quote James Madison. Madison said if people were angels there would be no need for government.

We would like everybody to play by the rules without us having to interject us, but Madison was right. Unfortunately, it's not about all employers, it's about employers who take advantage of it. Mr. Leedy, as somebody when I was in the legislature in California, we did an extensive look at the underground economy.

And people like yourself, were the antidote to that. You took care of your employees, you took care of your customers, you are licensed. Unfortunately, there were people who aren't like you where they were all nonunion contractors, went outside those boundaries.

So, they were hurting those people who were opposed to Madison's admonition the people who were the better angels of our nature, Lincoln, were adhering to what you alluded to. So how do we bring that bar up is really the question. How do we make sure employers, good employers, who have good employee relations for purposes of this

Committee make sure that they have that.

Because you're competing. You could compete against people who don't have a license, don't pay taxes, and can take that 20 to 30 percent advantage, and get the contracts that you won't be able to. So, in that context, hopefully we could have a constructive conversation given the governance of the Congress and the administration right now about how we protect workers.

I heard a lot of conversation here from people from the left and the right about protecting American workers. I know we're in a quote meeting I guess, I think de Tocqueville said it well, that he said "the basic genius of America is the belief that you can expect extraordinary things from ordinary people."

I think we can all agree on that. If the ground rules are right. So, sorry to go on Mr. Chairman, but I think there is a real opportunity for us to protect workers. To value the union movement, and my view clearly wouldn't, nonunion workers wouldn't be protected now if what Galbraith talked about, countervailing institutions, and countervailing powers.

This is what we're talking about is where is that balance between both, that creates an America that's great for everybody. That people really can do well, so Mr. Chairman, I want to end with that comment that as strongly as we have different perspectives, I think we have the same goal, which is empowering American workers.

Chairman Good. I thank the Ranking Member, and again, I want to thank our witnesses for being here today, and for bearing with us through our line of questioning, and sharing from your experience and your expertise in this area. And I would agree with the Ranking Member, to a greater extent if this was 100 years ago, but now today I would suggest that unions have greatly, largely the most part outlived their usefulness to right the wrongs that existed, the injustices that existed in the early history of our country.

We have so many laws in place now to protect workers, and of course we have just competitive practices, and best practices I should say, that just make the fact that unions have long outlived their usefulness in my opinion and my experience.

I grew up in a lower income family, having to work all of my life going back to my pre-teen years. Eventually trying to work my way through college, thankfully successfully, with a partial athletic scholarship. Working to pay off my students loans, imagine that by the way.

I worked for many small businesses along the way, little sole proprietorships, carpenters, landscapers, painters, those sorts of things, and then more established small businesses, including lumber yards, construction companies. I didn't ever do a restaurant, Mr. DeSaulnier, and I'm sure that your company culture was excellent, as Mr. Leedy's was.

I got hired once to work at a restaurant, but I had a landscaping injury that on the day that I was supposed to report, because I was working that morning on my way to the restaurant, so I never did actually make it there. But the highest paying job I ever had in my working years before finishing college, those summers, and those working my way through school, was a union job.

It was at an auto factory down in the Hampton Roads area of Virginia, and Virginia Beach north of Chesapeake area. It was the highest paying job that I ever had, prior to graduating college until the plant closed. And it was also the most dysfunctional workplace that I ever experienced was that union shop.

And just because of the work ethic that I had as a young college kid, and what I brought to the workplace, they quickly put me in charge of several of the more permanent union employees, who I worked with. But the division -- there's a lot of problems that come from a union culture, a union situation.

Division in the workplace, a resentment in the workplace between employees and management, suspicion in the workplace. In other words, if the management and ownership doesn't have the best interest of employees. Just an unhealthy workplace, is what I've experienced, and what I've learned from others who have worked in such situations.

Reduced productivity. Reduced efficiency. Protection of poor workers, underperforming workers. And I can remember my experience of being in that auto shop, many employees saying I get no more if I work harder, I work less, if I do more, if I do less. There's no incentive. Slow down college boy, it doesn't make any difference how hard you work, or how much you do, we're all going to get the same thing.

We all take our breaks at the same time. We don't have to work, you know, any more or any less from an incentive standpoint. It stifles ambition, it stifles ascension through the ranks. In a healthy workplace, I'm going to guess Mr. Leedy, this was your experience. That your employees want -- they might want to be foremen. They might want to be shift supervisor. They might want to be superintendent.

And they looked at that positively, and they aspired to that, some of them, and then some did not. That's not what they -- they didn't want the extra responsibility or time, or whatever was required of that. But there wasn't a negative us against them mentality that once you got into management, you've crossed over.

You've become the enemy. You've become the opposition that so often is the case. That's, you know, in a union shop. Unions increase costs unnecessarily on businesses. They reduce competitiveness. They certainly reduce American competitiveness, and too often, like my experience working for an auto factory, they result in the business closing, or at least diminished expansion incentive.

The government, and specifically the NLRB should not be tipping the scales in

favor of unions against employers. Ultimately, against employees, and customers for that matter. And against America, I would say, on the global stage. Democrats' union fetish is consistent with their obsession more broadly, with stripping independence from businesses, seizing more control from businesses, and frankly, eliminating choice for Americans, including in the workplace.

Of course it could be, as the gentleman from Indiana talked about a few months ago, as well as the gentleman from Missouri. It could be because of the hundreds of millions of campaign dollars that flow into Democrat coffers from unions, or the millions that are contributed to left wing causes. Quite frankly, without the permission of those workers whose wages are confiscated to go towards unions dues, and they have no say how those dues are applied, or how those are utilized.

That's why for my friends on the other side, their ultimate dream is the PRO Act. The PRO Act, thankfully, which did not get through the last Congress. But the PRO Act would give employers essentially two choices. Embrace a union, help the organization within your workplace, or just close your doors, which would be the only remaining protest, or form of resistance if that was to become law, the PRO Act.

The true -- we talked about polls this morning. Some of our members mentioned polls. The true poll, or the most accurate poll when it comes to unions in this country today, is only 10 percent of American workers choose to work in a union shop. And only 6 percent of small business employees who were under the jurisdiction of the NLRB have actually voted to be represented by a union.

So thankfully, those are at an all-time historic lows, that's why it is so important that we fight against the Biden administration's NLRB's crusading against employer, or excuse me, employee choice at the behest of big labor, that we resist the Biden administration’s efforts to steadily chip away at longstanding workplace rights, that we

protect workers' right to choose whether to join a union, and we ensure that employers retain the right to speak freely the truth about unions.

And again, I thank all of our witnesses. I thank all of our members who participated today, and before closing without objection, I'd like to enter for the record a letter of support from Associated Builders and Contractors.

[The letter of Mr. Good follows:]

********COMMITTEE INSERT********

Chairman Good. And again, thank our witnesses for the time they took to testify today before this subcommittee. Without objection, there being no further business, the Subcommittee stands adjourned.

[Whereupon at 12:30 p.m., the Subcommittee was adjourned.]