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Katerina Kerska ([Katerina.kerska@mail.house.gov](mailto:Katerina.kerska@mail.house.gov))  
Committee on Education and Workforce  
U.S. House of Representatives  
2176 Rayburn House Office Building  
Washington, DC 20515-6100  
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Re: Answers on the Record from December 17, 2025 HELP Subcommittee hearing titled:  
“Ensuring Union Leaders Represent Members, Not Agendas”

Ms. Kerska:

Thank you for inviting me to speak with the Subcommittee last month and for sending the Chairman’s follow-up questions. My responses to the Chairman’s questions are below. Please let me know if we can help in any other way.

- 1. Some may criticize the *Endorsement Transparency Act* by claiming that compelling unions to disclose survey results violates the “free speech rights” of the union. Mr. MacDonald, labor unions have First Amendment rights like any other group. How do you respond to the concern that my legislation would affect a union’s speech rights?**

These criticisms are exaggerated and misplaced. It is true, as you say, that labor unions have speech rights like any other group. The First Amendment protects not only the right to speak, but the right not to speak. But courts have explained that the right not to speak is limited in some commercial settings: a person can be required to disclose truthful, noncontroversial information about his or her own professional services. For example, in *Zauderer v. Office of Disciplinary Counsel*,<sup>1</sup> the U.S. Supreme Court held that an attorney could be required to disclose information about the costs that a client would be responsible for paying as part of the engagement. The Court recognized that to disclose the costs, the attorney would technically have to speak. But even so, that speech was necessary to make sure that the client was fully informed about the attorney’s services. The same principle applies here. The *Endorsement Transparency Act* would merely require a union to disclose factual information—the results of a poll—related to its representation of union members. And that

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<sup>1</sup> 471 U.S. 626 (1985).

information is reasonably necessary to make sure that the members are informed about the union's activities on their behalf. The Act is fully consistent with *Zauderer* and similar decisions.

The Act also tracks existing disclosure laws for employers. Today, employers must disclose a variety of information to their employees. For example, they must report information about wage rates, hours, taxes, and other deductions every time they issue a pay statement. They must also post posters and other notices in the workplace about employees' legal rights. These disclosures are largely uncontroversial because, again, they involve only factual, objective information. The polling disclosure is no different: it merely requires the union to disclose an objective fact about the views expressed by its members in response to the poll.

In short, the Act is consistent with longstanding caselaw. It also follows in a well-established tradition of laws requiring factual disclosures by employers. Any concerns about its effect on speech rights would be exaggerated.

- 2. Other critics of the *Endorsement Transparency Act* have suggested that political decisions such as endorsing a U.S. presidential candidate should be made exclusively by union leadership, the union bosses, because they are supposedly more informed about the issues. How would you respond to that criticism?**

This view contradicts the basic theory of American labor law. It essentially takes a "trustee" view of union leadership: it argues that the role of union leaders is to do what's best for union members—not necessarily what the members want. But whatever one thinks of the merits of that argument, it is not the one embodied in the LMRDA. Title I of the LMRDA, which establishes the Union Member's Bill of Rights, rests on the idea that unions work best when they listen to their members. Title I gives members the right to attend meetings, vote, nominate candidates, and run for office themselves. All of those rights are meant to make unions more responsive to their members, not less. The view that union leaders know best contradicts the law as it has existed for more than a half century. Whatever else one thinks about it, it is not the way labor relations are governed in the United States.

Sincerely,



Alex T. MacDonald  
Co-Chair, Workplace Policy Institute

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