

**TESTIMONY BEFORE THE
HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE,
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS
UNITED STATES HOUSE OF REPRESENTATIVES**

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"Examining Proposals to Strengthen the National Labor Relations Act"

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Chairman Roe, Ranking Member Andrews and Members of the Committee, thank you for your invitation to appear here today. My name is Devki Virk and I am a Member of the law firm of Bredhoff & Kaiser, P.L.L.C., in Washington, D.C. Since joining Bredhoff & Kaiser in 1996, I have represented labor organizations and workers in the public and private sector in a wide array of industries, including hospitality, manufacturing, public safety (fire and police), railway, and construction. My practice involves both federal and state court civil and administrative litigation, ranging from complex multi-party cases to individual employment matters, as well as arbitration. And much of my work is devoted to providing day-to-day advice regarding the rights of workers and their unions, and participating in collective bargaining and contract enforcement. After graduating from the University of Chicago in 1989, I worked for several years for a Chicago-based non-profit organization, and then obtained a law degree from the University of Illinois College of Law in Urbana-Champaign, graduating with honors in 1995 and serving as a law review editor and a teaching assistant for first-year contracts and the Uniform Commercial Code (UCC). Following law school, I clerked for the Honorable Martin L.C. Feldman, U.S. District Judge for the Eastern District of Louisiana in New Orleans from 1995-1996 before joining Bredhoff and Kaiser as an associate.

WORKERS AND EMPLOYERS FACE CHALLENGING ECONOMIC TIMES

U.S. workers today in virtually every industry face a challenging economic climate: rising costs, stagnant or decreasing wages, and employment levels that have yet to fully recover from the 2008 collapse. Employers, too, live and operate in this same difficult environment. And, although the stereotypical construct of labor-management relations usually involves unions unreasonably insisting on “more” without regard to the employer’s future financial health, the Committee should not be surprised to hear that, at least in my experience, that stereotype – like most stereotypes – has little to do with the reality of labor-management relations today. Indeed, it is my experience that successful, mature labor management relationships are those in which the representatives of both the workers and management recognize that they are both invested in the success of the enterprise, and that their best hope to solve a difficult problem, be it economic or operational, is to make every effort do so together. These are relationships in which both employers and employees recognize the fundamental truth, which is that they are in it together: that employees depend on the employer for their jobs – paychecks to keep body and soul

together or raise a family, and benefits with which a person can live and retire with dignity -- and that the employer depends on the employees to get the job done.

That is not to say that solving problems is easy, even in an “adult” relationship. Far from it: in many instances, these are discussions that progress inch by painful inch, with stops and starts, and steps backwards and sideways, both sides pushing not only their counterparts, but themselves, and holding their breath. Furthermore, the more difficult the problem, usually the more difficult the range of solutions: creativity, the ability to maintain an open mind, strong leadership, and, above all, perseverance, must be present on both sides to reach a workable agreement. The precise traits necessary to succeed in this process – innovation, open-mindedness, decisiveness, leadership, and sheer determination – closely mirror those that, I would argue, have historically been among the most valued in our national character. This is the process that I know as collective bargaining.

Employers and employees who face challenges in collective bargaining face them together and, in a successful relationship – one that involves give and take, and one in which both workers’ and employers’ views are considered and respected – build a record of quietly remarkable accomplishments. In times of stability and growth, employers invest in the futures of workers and their families, agreeing to offer dependent health care and to set aside a portion of compensation to fund workers’ retirement. In tough times, workers may forego negotiated economic gains, or agree to concessions to save jobs, to permit the company to refinance debt, to invest in infrastructure. This shared prosperity – and shared sacrifice -- occurs as demanded by the ebbs and flows of the economy: the most visible recent example of the latter, of course, is in the American auto industry. But compromises, albeit on a smaller scale, are made by workers and employers every day to ensure the success of the operation, as well as that of its people.

In the private sector, it is the framework supplied by the National Labor Relations Act that -- by making employees’ collective voice a right, and not a privilege, and by requiring employers to sit down in good faith and on reasonably equal footing with the representatives chosen by their workers -- permits this process to succeed. In turn, the bargaining process expressly ties together the fortunes of workers and employers, allowing workers the right to negotiate a fair share of the wealth they help to create, and requiring both employers and workers to make tough compromises to sustain the long-term growth of the organization.

THE ROLE OF WORKERS’ RIGHTS IN STRENGTHENING THE ECONOMY

The central premise of the NLRA is that workplaces better serve all stakeholders when employees, as well as employers, meaningfully participate in shaping their shared futures. That means, as the Act recognizes, that not only those who create the jobs, but those who do them, deserve to be heard, and deserve the right to insist that they be heard. That premise has largely been borne out over the last 75 years: studies show that when workers can come together in the workplace and bargain with their employer, the middle class is stronger, poverty is lower, racial and gender wage disparities are reduced, and health and educational outcomes are better.¹ Workers who have a collective voice on the job earn more, on average, than those without such a voice, have more access to health care and are more likely to be able to retire. Historically, when more workers were in collective bargaining relationships, our country’s middle class was

stronger, and wealth distribution less concentrated than it today. As documented in a recent Congressional Research Service study, the top 10% of the population held about two-thirds of the nation's wealth in 1989.² That percentage increased to three-quarters by 2010. Meanwhile, the bottom half of the population holds only 1% of the wealth. The polarization is striking: can we truly refer to a "middle" class when, as a matter of fact, 90% of our citizens hold less than a quarter of all the wealth?

By allowing workers an effective voice in their economic future, collective bargaining serves as an important counterweight to ever-increasing wealth concentration, and allows workers, families, and their communities to sustain economic stability even through difficult times, and to grow and advance in times of prosperity. In my work, I have had the opportunity to meet and advocate on behalf of people whose lives, and those of their families, were changed by the protections that they were able to collectively bargain:

- Scores of people who would have lost their livelihoods if not for the due process required under their contracts. Among them -- a cashier wrongfully fired for a single error after more than twenty years of faithful service -- an error that we were able to prove she did not even make. Firefighters -- who had in fact saved lives, and who time and again had shown not only their willingness, but their eagerness, to sacrifice on behalf of others -- facing termination based on incorrect facts and negative publicity. Waiters and waitresses fired based on the unfounded complaint of a single dissatisfied customer or an anonymous internet review.
- Dishwashers and housekeepers who were able to see their lifetime of backbreaking, dirty work pay off as they raised themselves out of poverty, and even were able to send their children to college;
- Men and women who were able to rise through the ranks because promotions were made based on neutral, objective criteria -- rather than on who the hiring manager personally favored;
- Countless workers who, but for the leave protections in their contracts, would have been subject to termination for taking time off to care for sick children, aging parents, or to address their own health problems;
- People who, after a lifetime of working with dangerous chemicals, were able to preserve their collectively bargained right to retire with affordable health care.

Unfortunately, I have also encountered people whose attempts to seek similar protections were repeatedly frustrated, blocked, and, ultimately, punished; these are people whose lives changed for the worse when they were unable to obtain timely or effective recourse from the Board.

The trials of one group of workers, employed by a hotel here in Washington, D.C., illustrates just how substantial and real the hurdles to self-organization can really be. This group, mostly immigrant women and men who clean rooms, prepare and serve food, and assist guests, approached the union in May 2003. Housekeepers (the women who clean up after guests) were

alarmed by the mounting workload, which had risen to thousands of square feet per day. Most of these workers earned between \$9.50 and \$10.50 an hour for their labor, and could not afford the premium payments charged for health insurance. They also could not afford to stop working, and at least one woman had miscarried on the job. Restaurant servers, on the other hand, were concerned by their supervisors' apparent tendency to give busier sections and more hours to those he favored. These workers were so desperate for better conditions that even after they were illegally threatened with closure of the hotel, even after they were granted benefits to dissuade them from unionizing, and even after one of their leaders, a restaurant server, was illegally fired, they still voted by a margin of 2-1 to unionize.

The employer engaged in extensive pre and post-election litigation, contesting the composition of the bargaining unit, and filing and litigating – and losing – objections and unfair labor practices following the election. At the end of June 2004, almost one year after the election petition was initially filed, the Board finally certified the results. Within a few days, the employer announced that it was closing the restaurant for an indefinite period and laying off all of the workers (including the brother of the worker who had been illegally fired). Following the restaurant closure, the employer systematically ignored the union's requests for basic information about the unit (names of employees, current wage rates and classifications, current employee handbook and rules) and its requests to set a meeting date. Finally, after the union threatened to file charges with the NLRB, the employer agreed to a single bargaining date. That date was cancelled by the employer, as were subsequent dates, and the parties did not, in fact, sit down for the first time until March 30, 2005 -- nine months following certification, eighteen months following the election, and almost two years after the workers first began their organizing effort.

Once dragged to the table, the employer employed a series of tactics designed to frustrate the process, including refusing to put proposals in writing, refusing to schedule more than one session at a time, and delaying or refusing to provide necessary information. But at the same time as it was impeding workers from obtaining their goals at the table, the employer was also using a mixture of threats and bribes in the hotel to undermine collective bargaining, including intimidating workers, and promising substantial rewards – including a wage increase of \$2.50, a hike of between 15 and 25% for most – if workers signed a petition disavowing their support for the union. Shortly after the one-year anniversary of the NLRB certification, the employer advised the union that it was withdrawing recognition. It then held a meeting in the hotel and granted the workers the promised wage increase.

Unfair labor practice charges were filed and, following investigation, the Region not only issued complaint, but advised that it would take the highly unusual step of seeking injunctive relief in federal district court, to get the employer promptly back to the table. Following a trial, the Board prevailed on its motion, and an injunction indeed issued on June 5, 2006: just about three years after the election petition was filed. It should surprise no one that, although the employer indeed finally returned to the bargaining table, the workers no longer believed that they would ever realize the gains they had hoped – at least not without risking further firings, intimidation, and delay. As a consequence, no contract was reached.

I share this experience with the Committee not to provide an example in which the system failed. To the contrary: the “system,” such as it is, worked as well as it could in this case. The Board dealt with the election litigation as promptly as its caseload permitted. Charges were filed and investigated, and complaint issued well within usual administrative processing timelines. And, indeed, this was one of the rare cases in which the Board authorized, and obtained, injunctive relief. And, although the employer did file pre and post-election litigation, it did not, in fact, take advantage of every lawful appeal or avenue of delay available to it. The process still took three years. I, for one, cannot blame workers for losing faith in a system under which, in the best case scenario, they still must wait three years simply for the employer to be ordered to recognize their chosen representative.

My experiences with workplace problems and solutions, both at and away from the bargaining table, have convinced me that real improvements to people’s lives, and real economic and social progress, can be made when workers and their employers come together under the framework of the NLRA. That is why, as I explain in more detail below, I am alarmed by several of the measures being proposed which, it appears to me, attempt to fundamentally alter this framework and, in doing so, will effectively deprive workers of meaningful opportunities to participate in shaping not only their own futures, but the economic future of the country. I am also aware that the limitations of the current NLRA processes for self-organization are so extreme as to render it, even when it works as well as it can, practically ineffective. That is also why I believe that the modest efforts made by this NLRB to advise workers of their rights under the law and to streamline the process by which workers may choose a representative are worthwhile, if small, steps that make it slightly more likely that more workers who so choose will be able to have meaningful involvement in the vital decisions that affect not only their workplaces and their families, but their communities and, ultimately, our economy.

RECENT NLRB INITIATIVES TO INCREASE THE EFFECTIVE ENFORCEMENT OF WORKERS’ RIGHTS

As this Committee is aware, the NLRB is the sole forum in which workers and their representatives may enforce the rights conferred by the NLRA. It should go without saying that a functional, fully-funded agency is essential to effective enforcement of these important federal rights. In addition to working diligently to clear its docket and more efficiently administer its business, the NLRB recently initiated two modest steps to increase effective enforcement of the Act’s protections.

Election Rulemaking

Last December the NLRB issued a final rule to improve the process through which workers decide whether to form a union.

The Board’s election procedures have been roundly criticized as antiquated, delay- ridden and easily susceptible to manipulation.³ Changes were proposed by the Board in a Notice of Proposed Rule Making which issued in 2011. The Board held a two-day public comment hearing last July, and received testimony from numerous witnesses, as well as tens of thousands of written comments. In late November, the Board decided to issue a final rule on only certain

portions of the proposed rules and did so on December 22, 2011. A federal district court judge recently ruled that the statute's quorum requirement was not satisfied on the day the rule was issued. Chamber of Commerce v. NLRB, Civil No. 11-2262 (D.D.C.) (May 14, 2012) (Boasberg, J.). I understand that the Board subsequently submitted a motion for rehearing, detailing the workings of its electronic system of voting and how Board Members are present in and participate in that process. That motion has not been decided, but while it remains pending, the rules have not been applied.

That is unfortunate. The new rules are aimed at ensuring that when workers are seeking an election to decide whether or not to choose a representative, they will have an election, not an endless series of litigation. These changes are aimed at creating a uniform, standardized process for resolving pre- and post-election disputes so that workers who want a vote get one as promptly as possible. The current system has, over time, incorporated processes that delay finality of elections, sometimes for years, and create obstacles for workers who want to use the process. The new rules minimize opportunities for delay, and discourage frivolous and duplicative litigation. Further, the rules modernize the process to reflect changes in the ways in which people communicate, and also harmonize practices across the Board's Regions.

Specifically, the new election rules address the following:

- Ensure that administrative hearings are devoted to those issues relevant to determining an appropriate bargaining unit and other questions relating to whether an election should be conducted. Currently, parties can and do raise issues at the hearing which are not relevant to these issues and which result in unnecessary, expensive and time-consuming litigation which unduly burdens both this government agency as well as the parties.
- Consistent with many other administrative and judicial systems, provides the Board with discretion over its review of cases, including the extent to which briefing is allowed; the current system increases parties' litigation costs by mandating Board review of all post-election cases and requiring legal briefing regardless of the routine nature of the issues involved.
- Reduces litigation by consolidating appeals. Current rules require parties to file two separate appeals to seek Board review of pre-election issues and issues concerning the conduct of the election. These two appeal processes are consolidated, which reduces costs to all and avoids appeals which become moot as a result of the election results.

Notice Posting Rule

The Board also took an important step towards making its processes accessible and enhancing enforcement when it issued a requirement that a notice of employee rights be posted in workplaces covered by the statute. Enforcement of the Act's protections is dependent on workers knowing their rights. Yet, to the extent that workers know of the NLRA, they believe it applies only in already-unionized workplaces.⁴ That, of course, is not the case. The NLRA applies in every workplace, unionized or not, and allows workers to engage in such basic

activities as sharing information about their pay, banding together to petition for a change in policy, or asking for improved safety, and to do so free of reprisal.

In order to make sure that both workers and employers know the rights and obligations set forth in the Act, in late 2010, the Board issued a Notice of Proposed Rule-Making and, on August 30, 2011, a final rule, requiring NLRA-covered employers to post a Notice of Employee Rights in the workplace. This Notice is virtually identical to the notice already required by the Department of Labor for federal contractors, except that the NLRB Notice adds, in the introductory sentence describing workers' rights, the right to "refrain from engaging in any of the above activity." The Notice gives examples of violations of the law by both employers and unions and lists NLRB contact information. It does not, in any manner, instruct workers how to form a union.

Workers cannot be expected to exercise rights that they do not know about; by the same token, employers cannot be expected to respect such rights. It is difficult for me to construe legislation that would forbid the Board from implementing any rule requiring the posting of a notice of rights as anything other than an attempt to keep workers in the dark.

RECENT HOUSE INITIATIVES THAT DIMINISH WORKERS' ABILITY TO HAVE A MEANINGFUL VOICE IN THE WORKPLACE

The House has before it a number of initiatives to rework the NLRA that would further undermine workers' economic rights and, by doing so, make it less and less likely that the voices of workers will meaningfully count as we struggle to rebuild our economy and achieve a sustainable recovery. The following paragraphs address a few of those initiatives:

Undermining the Right to Bargain Collectively

H.R. 4385, the Rewarding Achievement and Incentivizing Successful Employees ("RAISE") Act.

The stated purpose of this bill is to reverse the NLRB's supposed "ban on individual raises" by permitting unionized employers to negotiate and provide wage improvements to individual employees above and beyond those offered to or negotiated through the union. In my experience, however, employers who believe strongly in fairly rewarding productivity or quality, or who wish to offer workers opportunities to earn beyond their base salary, easily find ways to do so within the NLRA's collective bargaining framework. Agreements in many industries contain incentive pay or bonuses, profit-sharing, production bonuses, additional compensation for work above and beyond the employee's regular duties, or rewards for innovation or exceptional quality. And merit increase systems, where increases are based on the employer's annual reviews or ratings, are not at all uncommon, particularly in professional or technical occupations. There is no "ban" on such provisions, so long as they are mutually agreed. But that is the key: mutual agreement by structurally independent, freely chosen representatives. That principle is, as noted above, the premise on which the NLRA is built. Both the employer and the workers must agree that such a provision is in their interest.

This bill would erase the workers' voice from that determination, and leave such wage increases completely in the hands of employers. Employers alone would decide who was deserving of extra money and who was not, and could do so free of any statutory standard (indeed, the statute does not even require that the raises it permits in fact be tied to individual achievement or success at all), without any objective, measurable metrics – and without any review or recourse by employees who felt that they were unfairly passed over.

One of the most commonly voiced reasons that workers want a binding contract is to ensure that the rules by which economic benefits and opportunities are apportioned are clear, objective, and uniformly applied; that is, to take these critical decisions out of the employer's sole discretion. This bill permits employers to unilaterally set the rules and apply them as they see fit -- to institutionalize favoritism and employer discretion -- and to do so regardless of the desires of the workers as a group. If the workers thought the exercise of such discretion was in their interest, they would agree to it, and any need for the proposed legislation would disappear. Indeed, it is only in those circumstances where workers would *not* agree that the legislation would have any effect, and would permit the employer to step in and override their wishes.

This legislation strikes at the core of the NLRA's framework of self-determination by workers, and active engagement on equal footing between workers and their employers. If enacted, it would essentially render collective bargaining on wages meaningless: why bargain collectively if, in the end, the employer maintains complete discretion over individual rewards?

Undermining the Right to Self-Organize

Despite its title, **H.R. 3094, Workplace Democracy and Fairness Act**, this bill would place further hurdles in the path of workers' right to self-organize. It would change the NLRB's election process to mandate that workers wait months and years for a vote by encouraging wasteful litigation and impose arbitrary waiting periods, even if the parties involved want to proceed sooner. It would incentivize marathon litigation by requiring that any and every issues be fully litigated and resolved before workers can have an opportunity to vote – regardless of whether the issues are even relevant to the election. Other provisions in the bill overthrow decades of Board rules that have been formulated in response to the needs of specific industries and, instead, applies a limited, inflexible, “one size fits all” standard to determine which groups of workers can be represented together. It will flood the Board with frivolous appeals, which will require additional funds and needlessly waste taxpayer monies.

Moreover, the bill would further restrict the already extremely limited ability of unions to contact workers. In most circumstances under current law, labor organizations are not allowed in the workplace – indeed, they are often not even allowed outside the workplace if that area is private land -- and are relegated to contacting workers during their non-work time and in non-work locations. This bill would permit a labor organization only a single method by which to reach each worker (it envisions each worker selecting the method and disclosing that selection to the employer, to pass on to the NLRB), in contrast to the addresses that have routinely been required by law since the 1960s. Of course, all the while, employers have unlimited access to these same workers during their work-days, can compel their attendance at meetings to communicate their views, can compel them to furnish personal contact information, and can use

that information to further communicate their views. These revisions undermine, rather than promote, fairness.

H.R. 2810, the Employee Rights Act, among other aspects, sets minimum (but no maximum) timelines for holding administrative hearings and elections, and prohibits the Regional Offices as well as the NLRB from exercising any discretion to move their dockets and streamline procedures. Further, notwithstanding the wealth of scholarly research and literature on the abuses of workers' rights by companies during organizing efforts set forth in the endnotes, this proposal actually imposes additional penalties only on union misconduct. Even a cursory review of NLRB data reveals that the vast majority of unfair labor practice charges involve employer, not union, misconduct;⁵ those claims also are found sufficient to issue complaint at a far higher rate.⁶ Of 1,166 formal actions taken by the NLRB in Fiscal Year 2010 (the most recent year for which I was able to find data), 1,028 of those actions, almost 90%, were taken against employers. Further, the bill would change the rule that has governed workplace elections for more than 75 years – a rule that honors the choice of a majority of voting workers – to require a majority vote of the entire affected workforce. We do not apply such a rule when we elect our Congressional representatives; why, then, is it necessary in all of our workplaces, other than to make workers' selection of a representative even more difficult a task?

The Secret Ballot Protection Act, H.R. 972, is another measure that would strip workers of current rights. Since 1935, workers have had the right to decide whether to form a union through either an NLRB-conducted election process or to demonstrate their support for a union through signing cards or a petition authorizing a union to represent them in collective bargaining. This right has been endorsed by Congress and by the U.S. Supreme Court. This bill eliminates that right. Even if a majority of workers tell their employer that they want a union, and even if the employer wants to accede to their wishes, this bill nevertheless inflexibly injects a government agency into the process, expending time and resources, and delaying achievement of the parties' shared goal. It is difficult to understand the rationale for such a requirement. Nothing under current NLRA law that I am aware of requires an employer to recognize a labor organization without an election, even upon an unquestioned showing of majority support. Those employers who do agree to recognize without an election therefore do so voluntarily. This bill seeks, as I understand it, to categorically forbid such voluntary arrangements, even though the employer thought it a desirable alternative to the burdensome, expensive, and friction-laden NLRB election process.

The push to eliminate voluntary recognition as an option on grounds that unions "coerce" workers to sign cards is puzzling. According to the most recent data released by the Board, charges brought against labor unions account for just over one-quarter of all unfair labor practice charges filed (6,330, in comparison to over 17,000 charges brought against employers).⁷ The Board finds merit and issues complaint in only a very small percentage of all cases filed – about 1,200 in FY 2010⁸ -- and, only about 10% of charges brought against unions on *any* theory resulted in a complaint, much less a determination of culpability. The fraction of claims found to have merit is even lower in the objections setting: only 3 were sustained out of the 92 objections filed in representation cases disposed of in FY 2010.⁹ I am not aware of research showing that there exists any significant difference between the rate of coercion claims against unions in connection with card-signing initiatives as opposed to elections; certainly, in both

situations, the rate of such claims is extremely small, and the likelihood that they have merit smaller yet.

Weakening Workers' Entitlement to Redress for Wrongful Acts

The House recently passed a proposal that takes broad aim at workers' rights by further weakening already ineffective remedies. **H.R. 2587**, titled "**Protecting Jobs from Government Interference**," would prohibit the NLRB from ever ordering an employer to reinstate work that was illegally eliminated – for example, closing and subcontracting of a department believed to be spearheading an organizing campaign, or abolishment of an individual workers' job because she exercised her federally protected right to challenge harsh working conditions. To be sure, the workers involved might receive some backpay. But the bill will immunize the employer from undoing its wrongful act, notwithstanding an adjudication that it violated federal law. For employees who have illegally lost their jobs, a right without a reinstatement remedy is hollow indeed. Most workers and their families rely on each paycheck for housing, food, and other essentials; little fat is left in most families' budgets these days. Yet, under this law, even when an employer decimates that family's budget by illegally outsourcing that worker's job, the employer need only pay what will amount, in most cases, to a modest fine: an amount equal to the fired worker's wages for the time period in question, but crediting back to the employer all of the money actually earned by the worker from other sources during that period. As most workers who have been fired or laid off can attest, a check is not a job: it is a band-aid, not a lasting solution. What rational worker, particularly when, as now, unemployment is high, would take the already substantial risk of protesting workplace conditions or lending support to an effort to organize a union, if he or she knew that no meaningful recourse was available for wrongful retaliation?

Other Impediments to Meaningful Enforcement of Workers' Rights

Several current proposals, such as **H.R. 2854**, forbid the NLRB from ever requiring employers to post notices informing employees about their federal rights under the NLRA. Other proposals are wholesale efforts to eliminate the NLRB as an enforcement agency. **H.R. 2118** appears aimed at divesting the NLRB of the authority to enforce the Act's protections against contrary state law.

Other proposals either drastically restrict, or eliminate entirely, the NLRB's ability to enforce the law. **H.R. 2978** reduces the agency to an investigative body, while providing for enforcement of unfair labor practice provisions of the Act exclusively through private rights of action. Theoretically, such a revision could provide workers with a more potent tool with which to enforce their rights; however, given the substantial expense of federal court actions and the relatively unequal resources of workers and employers, absent a cost-shifting provision similar to what is found in other federal workplace laws, that tool would, unfortunately, remain out of reach for the vast majority of workers who need it. Written on a broader scale, **H.R. 2926** simply eliminates the Agency.

CONCLUSION

None of the legislative measures discussed will do anything to further the central purposes of the NLRA: to grant workers a meaningful opportunity to join together, if they wish, to better their own lives and those of their families and communities, and to insist on their right to be heard in workplace decisions that affect them. Indeed, taken together, it is difficult to view these measures as anything other than a broad-based, politicized attack on these purposes. Furthermore, these measures do not address the economic issues that I believe are most vital to our country, in both the short and the long term: the need for good jobs that can sustain generations and anchor our communities, and the growing concentration of wealth in the hands of a small proportion of the population. It is my hope that future hearings will focus on those urgent matters.

¹ John Schmitt, *Unions and Upward Mobility for Latino Workers*, Center for Economic and Policy Research, September 2008; <http://www.cepr.net/index.php/publications/reports/unions-and-upward-mobility-for-latino-workers/>; *Unions and Upward Mobility for African-American Workers*, Center for Economic and Policy Research, April 2008; http://www.cepr.net/documents/publications/unions_2008_04.pdf; *Unions and Upward Mobility for Young Workers*, October 2008; <http://www.cepr.net/index.php/publications/interactive-reports/unions-and-upward-mobility-for-young-workers/>; *Unions and Upward Mobility for Women Workers*, Center for Economic and Policy Research, December 2008; <http://lcc.aflcio.org/WhatsNewDocuments/EFCA/CEPRupwardwomenworkers2008.pdf>; *The Union Wage Advantage for Low-Wage Workers*, Center for Economic and Policy Research, May 2008; <http://lcc.aflcio.org/WhatsNewDocuments/EFCA/LowWageWorkers.pdf>; Shawn Fremstad and John Schmitt, *Unions Improve Jobs at the Bottom*, November 29, 2007, <http://www.policyinnovations.org/ideas/commentary/data/unionization>. Bureau of Labor Statistics, 2006 *Employment Benefits Survey*, available at: [http://data.bls.gov/PDQ/servlet/SurveyOutputServlet;jsessionid=f03045af62dfW\\$3F\\$08\\$](http://data.bls.gov/PDQ/servlet/SurveyOutputServlet;jsessionid=f03045af62dfW$3F$08$).

² *An Analysis of the Distribution of Wealth Across Households, 1989-2010*, Linda Levine, Specialist in Labor Economics, Congressional Research Service, July 17, 2012

³ *Dropping the Ax: Illegal Firings During Union Election Campaigns, 1951 – 2007*, John Schmitt and Ben Zipperer, Center for Economic and Policy Research, March 2009; <http://www.cepr.net/documents/publications/dropping-the-ax-2009-03.pdf>; *No Holds Barred: the Intensification of Employer Opposition to Organizing*, Kate Bronfenbrenner, Economic Policy Institute and American Rights at Work Education Fund, 2009; <http://www.epi.org/publications/entry/bp235>; *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards*, Human Rights Watch, 2000; <http://lcc.aflcio.org/WhatsNewDocuments/EFCA/UnfairAdvantage.pdf>; *Neither Free Nor Fair: The Subversion of Democracy Under National Labor Relations Board Elections*, Gordon Lafer (American Rights at Work, July 2007); <http://www.americanrightsatwork.org/publications/general/Neither-free-nor-fair.html>; *Consultants, Lawyers and the 'Union Free' Movement in the USA Since the 1970s*, John Logan, Industrial Relations Department, London School of Economics, 2002; <http://www.americanrightsatwork.org/dmdocuments/OtherResources/Logan-Consultants.pdf>.

⁴ See, e.g. Ronald Meisburg and Leslie E. Silverman, *Why Should a Non-Union Company Care About the NLRB?*, Society for Human Resource Management (August 11, 2010); see also Jonathan A. Segal, *Labor Pains for Union Free Employers: Don't be caught unaware of nonunion employees' labor law rights*, HR Magazine, Vol. 49, No. 3 (March 2004) (“Because these [Section 7] rights are granted under the NLRA – a law that HR professionals working in nonunion environments may be relatively unfamiliar with – they may come as a surprise to many employers that operate without unions.”).

⁵ See Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 2010, NLRB, available at: http://www.nlr.gov/sites/default/files/documents/3580/table_1a.pdf

⁶ Out of a rough total of 17,000 charges filed against employers, according to Table 1A, 1,028, or 6%, resulted in a formal complaint, according to Table 3A. In contrast, less than 2% of the 6,300 charges filed against unions resulted in complaint. Table 3A. – Formal Actions in Unfair Labor Practice Cases, Fiscal Year 2010, NLRB, available at:

http://www.nlr.gov/sites/default/files/documents/3580/table_3a.pdf.

⁷ See Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 2010, NLRB, available at: http://www.nlr.gov/sites/default/files/documents/3580/table_1a.pdf

⁸ See Table 3A. – Formal Actions in Unfair Labor Practice Cases, Fiscal Year 2010, NLRB, available at: http://www.nlr.gov/sites/default/files/documents/3580/table_3a.pdf

⁹ Table 11-D., Disposition of Objections in Representation Cases Closed, Fiscal Year 2010, available at : http://www.nlr.gov/sites/default/files/documents/3580/table_11d.pdf