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October 1, 2018

The Honorable John F. Ring
Chairman
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dear Chairman Ring:

We write to applaud the progress made by the Trump administration National Labor Relations Board (NLRB or Board) over the past year to restore a reasonable application of the *National Labor Relations Act* (NLRA). We also urge you to continue moving forward in your pursuit of protecting the workplace rights of employees and employers. As members of the Committee on Education and the Workforce (Committee), which has jurisdiction over the NLRB and the NLRA, we share these priorities.

Under the previous administration, the Board overturned more than 4,500 years of cumulative precedent.¹ The Board's deliberative process will undoubtedly require time to restore balance to the agency's jurisprudence, but already, in the face of significant challenges, recent NLRB actions have helped improve our nation's economic and business climate.

Perhaps the most significant reform the Board has enacted to date was last December's *PCC Structurals, Inc.*² decision that overturned the 2011 *Specialty Healthcare*³ decision on "micro-units." *Specialty Healthcare* allowed labor unions to essentially gerrymander union elections and increase their own likelihood of success, while disenfranchising workers who opposed unionization, needlessly dividing the workforce and reducing flexibility both for the employer and employees.

In restoring the traditional community-of-interest standard, the Board made clear that the

¹ COALITION FOR A DEMOCRATIC WORKPLACE AND LITTLER MENDELSON P.C. WORKPLACE POLICY INSTITUTE, WAS THE OBAMA NLRB THE MOST PARTISAN BOARD IN HISTORY? THE OBAMA NLRB UPENDED 4,559 YEARS OF PRECEDENT (Dec. 2016), <http://myprivateballot.com/wp-content/uploads/2016/12/CDW-NLRB-Precedents-.pdf>.

² 365 NLRB No. 160 (Dec. 15, 2017).

³ 357 NLRB 934 (2011).

interests of all employees should be considered, not only those who are petitioning for a union. Moreover, the NLRB General Counsel's memorandum⁴ instructing regional offices to use this traditional standard on all currently pending cases ensured that more workplaces would immediately benefit from the interpretation that has stood for most of the Board's history and that has worked effectively to protect the interests of workers and employers for decades.

In December 2017, the Board took another constructive step worth noting to clarify the rules of the road for employers, while protecting the rights of workers. In *Boeing Co.*,⁵ the Board held that when evaluating an employer's facially neutral policy, rule, or employee handbook provision that could potentially interfere with employee rights, the Board will evaluate the nature and extent of the impact on NLRA rights and legitimate justifications associated with the rule. *Boeing* overruled the broad standard previously used to strike down reasonable workplace policies, rules, and employee handbooks, even when these workplace policies had a legitimate justification, such as a policy that employees must be civil with co-workers. Employers can now more easily set reasonable rules in the workplace that protect workers.

These and other recent Board actions have eased unnecessary regulatory burdens and are helping to unleash economic growth and job creation in the United States. However, there remains much more the Board can do. We encourage you to continue that pursuit diligently in the face of politically-motivated challenges.

Also in December 2017, the Board in *Hy-Brand*⁶ overturned the Obama NLRB's "indirect control" joint-employer standard established in *Browning-Ferris*.⁷ The objectionable and unfair Obama NLRB standard created an untenable situation for employers across the country, including franchisees and any employer that contracts for services. Unfortunately, *Hy-Brand* was vacated⁸ following a disputed recusal challenge, leaving the issue unresolved.

We were pleased to see the September 14, 2018, publication of a Notice of Proposed Rulemaking regarding the Board's joint-employer standard. We urge the Board to move expeditiously to complete this process in order to provide much needed clarity for employers and workers.

We also note new politically-motivated calls for Board member recusals attempting to impede the Board's progress. We applaud your ongoing comprehensive review of the Board's "policies and procedures governing ethics and recusal requirements for Board Members," and concur with the Board's description of this review to "ensure that the NLRB's stakeholders—and the

⁴ NLRB, Off. of the Gen. Couns., Memorandum GC 18-04 (June 6, 2018).

⁵ 365 NLRB No. 154 (Dec. 14, 2017).

⁶ 365 NLRB No. 156 (Dec. 14, 2017).

⁷ 362 NLRB No. 186 (2015).

⁸ *Hy-Brand Indus. Contractors, Ltd.*, 366 NLRB No. 26 (Feb. 26, 2018) (order vacating decision and order and granting motion for reconsideration in part).

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American people generally—can have full confidence in the integrity of the Board and its recusal process.”⁹

Another Obama Board scheme that remains in place is the faulty ambush election rule,¹⁰ which drastically shortened the time between a union filing an election petition and the election being held from an average of 38 days to as few as 11 days. This rule significantly limits the time period in which employers can explain their side of the story to their employees, while unions regularly plan for elections and visit with workers for weeks or even months before filing a petition. Worse, the shortened time window deprives workers the opportunity to receive all the information necessary to make an informed decision on an important question impacting their livelihood.

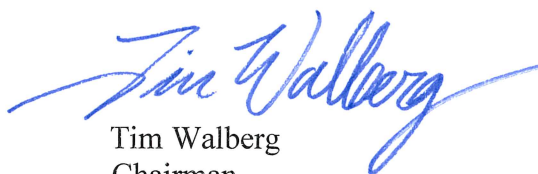
While the 114th Congress voted to overturn the ambush election rule, President Obama vetoed the legislation. Last year, the Committee again passed legislation overturning the rule. It is essential that the Board use its authority to revoke the ambush election rule and restore fairness and balance in the workplace. We encourage you to proceed expeditiously with the rulemaking that was begun on December 12, 2017, with the Board’s Request for Information regarding representation election regulations.

We understand that the Board plays a vital role in protecting the rights of workers and employers. We commend you for your leadership of the Board to date, and we urge you and your fellow Board members to continue your determined pursuit of a legal and regulatory environment that works better for all employees and employers, ensuring that the U.S. economy remains an engine of growth, opportunity, and prosperity for all Americans.

Sincerely,



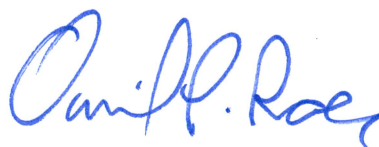
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Chairwoman



Tim Walberg
Chairman
Subcommittee on Health, Employment,
Labor, and Pensions



Joe Wilson
Member of Congress



David P. Roe, M.D.
Member of Congress

⁹ Press Release, NLRB to Undertake Comprehensive Internal Ethics and Recusal Review (June 8, 2018), <https://www.nlr.gov/news-outreach/news-story/nlr-undertake-comprehensive-internal-ethics-and-recusal-review>.

¹⁰ Representation—Case Procedures, 79 Fed. Reg. 74308 (Dec. 15, 2014).



Glenn "GT" Thompson
Member of Congress



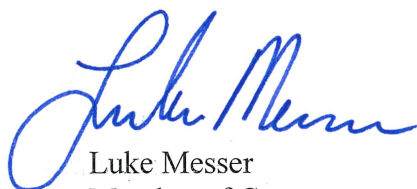
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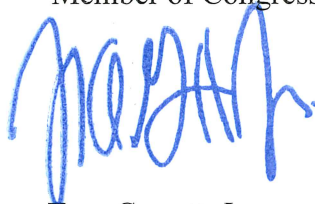
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Member of Congress



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Member of Congress



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Member of Congress



Tom Garrett, Jr.
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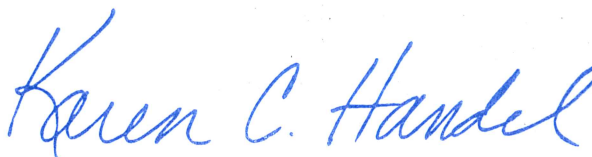
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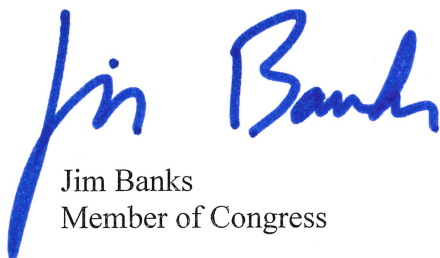
A. Drew Ferguson, IV
Member of Congress



Ron Estes
Member of Congress



Karen Handel
Member of Congress



Jim Banks
Member of Congress

CC: The Honorable William J. Emanuel, Board Member
The Honorable Marvin E. Kaplan, Board Member
The Honorable Lauren McFerran, Board Member
The Honorable Peter B. Robb, General Counsel