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June 30, 2020

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

The Honorable Peter B. Robb
General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570

Re: Impact of COVID-19 on NLRB-Supervised Union Elections

Dear Chairman Ring and General Counsel Robb:

We write to inquire about union representation elections overseen by the National Labor Relations Board (NLRB) since the agency resumed elections on April 6, 2020 following a temporary suspension of these elections on March 19 due to the COVID-19 pandemic. As you know, the *National Labor Relations Act* (NLRA) protects workers' right to organize and bargain collectively. However, the NLRB made a prudent decision earlier this year to suspend elections for two weeks to ensure the health and safety of all those involved, including workers, union and company personnel, and NLRB staff—as well as to allow the General Counsel to assess the logistics of conducting elections under these difficult circumstances. This suspension was short-lived, and elections have been occurring for nearly three months under the supervision of NLRB Regional Directors.

Unfortunately, some have taken to heart the advice of President Obama's former chief of staff, Rahm Emanuel, to "never allow a crisis to go to waste" and are using the COVID-19 pandemic to attempt to advance a long-held left-wing wish-list of proposals that would make it easier to

force more workers into unions. One scheme being promoted is for the NLRB to hold union elections electronically.¹

We have serious concerns about electronic voting in NLRB elections, particularly the ability to maintain the “laboratory” conditions required by the NLRA to ensure a free and fair election.² Unions have a long and sordid history of harassing and intimidating workers. This Committee has heard directly from victims of such ignoble behavior over the years.³ Electronic voting would create one more opportunity for union organizers to intimidate and coerce workers at their homes, in public, and elsewhere, and provide another conduit for workers’ personal information to be compromised—a fate millions of Americans have already suffered as the result of hackings of government and private sector electronic databases. Workers have every right to be skeptical of the ability of self-interested union organizers and the federal government to keep their private, personal information safe and secure. The risk of hacking, fraud, and abuse is just one of the many reasons union elections typically take place on the employer’s premises, so NLRB officials can administer and closely monitor voting to prevent wrongdoing.

Moreover, allusions to union elections held electronically by the National Mediation Board (NMB) under the *Railway Labor Act* (RLA) are misleading. Bargaining units under the jurisdiction of the RLA are much more likely to be spread across the country, making in-person voting a far greater logistical challenge, thereby increasing the use of electronic voting. This is not the case with nearly all bargaining units under the jurisdiction of the NLRB, and thus the experience of the NMB is not instructive.

Finally, we question whether creating another method of voting is necessary. If the frequency of NLRB-supervised elections and the participation rate in those elections has not declined since the NLRB restarted them in April, then there is no need to inject a different, unreliable, and untested method that is bound to face a litany of logistical challenges and is likely to disrupt the “laboratory” conditions the NLRA requires.

Calls for the NLRB to conduct elections through electronic voting appear to be little more than another attempt to change the rules in favor of organized labor, against workers who wish to represent themselves, and against employers who wish to negotiate directly with their employees. Unions attempted to organize less than one-tenth of one percent of eligible employees in 2018⁴ and the largest federation of labor unions in America spends more than three times as much money on political activity as it does on its stated purpose of organizing and representing workers.⁵ As such, unions could increase operational transparency and

¹ See Letter from Rep. Andy Levin (D-MI) et al. to Speaker Nancy Pelosi and Republican Leader Kevin McCarthy (Apr. 20, 2020), <https://andylevin.house.gov/sites/andylevin.house.gov/files/Letter%20re%20union%20electronic%20voting%20FINAL%204.19.20%20.pdf>.

² *General Shoe Corp.*, 77 N.L.R.B. 124, 127 (1948).

³ H.R. REP. NO. 113-583, at 6-7 (2014).

⁴ *Protecting the Right to Organize Act: Modernizing America’s Labor Laws: Hearing Before the Subcomm. on Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & Lab.*, 116th Cong. (2019) (statement of G. Roger King, Senior Lab. & Emp. Counsel, HR Pol’y Ass’n).

⁵ Hamilton Nolan, *AFL-CIO Budget is a Stark Illustration of the Decline of Organizing*, SPLINTER NEWS, May 16, 2019.

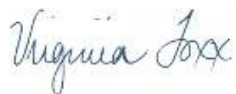
accountability to workers to serve their members better or dedicate more resources to organizing, rather than trying to rig the existing system. Nevertheless, it is clear that in-person, secret-ballot voting is the most reliable method for elections of any kind, and we strongly encourage the NLRB to ensure that all union elections under its jurisdiction be conducted in this manner to ensure a free and fair process.

To understand more fully the NLRB's conduct of these elections since their resumption on April 6, we request answers to the following questions:

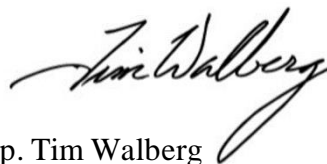
1. Since the NLRB resumed elections on April 6, 2020 how many NLRB-supervised union elections have been held, and how many have been scheduled for the future?
2. How does the frequency of NLRB elections since April 6 compare to the frequency of elections prior to March 19?
3. What has been the participation rate in NLRB elections since they resumed on April 6, and how does this participation rate compare to the rate in elections prior to March 19?
4. What percentage of elections held since April 6 have been won by unions, and how does this figure compare to the union win rate prior to March 19?
5. What percentage of NLRB elections since April 6 have been held using mail ballots, and how does this figure compare to the rate prior to March 19?
6. If the prevalence of mail-ballot elections has increased, does the NLRB have a plan or deadline in place to restore the rate of elections held by in-person voting to the rate that existed prior to March 19?
7. If directed by Congress, what steps would the NLRB need to take in order to hold electronic elections? What are the costs and challenges the NLRB would face?

We appreciate the NLRB's efforts to protect the rights of workers and employers alike and look forward to receiving your responses to the above questions by July 14, 2020.

Respectfully submitted,



Rep. Virginia Foxx
Ranking Member



Rep. Tim Walberg
Ranking Member
Subcommittee on Health, Employment,
Labor, and Pensions