INSTITUTE FOR THE AMERICAN WORKER

Statement of
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"Restoring Balance: Ensuring Fairness and Transparency at the NLRB."

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Introduction

Good Morning. My name is F. Vincent Vernuccio and I am President of Institute for the American Worker (I4AW). I4AW is a 501(c)(3) nonprofit organization focused on empowering workers. We educate on the benefits of freedom, innovation, and collaboration between workers and job creators. We also educate on policy solutions to remove roadblocks to worker freedom. More information can be found on www.i4aw.org, a one-stop shop for the best resources on the labor policy debates facing our country.

The National Labor Relations Act (NLRA) was enacted nearly 90 years ago with the promise of fostering labor peace by leveling the playing field between employers and employees. It granted employees the ability to collectively bargain and established the National Labor Relations Board (NLRB) to oversee labor disputes. As we approach its centennial, we should work to ensure we maintain the level playing field and refocus our laws with an eye to empowering the American worker.

The law should put the American worker first—and with the right reforms, it can. Every employee deserves a fair, transparent system that protects their rights and supports their ability to make informed choices about union representation. Over time, legal complexities and a constantly shifting regulatory landscape have made the NLRA difficult to navigate. Instead of empowering workers with meaningful choices, the current system obscures information, restricts employer communication, and too often stacks the deck in favor of an outdated one-size-fits-all collective bargaining model—regardless of worker preferences.

This is particularly true for small businesses where nearly half of Americans are employed.[1] Too often, smaller employers and their employees lack the clarity or support they need. A more balanced and transparent system would better serve American workers.

American workers deserve a transparent, fair, and modern labor system. That means:

- Ensuring that a majority or quorum of the full bargaining unit has a say in union elections to make certain unionization reflects the true will of the workforce.
- Ensuring workers can make an informed decision on unionization by giving them the opportunity to hear all sides regarding what a unionized workplace means for them and their families. And, if a union is chosen, ensure government bureaucrats don't impose a collective bargaining agreement on their workplace.
- Ensuring the NLRA does not shield harassing or discriminatory conduct, preserving respect and safety in the workplace.
- Preserving independent work arrangements and maintaining a clear, direct control standard for joint employment.

[1] U.S. Small Bus. Admin. Off. of Advoc., *Frequently Asked Questions About Small Business July 2024* (2024), https://advocacy.sba.gov/2024/07/23/frequently-asked-questions-about-small-business-2024/.

As we work to modernize labor law, it should reflect the realities of today's workforce—not the economy of the 1930s. A balanced, forward-looking system should empower workers with meaningful choices and ensure they have access to all information needed to make informed decisions regarding union representation. True empowerment comes from respecting how Americans work today—not from one-size-fits-all solutions. It's time to renew the original promise of the NLRA: to level the playing field and ensure every worker and job creator has a voice in shaping the future of the workplace.

Ensuring True Worker Support in Union Elections

The decision as to whether to grant a union a monopoly to represent all workers should reflect the will of the full bargaining unit, not just those members of the bargaining unit who vote. Under the current interpretation of the NLRA, unions are elected based on majority support from *voting* employees.[2] In these elections, workers decide whether to be represented by a union and, if so, which one. If a majority of *voters* choose a union, it is authorized to represent all employees in the designated bargaining unit, regardless of how many individuals in that bargaining unit actually voted.

A recent study released by I4AW and the Mackinac Center for Public Policy, explains that the manner in which union elections occur today is contrary to the plain language of the NLRA.[3] Currently, a union can win with support only from a majority of workers who vote, instead of a majority of the proposed bargaining unit—whereas the plain language of the NLRA requires a majority of the employees in a unit to vote:

> Representatives designated or selected for the purposes of collective bargaining *by the majority of the employees in a unit* appropriate for such purposes, shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment […].(emphasis added.)[4]

This language suggests two possible interpretations. Under a strict reading a union may represent employees only if a majority of all eligible employees vote in favor. A more flexible interpretation would require that a majority or quorum of employees vote, and the union wins if it secures most of the votes of the employees who voted.

Both standards reflect a core principle: unionization should be based on the will of the majority of affected employees. However, for nearly 90 years, unions have been certified based only on the majority of those who voted, regardless of turnout. As a result, unions obtain exclusive

[2] Nat'l Labor Relations Board ("NLRB"), *About NLRB: Conduct Elections*, https://www.nlrb.gov/about-nlrb/what-we-do/conduct-elections ("Elections to certify or decertify a union as the bargaining representative of a unit of employees are decided by a majority of votes cast").
[3] Stephen Delie, *Misred: How Legal Authorities Allowed Tyranny of the Minority to Subdue Worker Enfranchisement* (2025), https://www.mackinac.org/archives/2025/s2025-06.pdf.
[4] 29 U.S.C. § 159(a)

representation over bargaining units even when most eligible employees did not support unionization.

Compounding the matter, once a union is elected employees cannot move to decertify a union for the first year and, further, once a collective bargaining agreement is in place, a decertification election cannot occur for three years except during a very narrow "window period."[5] This is known as a "contract bar." This window period is important—if workers do not request a decertification election during the window period, the employer and union can enter into another agreement and re-start the three-year contract bar which then curtails workers' opportunity to have a say on the union at their workplace. The contract bar combined with a lack of majority standard contributes to why 95% of private-sector union workers covered by the NLRA didn't vote for the union that represents them.[6]

The NLRB continues to uphold the contract bar doctrine despite recognizing that the "window period" is not always known to employees. In fact, in the 2021 *Mountaire Farms* case, the NLRB stated:

> Some parties and several amici argue that the relevant date may not always be readily ascertainable under the contract-bar doctrine in its current form. These arguments have considerable force. The efficacy of the contract-bar window period is obviously negated if employees are unable to determine when the window period opens and closes. Although we share this concern, a sufficiently compelling case has not been made for any particular proposed modification.[7]

American workers deserve transparency, fairness, and for their voices to be heard. According to the I4AW and the Mackinac Center for Public Policy study:

> Recent data from the National Labor Relations Board shows that 20% of private sector unions were elected with less than a quorum of the collective bargaining unit voting, and 40% were elected without majority support from all employees eligible to vote. Of the approximately 74,000 employees collectively eligible to vote in these elections, only 32,000, or 43%, actually did.[8]

Employees also can't simply decide they don't want to be part of the union without a decertification vote. Additionally in states without right-to-work laws, workers can be fired for not paying their union fees.

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[5] NLRB, *About NLRB: Rights we Protect*, https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law/employees/decertification-election (According to the NLRB, a "window period" begins, "90 days and ends 60 days before the agreement expires (120 and 90 days if your employer is a healthcare institution)").

[6] F. Vincent Vernuccio, Opinion, *Workers of the World, Vote!*, Wall St. J., Aug. 30, 2024, https://www.wsj.com/opinion/workers-of-the-world-vote-unions-voting-election-36f9087a?st=oa2hHC.

[7] Decision agreed to by Board Members McFerran, Kaplan, Emanuel, and Ring. McFerran "did not join her colleagues' observations about the potential problems with current law." 370 NLRB No. 110 (2021).

[8] *Supra* note 3.

Amending the NLRA to make clear the true meaning of its voting requirements would realign labor law with its original intent and this change would not significantly disrupt current election procedures. As I stated in a Wall Street Journal op-ed:

> Federal data show that unions can rally workers in most cases. According to the NLRB 2022 election report, in nearly 60% of successful unionization elections, a majority of eligible workers voted for representation. Nearly 80% of successful unionization elections met a lower bar, with more than half of workers participating and the union getting a majority of support from that smaller number of eligible workers who participated. These elections reflect some measure of democratic fairness. The rest raise doubts about the true level of worker support for unionization.[9]

Congress could also pass Rep. Bob Onder's (R-MO) *Worker Enfranchisement Act* (H.R. 2572) to require at least two-thirds of eligible workers participate in a unionization election.[10] If that threshold is met, the union wins and obtains the representation monopoly. If that threshold is not met, the union is not certified. Even the NLRB itself has a quorum requirement—at least three of the Board's five members must be lawfully seated to exercise its full power, and then a majority of that quorum is required to issue decisions. Requiring unions to win the support of a majority of all employees—or at least a majority of a two-thirds quorum—would ensure workers are not compelled to join and financially support a union that the majority of the workforce did not actively choose.

When a union does win an election it has a monopoly on bargaining for each and every worker in that unit. It's a requirement of the union to bargain even for workers that choose to opt-out of union membership in right-to-work states. Some call this a "free-rider" problem. Many of those workers would argue they're "forced riders" stuck under a collective bargaining agreement negotiated by a union they haven't joined and of which they don't pay dues. A policy solution exists for those that view it as either a free-rider or forced-rider problem – Workers' Choice.[11] The *Workers' Choice Act* was introduced in the previous Congress by Representative Eric Burlison (R-MO).[12]

Workers' Choice would empower employees in right-to-work states by allowing them an option to fully opt out of union representation and negotiate directly with their employer, just like more than 93% of the rest of the private sector workforce.[13] It addresses the "free rider" issue by freeing unions from the obligation to represent non-members. This commonsense reform

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[9] F. Vincent Vernuccio, *In Union Votes, 11% Can Make a Majority*, Wall St. J., June 23, 2023, https://perma.cc/T95M-4TNX; NLRB, *Election Reports Fiscal Year 2022*, https://perma.cc/Z76R-QBEC.

[10] Worker Enfranchisement Act, H.R. 2572, 119th Cong. (2025).

[11] Rep. Eric Burlison and F. Vincent Vernuccio, *Workers' Choice is the Way Forward*, Wall St. J., Dec. 12, 2023, https://www.wsj.com/articles/workers-choice-is-the-way-forward-unions-employees-9847e341.

[12] Workers' Choice Act, H.R. 6745, 118th Cong. (2023).

[13] Bureau of Labor Statistics, *2024 Union Membership Rate*, https://www.bls.gov/news.release/pdf/union2.pdf.

both respects freedom of association and modernizes labor relations without undermining collective bargaining rights.[14]

Leveling the Playing Field: Conversations with Workers about Unionization & Ensure a Fair Collective Bargaining Process

Employer Meetings on Unionization

During an organizing campaign, workers should have access to comprehensive information and the opportunity to make an informed, thoughtful decision regarding union membership. Employer meetings with employees typically occur during working hours and are compensated, similar to other workplace briefings or training sessions required by the employer. Prohibiting such employer meetings deprives workers of crucial information about the effects of unionization and places employers at a disadvantage. While employers may generally only speak with employees during work hours due to employment laws, unions have the latitude to contact employees at any time during non-working hours —including outside of the workplace, at home, or through other means of personal communication. This creates an uneven playing field as unions can freely contact employees at any time when they are not actively working, while employers are constrained by employment and labor laws that limit communication. Employer-led staff meetings are often the only opportunity for workers to hear from their employers regarding unionization because if a union is elected, employers are prohibited from engaging with employees directly regarding workplace related issues covered by the collective bargaining agreement.[15]

During the Biden administration, General Counsel Jennifer Abruzzo issued a memorandum declaring employee meetings on unionization to be unlawful.[16] Although the Trump administration subsequently rescinded that memorandum,[17] late last year in *Amazon.com Services LLC* the Board overturned more than 75 years of precedent and also held these meetings to be unlawful.[18] That case is still controlling. My organization recently released a report, *Free Speech Under Fire*, by James A. Prozzi. It demonstrates why the NLRB's *Amazon.com* decision is unconstitutional and underscores why workers have a right to hear from their employers and employers a right of free speech about unionization during paid staff meetings.[19]

[14] F. Vincent Vernuccio, *Workers' Choice: Freeing Unions and Workers from Forced Representation*, Mackinac Center for Public Policy, June 1, 2016, https://www.mackinac.org/22471.
[15] *See* Institute for the American Worker, *Senator Hawley's Pro Act Lite*, Mar. 13, 2025, https://i4aw.org/resources/hawleys-pro-act-lite/.
[16] NLRB Gen. Couns. Mem. GC 22-04 (Apr. 7, 2022).
[17] NLRB Acting Gen. Couns. Mem. GC 25-05 (Feb. 14, 2025).
[18] *Amazon.com Services, Inc.,* 373 NLRB No. 136 (2024).
[19] James A. Prozzi, *Free Speech Under Fire: How Restricting Employee Meetings on Unionization Prevents Workers from Making Informed Decisions*, Institute for the American Worker, Feb. 2025, https://i4aw.org/reports/free-speech-under-fire-how-restricting-employee-meetings-on-unionization-prevents-workers-from-making-informed-decisions/.

In order to better understand how workers feel about employer meetings on unionization, I4AW commissioned the bipartisan public affairs firm Forbes Tate Partners to conduct an online survey of national likely voters.[20] The results showed broad support for employer meetings on unionization with 84% of those polled viewing the meetings favorably or neutrally and only 12% holding a negative view.[21] These results suggest that most people value an open dialogue and believe employers should have a voice in the conversation about workplace unionization.

Further, the permissible content of communications to workers are different for employers and unions. While employers face significant legal restrictions regarding what they may say to employees during organizing campaigns, unions do not have those same restrictions.[22] Unions are not required to keep the promises made during their organizing campaign—these promises can include guarantees of job security, better pay and benefits, and a greater voice in the workplace.[23]

Workers should be empowered to engage in informed decision-making when deciding whether to unionize. Banning employer meetings on unionization deprives employees of critical information and creates an uneven playing field.

Government Forced Collective Bargaining Agreements

Imposing a one-size-fits-all contract on workers and job creators through unelected government bureaucrats is fundamentally at odds with the principle of worker empowerment. The *Faster Labor Contracts Act* (S. 844) would force contracts on workers, unions, and employers—allowing government-appointed arbiters to make critical employment decisions in the name of speed.[24] Under current law, employers and unions are required to negotiate in good faith, providing both parties the opportunity to reach a mutually acceptable agreement. Replacing the negotiation process with government-imposed arbitration risks producing collective bargaining agreements that are unworkable, unreasonable, and ultimately disadvantageous to the very workers they are meant to serve.

Protecting Workers from Harassment

Employers should have the ability to protect their employees from discriminatory, harassing, or demeaning language. This behavior has no place in the workplace—and certainly should not be *protected*. However, in its 2023 decision in *Lion Elastomers*, the NLRB disagreed, holding that

[20] Institute for the American Worker, *Polling Results for Employer Meetings on Unionization* (2022), https://i4aw.org/resources/polling-results-for-employer-meetings-on-unionization/.
[21] *Id*.
[22] NLRB, *Interfering with Employee Rights (Section 7 & 8(a)(1)*, https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law/interfering-with-employee-rights-section-7-8a1 ("[an employer] may not . . . [p]romise employees benefits if they reject the union."); *An Outline of Law and Procedure in Representation Cases*, NLRB, https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-1727/OutlineofLawandProcedureinRepresentationCases_2017Update.pdf.
[23] Glenn Spencer, *Do Unions Deliver on Their Promises*, U.S. Chamber of Com., https://www.uschamber.com/employment-law/unions/do-unions-really-deliver-on-their-promises.
[24] Faster Labor Contracts Act, H.R. 844, 119th Cong. (2025).

racist, sexist, and vulgar rhetoric is permissible in the workplace so long as it occurs in the context of "union activity."[25]

In June 2024, I4AW released a report exploring this deeply concerning interpretation entitled, "Battle of the 7s: Lauren McFerran's Weaponization of NLRA Section 7 Against Title VII Civil Rights Protections, Allowing Racist and Sexist Harassment in the Workplace." The report details the conflicting obligations placed on employers under federal law with respect to preventing workplace discrimination and harassment.

The NLRB's ruling is not only inconsistent with federal civil rights laws—it is a troubling example of how the law can fail to protect American workers. In *Lion Elastomers*, the NLRB held that employers may be restricted from disciplining workers who use discriminatory language during union-related activity, citing protections under Section 7 of NLRA. The plain language of Section 7 protects employees' right to engage in collective bargaining or other concerted activities—it does not grant immunity for unlawful or abusive conduct. The Board's interpretation suggests that employers may be prohibited from protecting employees from vulgar, harassing, or discriminatory speech from coworkers, if that speech is union related—potentially leaving employees vulnerable to such behavior in the workplace. While the NLRB's position was vacated by the Fifth Circuit for procedural reasons, it leaves open the door for a future NLRB to revisit this stance.[26]

This position also conflicts with guidance from the federal agency charged with enforcing anti-discrimination laws. In 2024—one year after *Lion Elastomers*—the Equal Employment Opportunity Commission (EEOC) reaffirmed that harassment because of race, color, religion, sex (including pregnancy, childbirth, or related medical conditions; sexual orientation; and gender identity), national origin, disability, genetic information and age (40 or over) can trigger liability under federal law.[27]

Employers should have the ability to enforce basic standards of respect and civility—not only to comply with civil rights laws but also to maintain a safe and inclusive work environment. Under the NLRB's 2023 standard, employees disciplined for offensive conduct could be reinstated and even receive back pay—undermining workplace integrity and encouraging further misconduct.

All workers deserve a safe and respectful workplace. Congress should act to protect the American worker and clarify that discriminatory, harassing, or demeaning language is not protected activity under the NLRA—or under any federal law.

[25] *Lion Elastomers LLC II,* 372 NLRB No. 83 (2023).
[26] *Lion Elastomers, LLC II v. NLRB*, 108 F.4th 252 (5th Cir. 2024).
[27] Equal Emp. Opportunity Comm'n, *Enforcement Guidance on Harassment in the Workplace* (2024), https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace

Protecting Worker Freedom and Flexibility

Independent Contractors

Our nation's labor laws were originally designed to protect and empower American workers, but over time administrative overreach and shifting legal interpretations have moved us from that core mission. To truly support today's workers, we need to restore balance and refocus labor policy on fairness, choice, and economic opportunity.

Independent contracting is a popular way tens of millions of workers earn a living or make extra income. In 2023, 38% of the American workforce, or 64 million Americans, engaged in some form of independent contracting work.[28] These arrangements empower workers to work how they want and when they want, providing flexibility and economic opportunity. Independent contractors can take time during the day to help with a sick family member, earn extra money to pay for unexpected medical bills, save for a family vacation, and/or grow and build their own career pathways.

Unfortunately, this popular model for workers is regularly endangered by legislation and regulation at the state and federal level. For example, in its 2023 *Atlanta Opera* case, the Biden administration's NLRB tried to make it more difficult for individuals to work as independent contractors under the NLRA by creating a burdensome analysis that deemphasized a workers' entrepreneurial opportunity.[29] In addition, the Biden administration's Department of Labor (DOL) issued a rule that confused the issue and potentially could reclassify many independent contractors as employees. The Biden era NLRB and DOL changes to the longstanding independent contractor definitions have a common theme: they were designed to move more workers from an independent contractor relationship into an employment relationship—deciding what's best for workers and their families instead of empowering workers to make those decisions for themselves. While the Trump administration stated it will not enforce the rule and is in the process of reconsidering that rule,[30] the ever-swinging pendulum of policy changes between presidential administrations only leads to economic uncertainty and instability for America's workers.

Gig workers enjoy the flexibility of being independent contractors. A recent study found 77% of app-based workers want to remain independent contractors and not be forced into an employment model.[31] Another study found that flexibility is the reason they choose to work on an app-based platform, followed by allowing them to earn money quickly (65%) and enjoying

[28] https://www.upwork.com/resources/gig-economy-statistics#:~:text=2.,of%20the%20global%20labor%20force.
[29] Board Modifies Independent Contractor Standard under National Labor Relations Act. (n.d.). National Labor Relations Board. Retrieved October 13, 2023, from https://www.nlrb.gov/news-outreach/news-story/board-modifies-independent-contractor-standard-under-national-labor
[30] *Frisard's Transp., LLC v. U.S. Dept. of Labor,* No. 24-30223 (5th Cir. 2025) ("[DOL]" intends to reconsider the 2024 Rule at issue in this litigation, including whether to issue a notice of proposed rulemaking rescinding the regulation.")
[31] Flex Association, *The App-Based Economy at Large* (2023), https://www.flexassociation.org/report/the-app-based-economy-at-large/.

being one's own boss (64%).[32] Further, 79% of rideshare and delivery drivers have other forms of income, including retirement income.[33] Yet another study found that more than a quarter of all skilled knowledge workers in the United States are independent contractors and are intentionally choosing this career pathway.[34] Of full-time w-2 employees, just 20% hold postgraduate degrees—while 37% of these skilled freelance knowledge workers hold postgraduate degrees.[35]

My organization and allies have spoken to many workers who can attest to the value of independent contracting. Independent Women's Forum, leaders on this issue, recently showcased examples of workers thriving as independent contractors and the risk of poor policies can have on their careers.

The Independent Women's Forum (IWF) spoke with freelance writer Cynthia Clampitt, who left a corporate job after a decade. Her freelance career faced a major setback when Illinois passed a law forcing companies to reclassify independent contractors as employees. Her main client offered to retain as employees some of the freelancers it contracted with, but at what amounted to lower pay rates. Cynthia remained a freelancer, valuing the flexibility to travel for speaking engagements and research, and to care for loved ones.[36]

Another was Sheryl Myers, an owner-operator truck driver. She and her husband transport cargo for the likes of the Department of Defense and Smithsonian museums. Myers told IWF about independent contracting, "It has been a real blessing to lay out our business strategy the way we chose, and it's worked well for us." They had crisscrossed the country for years but when California approved the disastrous AB5 law to limit independent contracting the Myers chose to avoid California like many other independent contractor drivers.[37]

Representative Kevin Kiley (R-CA) understands the importance of this model for workers and recently introduced legislation to empower workers and protect the independent contractor model. The *Modern Worker Empowerment Act* (H.R. 1319) would amend the *Fair Labor Standards Act* (FLSA) and NLRA to support entrepreneurial opportunity, ensuring those who are genuinely independent contractors are not misclassified as employees.[38]

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[32] Flex Association, *Flex Economy Impact Report* (2024), https://www.flexassociation.org/wp-content/uploads/2024/03/Flex-Economic-Impact-Report-2024.pdf.
[33] *Id.*
[34] Upwork, *Future Workforce Index* (2025), https://www.globenewswire.com/news-release/2025/04/23/3066181/0/en/Upwork-Study-Finds-1-in-4-U-S-Skilled-Knowledge-Workers-Now-Work-Independently-Generating-1-5-Trillion-in-Earnings.html.
[35] *Id.*
[36] Andrea Mew, *Cynthia's Story: This Food Historical Documented the Midwest's Agricultural Legacy Thanks to Freelance Work*, Independent Womens Forum (2023), https://www.iwfeatures.com/profile/cynthias-story-this-food-historian-documented-the-midwests-agricultural-legacy-thanks-to-freelance-work/.
[37] Ashley McClure, *Department of Defense Truck Driver Says Law Undermining Independent Contractors Also Undermine National Security*, Independent Womens Forum (2025), https://www.iwfeatures.com/profile/department-of-defense-truck-driver-says-laws-undermining-independent-contractors-also-undermine-national-security/.
[38] Modern Worker Empowerment Act, H.R. 1319, 119th Cong. (2025).

Workers like Cynthia Clampitt and Sheryl Myers should have the freedom to choose how they work, when they work, and what kind of employment best meets their needs.

Joint Employment

Recent changes to the definition of joint employment have far-reaching implications for small businesses, workers, and the broader American economy. For decades, joint employer status was based on whether one entity exercised actual, direct and immediate control over another company's employees. However, in 2015, the Obama administration's NLRB significantly broadened that standard to include indirect or unexercised control—upending 30 years of established precedent.[39] In 2017, the Trump administration's NLRB rescinded this decision, restoring the traditional standard.[40] In 2023, the Biden NLRB finalized a rule returning to the broader Obama-era standard—a move that prompted Republican NLRB Member Marvin Kaplan to warn in his dissent that it is "potentially even more catastrophic to the statutory goal of facilitating effective collective bargaining, as well as more potentially harmful to our economy, than the Board's previous standard..."[41] In 2024, the Biden rule was vacated by a U.S. District Judge.[42]

The constant legal whiplash has created significant instability for employers, especially small businesses, and workers. Businesses now face uncertainty over when they might be held liable for workers they do not hire, supervise, or compensate—making it harder to confidently enter partnerships, grow, or invest in workforce development. Industries that rely on franchising, subcontracting, or staffing are particularly vulnerable.

Workers benefit from diversity of industry. The legal ping-pong regarding joint employment creates concern and uncertainty among small business owners. A survey from the International Franchise Association showed that nearly three-quarters of franchisees are concerned about increased control from the franchisor and two-third expect that increased control would institute barriers to entry into this popular small business ownership model.[43] We should actively encourage job creation, career development, and economic mobility for workers, not decrease access to small business ownership. Ultimately, these dynamics restrict—not expand—workers' access to growth and choice in the labor market.

To restore stability and protect worker opportunity, Representative James Comer (R-KY) introduced the *Save Local Businesses Act* in the previous Congress.[44] This legislation would codify a clear, fair definition of joint employment, specifying that a business is only a joint employer if it, "directly, actually, and immediately" exercises control over another entity's

[39] *Browning-Ferris Industries of California, Inc.*, 362 NLRB No. 186 (2015).
[40] *Hy-Brand Industrial Contractors, Ltd.,* 365 NLRB No. 156 (2017).
[41] Standard for Determining Joint Employer Status, 29 C.F.R. pt. 103 (2023).
[42] U.S. Chamber of Com. v. NLRB, No. 6:23-CV-00553 (E.D. Tex. Mar. 8, 2024).
[43] Int'l Franchise Ass'n, *Potential Consequences of the NLRB Joint Employer Rule* (2023), https://www.franchise.org/potential-consequences-of-the-nlrb-joint-employer-rule/.
[44] Save Local Business Act, H.R. 2826, 118th Cong. (2023)

employees. By eliminating regulatory confusion, the bill would have empowered workers with more job opportunities while providing legal certainty to job creators.

True worker empowerment requires clarity, consistency, and accountability. Constantly shifting joint employment rules limits workplace flexibility and stifles entrepreneurial opportunity. A clear standard grounded in actual control ensures that businesses can innovate and grow—giving workers the freedom to thrive.

Conclusion

American workers deserve fairness and transparency at the NLRB. Labor law should prioritize the best interests of both workers and job creators.

The NLRB should strive for an informed workforce that is given information on their rights as opposed to stifling one side's speech.

It should also prioritize worker enfranchisement, ensuring that unions cannot represent all workers in a collective bargain unit unless they have the support of a majority of those employees.

Additionally, once a union is chosen, the workers, employers, and unions should be given the time needed to come to agreement on a contract instead of being constrained by an arbitrary deadline that allows bureaucrats to force arbitration. Forced arbitration could result in a panel unfamiliar with the workers or the business, dictating almost every aspect of working conditions for the employees.

The Board should allow employers to protect their employees from harassment and not allow special circumstances to shield vile conduct and language that makes employees feel unsafe.

Finally, labor law needs to embrace and encourage entrepreneurship and the flexibility modern workers want. Rather than forcing workers into one-size-fits-all collective bargaining agreements, Congress can amend the NLRA to allow workers to represent themselves if they choose and remove union's obligation to represent workers who do not pay them. Additionally, the Board should not hamper workers' ability to be self-employed and small business owners' ability to open and run a franchise.

Congress has sought to remedy many of these issues through legislation, but the NLRB can also restore balance for workers by embracing traditional interpretations on these issues and staying faithful to the plain meaning of the NLRA.