

**Testimony of Stefan Marculewicz Before
The United States House of Representatives
Subcommittee on Health, Employment, Labor, and Pensions
April 26, 2018**

Chairman Walberg, ranking member Sablan, and members of the Committee.

Thank you for the opportunity to offer testimony here today. My name is Stefan Marculewicz and I am a Shareholder at the law firm of Littler Mendelson here in Washington, DC. I am speaking to you today on my own behalf and not on behalf of my law firm or any firm client.

The topic I am going to testify about today is worker centers. Labor unions, the primary advocates for workers' rights in the United States continue to experience a decline in membership. Perhaps partially in response to that decline, labor unions have sought new ways to effectuate change in the workplace. One of the most prominent examples of this effort has been the development of organizations known as worker centers.

Today there are hundreds of these organizations. Their structure and composition vary. They go by many different names. Typically, they are non-profit organizations that receive funding from foundations, grants—including from government, membership fees and other donations. Some are funded by other labor organizations.¹

These groups offer many different services to their members, including education, training, employment services and legal advice. Increasingly, however,

¹ The U.S. Chamber of Commerce has published a number of important studies tracing the funding of these organizations.

these organizations directly engage employers or groups of employers to effectuate change in the wages, hours and terms and conditions of workers they claim to represent. When it comes to such direct engagement, these worker centers often act no differently than traditional labor organizations.

In 2012, I conducted research on the subject of worker centers, and published the article *Labor Organizations by Another Name: The Worker Center Movement and its Evolution into Coverage under the NLRA and LMRDA* in *Engage* the Federalist Society's law and policy review. In that article, I described the growth of worker centers, and their evolution into *de facto* labor organizations. The premise of my article was that because of this evolution, worker centers should comply with the laws that regulate labor organizations. These laws include the National Labor Relations Act (the NLRA) and the Labor Management Reporting and Disclosure Act (the LMRDA). I asserted that because the benefits of those laws ultimately flow to the workers these organizations claim to represent, there was no viable justification for them not to comply with the laws.

In September 2013, I had the honor of testifying on this subject before this Committee. In my testimony, I urged the Committee to seek to have these organizations comply with the laws. Unfortunately, since that time, to my knowledge, worker centers continue to remain largely outside of coverage by these laws. In addition, during these years, not only have worker centers continued to evolve, but other organizations have emerged that have similar objectives of effectuating change in the workplace.

Instead of conforming their behavior to the existing laws, however, their advocates are pursuing what appears to be a parallel track. For example, in at least one jurisdiction, New York City, the City Council passed legislation allowing employees to make voluntary contributions to not-for-profit organizations of their choice through payroll deductions. This structure is very similar to the manner in which union dues are withheld from employee paychecks. In other situations, groups calling themselves global union federations that go by the names IndustriALL, UNI Global Unions and BWI, have become increasingly active in the United States and on behalf of their U.S. member unions to further organizing efforts or create added leverage at the bargaining table. However, to my knowledge none of these global union federations comply with the requirements of the LMRDA.

Compliance with these laws would confer benefits upon the very workers these groups claim to represent. Unfortunately, it appears these groups are reluctant to define themselves as labor organizations because the NLRA and the LMRDA are perceived as creating an impediment to worker centers' activities. In addition, worker centers have not considered themselves to be limited by the NLRA restrictions on secondary picketing and protracted picketing for recognition. Such conduct is a common tool used by these groups to convey their message, but it would violate the NLRA if they considered themselves labor organizations.

Without coverage of the NLRA and LMRDA these organizations can avoid accountability to the workers they claim to represent. Yet, the laws that provide protections to workers vis a vis labor organizations that represent them were designed

precisely to create that accountability. Moreover, these laws were also intended to protect worker self-choice, to ensure a balance between labor and management interests, and to ensure the free flow of commerce. The burden of compliance with those laws is not so significant when considered within the context of the benefits afforded to workers and the economy in general.

The mission of many worker centers is often seen as being an important means of advocating on behalf of underrepresented employees who do not have access to or knowledge of the legal mechanisms to protect their rights. However, no organization, no matter how laudable its mission, is above reproach, and through its passage of the laws that regulate labor organizations, Congress established safeguards to give workers a say in and understanding of the operations of the organizations that represent them. Compliance with the NLRA and LMRDA serves not only as a protection for workers, but perhaps as a validator of the worker centers that claim to represent them.

A goal of many worker centers is to ensure that employers of their members comply with the basic laws that offer protections to workers. It is not unreasonable to expect worker centers to do the same. Ultimately, the benefits of the laws that govern labor organizations flow to the workers they represent, and, as such, there simply is no viable justification for worker centers not to comply with them.

Finally, I would like to point out that today, well into the second year of the administration of President Trump, the Administrator position in charge of the Office of Labor Management Standards, or OLMS, which oversees compliance with the LMRDA

remains unfilled. I therefore ask the members of this Committee to urge the administration to fill the position as quickly as possible.

Thank you for your time, and I look forward to answering any questions you may have.