

**Opening Statement of the Bobby Scott
Committee on Education and the Workforce
Hearing on H.R. 2776, the Workforce Democracy and Fairness Act
H.R. 2775, the Employee Privacy Protection Act, and H.R. 986, the Tribal Labor
Sovereignty Act of 2017
June 29, 2017**

Good morning, Chairwoman Foxx.

Today, this committee meets for the 28th time since the Majority took control in 2011 to discuss issues related to the National Labor Relations Board.

Economists agree that the rise of income inequality over the past 40 years is linked to the decline of union membership. This is because unions allow employees the right to collectively bargain over their wages and conditions in the workplace, ensuring that productivity gains are more fairly shared throughout the economy.

At the outset of this markup, it bears repeating that the stated purpose of the National Labor Relations Act is to encourage collective bargaining and to protect workers' right to full freedom of association for the purpose of negotiating terms and conditions of employment.

Standing at odds with this purpose are the three bills under consideration today, which, by design, sabotage workers' ability to organize and collectively bargain for a better life. Labeling these bills with titles that speak to workplace "democracy," "fairness" and "privacy" fails to mask that the bills actively undermine the stated purposes of the National Labor Relations Act.

The goal of H.R. 2776—the misnamed **Workforce Democracy and Fairness Act**—is to delay, and to defeat union elections.

First, rather than minimizing undue delay in elections, this bill mandates delay for delay's sake.

For example, the bill imposes a 35-day delay before an election can take place, even if workers and their employer agree that an election can take place sooner. Over 90 percent of all pre-election issues—such as defining the appropriate bargaining unit—are resolved through stipulation, thereby eliminating the need for arbitrary delay.

Second, H.R. 2776 expands the scope of issues that can be litigated before an election. This approach is in contrast with the NLRB's 2015 election rule, which minimized pre-election delays by postponing litigation of most issues until after the election.

Given the opportunity to create delays used to campaign against the union, unscrupulous employers will have an incentive to litigate every conceivable pre-election matter. Union avoidance law firms, such as Jackson Lewis, advise its clients to use such litigation as a way to buy time to allow “the heat of the union’s message to chill prior to the election.”

Third, the bill manipulates the procedure for deciding who is in a bargaining unit by empowering employers to dilute the percentage of employees interested in forming a union by expanding the pool of eligible voters.

This is a gilded invitation to dishonest employers to gerrymander and rig an election. This isn’t fairness or democracy. Rather, it deprives workers full freedom of association.

The second bill, the **Employee Privacy Protection Act**, has nothing to do with employee privacy. While employers have multiple means of contacting employees, through mail, phone, email, text message and captive audience meetings, the bill allows the employer to limit the union’s access to only one means of contact. The purpose is to undercut the union’s ability to provide information prior to the election. Would it be fair in a Congressional election campaign if one side were able to limit their opponent to only one form of contact information?

The third bill is H.R. 986, the **Tribal Labor Sovereignty Act of 2017**. This legislation would strip employees of the protections afforded by the National Labor Relations Act (NLRA) at any enterprise owned and operated by an Indian tribe *and* located on Indian lands.

At issue in this bill are two solemn and deeply rooted principles.

One is the rights of Indian tribes as “distinct, independent political communities.”

The second is the rights of workers to organize and bargain collectively.

Rather than attempting to reconcile these competing principles, H.R. 986 simply strips workers’ of their rights. Some 600,000 workers are employed nationwide in tribal casinos, but these are rarely members of the tribe. Indeed, 75 percent of tribal casino workers are not members of tribes.

Thousands of employees at tribal enterprises are covered by collective-bargaining agreements.

Unions have helped tribal casino workers secure better wages and benefits, while reducing the need for government assistance with health care. Without a union, these jobs could easily revert to low-wage service jobs, instead of jobs that allow workers to climb the ladder to the middle class.

This legislation jettisons the carefully crafted balance between tribal sovereignty and workers' rights that were adopted in the *San Manuel* decision by the NLRB in 2004 under a Republican Administration.

The NLRB simply followed the precedents approved by multiple courts that applied labor laws to Indian tribes, such as the Fair Labor Standards Act, the Occupational Safety and Health Act and the Employee Retirement Income Security Act. But only the NLRA is being singled out.

Let's be clear, this bill is about creating union-free zones wrapped in the garb of tribal sovereignty. Just as the other bills weaken or eliminate labor unions in the name of "privacy," "fairness" or "democracy," this bill does so in the name of sovereignty.

I urge a no vote on all three bills.

In summary, we have three cynical bills that take time away from what we should be doing. Rather than considering anti-labor bills that strip workers of their ability to bargain for better wages and working conditions, we should be focusing on policies that promote economic security.

That's precisely why I have introduced the Raise the Wage Act to gradually increase the minimum wage to \$15 per hour. I urge the Chair to find time to take this bill up, instead of bills that weaken workers' bargaining power and make it harder for Americans to join or stay in the middle class.

It's well past time to get back on track and work on the side of middle-class Americans.