TESTIMONY OF
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Chairman Good, Ranking Member DeSaulnier, and members of the Subcommittee: Thank you for the invitation to appear before you today. I am Lynn Rhinehart, and I am a senior fellow at the Economic Policy Institute, a Washington, D.C.-based think tank that analyzes economic issues as they affect working Americans. My focus at EPI is on workers' rights to form unions and engage in collective bargaining, which I have worked on for my entire career.

This is an exciting time for supporters of the labor movement and worker organizing. Support for unions is at the highest it has been in decades, particularly among young workers.[1] Workers are filing more petitions for union representation elections at the National Labor Relations Board, and they are winning a higher percentage of elections.[2] Unionized workers are winning significant gains in pay, benefits, and working conditions, as a recent report by the U.S. Department of Labor's Bureau of Labor Statistics details.[3]

Research shows that 60 million non-union workers would choose union representation today if given the choice.[4] Yet union membership today is at 14.4 million workers, and while actual membership numbers have increased in each of the past two years, union density – the percentage of workers who are members of a union – has ticked downward due to the proportionately larger increase in overall employment levels.[5]

So why aren't these 60 million workers organized? The fact is that our primary labor law – the National Labor Relations Act (NLRA) – is too outdated and weak to fulfill its stated

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[1] https://aflcio.org/press/releases/afl-cios-shuler-state-unions-strong-record-public-support-unprecedented-activism-and

[2] https://www.nlrb.gov/news-outreach/news-story/union-petitions-up-35-unfair-labor-practices-charge-filings-up-7-in-the; https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-unions-on-a-roll-are-reeling-in-the-workers

[3] "Wages and salaries increased 6.3 percent for union workers and 4.1 percent for nonunion workers for the 12-month period ending in March 2024," https://www.bls.gov/news.release/pdf/eci.pdf

[4] https://www.epi.org/publication/union-membership-data/

[5] Id.

purpose of protecting and encouraging workers' organizing and bargaining rights.[6] The law gives employers too much leeway to interfere when workers want to organize. Employers can and do hold mandatory anti-union "captive audience" meetings that workers are required to attend or risk discipline. Research shows that nine out of ten employers hold such meetings during organizing campaigns.[7] Union supporters have no comparable right to talk with workers at the workplace about the benefits of unionization. Employers regularly hire third-party union busters – formally known as "persuaders" – to undermine the union organizing drive. Three out of four employers hire these third-party union busters, paying them hundreds of millions of dollars each year to thwart their workers' organizing drives.[8] One company – Amazon – spent $14.2 million in one year alone (2023) on third-party union busters.[9]

Another standard practice by employers is to fire workers who support the union, because employers know that they face no real financial consequences for violating the law. Starbucks has been charged with firing dozens of pro-union workers during the recent organizing drives.[10] Firing workers for exercising their organizing rights is illegal under the NLRA, but there are literally no monetary penalties for illegally firing union supporters for exercising their organizing rights – none. Employers found to have violated the law are required to reinstate workers and make them whole for lost wages (minus interim earnings) and other expenses they incurred after being illegally fired, but there is no monetary penalty for breaking the law.

Another fundamental weakness in our labor law is that it fails to provide a process for parties to reach an initial collective bargaining agreement when workers organize. When workers courageously overcome the various obstacles to organizing and form a union, their employers can and do string out the collective bargaining process to try to frustrate workers and undermine the union. We have seen this at Apple, Amazon, REI, Trader Joes, and other companies. These companies are stalling the bargaining process to undermine the union because they know that, here again, there are no monetary penalties under our labor law for bad faith bargaining, and if workers get frustrated, they might vote out the union.

For these and other reasons, comprehensive legislation to strengthen workers' organizing and bargaining rights is urgently needed to make real the NLRA's promise of the right to organize. EPI continues to urge Congress to pass the Protecting the Right to Organize Act and the Public Service Freedom to Negotiate Act at its earliest opportunity.

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[6] https://www.epi.org/publication/why-workers-need-the-pro-act-fact-sheet/

[7] https://www.epi.org/blog/captive-audience-meetings/

[8] https://www.epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns/

[9] https://thehill.com/business/3931442-amazon-spent-unmatched-14-million-on-labor-consultants-in-anti-union-push/

[10] https://www.theguardian.com/us-news/2023/aug/28/will-starbucks-union-busting-stifle-a-union-rebirth-in-the-us

Insufficient funding for the National Labor Relations Board (NLRB) – the independent agency established by Congress to administer and enforce the NLRA – is another impediment to workers being able to effectively exercise their organizing and bargaining rights. Despite the increase in union representation petitions at the agency and the increase in unfair labor practice filings, the NLRB has been essentially flat-funded for years, other than a much-needed $25 million increase in FY 2022.[11] NLRB personnel are responsible for protecting the organizing and bargaining rights of more than 100 million workers.[12] President Biden's appointees to the NLRB are doing as much as they can with existing resources, but additional funding for the agency is needed in order for it to handle representation elections and unfair labor practice charges in a timely manner.

It's important to point out that not all employers fight their employees' efforts to organize. Some companies, like Microsoft, New Flyer, Ben and Jerry's, and others, have stayed neutral when workers have organized and have respected their workers' decision. Whatever their motivation -- and there is extensive research documenting the benefits of unionization to productivity, reduced turnover, and more[13] -- these companies begin their collective bargaining relationship on a much more positive and constructive note. We should be encouraging more companies to take a similar approach.

Today's hearing bears the provocative title "Big Labor Lies: Exposing Union Tactics to Undermine Free and Fair Elections." I understand that the Subcommittee is interested in focusing on the practice of salting, and on neutrality agreements. I will offer comments on these issues in the context of pending legislation on these topics and will also comment on another pending bill relating to collective bargaining and union representation. These bills include H.R. 4320, the Truth in Employment Act of 2023; H.R. 7784, the Start Applying Labor Transparency (SALT) Act; H.R. 719, to amend the LMRA to prohibit organizing assistance by employers; and H.R. 6745, the Worker's Choice Act. Each of these bills would take the law in the wrong direction. They would weaken rather than strengthen workers' organizing rights at the very moment that workers are telling us they want to unionize more than at any time in recent memory.

H.R. 4320, the Truth in Employment Act, would allow employers to discriminate against, and not hire, job applicants who work for a labor organization that does not currently represent the employer's employees. The stated purpose of the legislation is to prevent "salting" – pro-union workers seeking employment at an employer with an interest in organizing their workplace – a practice that has existed since before the passage of the NLRA. The U.S. Supreme Court – which at the time had seven Republican and two Democratic appointees – ruled **unanimously** in

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[11] https://www.epi.org/publication/bidens-nlrb-restoring-rights/

[12] Id.

[13] https://home.treasury.gov/system/files/136/Labor-Unions-And-The-Middle-Class.pdf

1995 that the NLRA prohibits employers from discriminating in hiring against "salts."[14] Yet H.R. 4320 would authorize exactly this sort of discrimination.

H.R. 4320 is premised on the idea that "salts" are not interested in working for the employer and promoting the employer's business interests, and that hiring them will necessarily harm the employer's business, i.e., that unionizing is bad for business. This argument ignores the extensive research documenting the advantages unionized employers enjoy, in terms of reduced turnover, improved employee morale, and increased productivity, among other benefits.[15] It is also important to note that to the extent an employer faces performance issues by any employee, employers have many lawful means of addressing these issues at their disposal.

Nor does the presence of "salts" in the workplace change the fact that it is up to individual workers in a bargaining to decide whether or not to unionize. A pro-union "salt" in the workplace does not change the right of any worker to make his or her own decision regarding unionization, pro or con.

In short, H.R. 4320 is the classic solution in search of a problem, but in the course of solving a non-existent problem, it would open the door to blatant anti-union discrimination that has been illegal since the passage of the NLRA.

H.R. 7784, the Start Applying Labor Transparency (SALT) Act, would require unions to report on payments made for the purpose of persuading employees regarding unionization, and similarly would require consultants and other entities the union contracts with for these services to file financial reports. The bill would require these reports to identify the target(s) of the organizing efforts. The legislation states that it is intended to create parity between the persuader reporting requirements that currently exist under the Labor Management Reporting and Disclosure Act (LMRDA) for employers who hire anti-union consultants to run anti-union campaigns. However, the truth is there is no parity between the detailed reports that unions are already required to file under the LMRDA and the minimal reports required of employers. Unions are currently required to file extensive annual reports detailing their receipts and expenditures, by functional category, with itemized listings of every expenditure of $5,000 or more in the aggregate in any given year.[16] Reports are posted on-line, giving workers, employers, and the public easy access to this information.

Employers, on the other hand, are only required to report on a limited number of financial transactions, including payments to union officials and arrangements to hire union busters. The persuader reporting requirement is riddled with loopholes (including loopholes that the PRO Act

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[14] NLRB v. Town & Country Electric, Inc., 516 U.S. 85 (1995).

[15] *See* fn. 13.

[16] *See* https://www.dol.gov/sites/dolgov/files/OLMS/regs/compliance/comp_pubs/ReportsRequiredRevised%202014.pdf at 7.

seeks to address).[17] A recent report by the Department of Labor's Inspector General found that of 12 million employers, only 428 persuader reports were filed by employers during a three-year period, despite the occurrence of thousands of union representation elections during this time period and research showing that employers regularly hire union busters during these campaigns.[18] Thus, rather than achieve parity in reporting, H.R. 7784 would exacerbate an imbalance and inequity between the types and extent of information unions and employers are required to file, and impose unnecessary additional burdens on unions, given that much of the information outlined in H.R. 7784 is already disclosed.

H.R. 719 would amend Section 302 of the LMRA to criminalize the provision of "organizing assistance" by employers to unions as an illegal "thing of value." It is a dangerous, unnecessary, and wrong-headed proposal.

Section 302 was enacted by Congress to prevent bribes, payoffs, and other types of corruption. It is a criminal statute that is enforced by the U.S. Department of Justice. H.R. 719 would expose employers and unions to potential criminal prosecution for "organizing assistance" – a term that is not defined in the legislation.

To the extent the legislation seeks to criminalize organizing agreements between employers and unions establishing ground rules for organizing campaigns, like employer neutrality or access to workers, the proposal is entirely off base. Employers and unions sometimes choose to enter into arms' length ground rule agreements in order to lower the temperature and provide for a fair, orderly process for workers to decide on whether to form a union. These agreements have existed since the beginning of the NLRA, and they have been enforced by the courts.

Sometimes these agreements include voluntary recognition provisions whereby employers agree to recognize their workers' choice of union upon a showing of majority support (as opposed to an NLRB election). Voluntary recognition has existed since the beginning of the National Labor Relations Act and is a recognized and time-honored path for beginning a collective bargaining relationship.

Opponents of ground rule agreements contend that these agreements somehow interfere with employee free choice regarding union representation. They do no such thing. In fact, ground rule agreements *facilitate* employee free choice by creating an environment in which workers can make their decision without pressure or coercion.

Finally, if an employer and union were to enter into an organizing agreement that involved improper payoffs or employee coercion, such an agreement could be addressed under existing law. H.R. 719 is simply not needed for this purpose.

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[17] https://www.epi.org/publication/comment-to-the-u-s-department-of-labor-opposing-the-rescission-of-the-persuader-rule/

[18] https://www.oig.dol.gov/public/reports/oa/2024/09-24-002-16-001.pdf.

Finally, H.R. 6745, the Worker's Choice Act, would allow workers in so-called "right to work" states the ability to opt out of union representation and negotiate their terms and conditions of employment directly with their employer. This legislation would wreak havoc on our labor relations system, create divisiveness among the workforce, and create legal headaches for employers.

Under our labor law, when a majority of employees in a workplace or defined bargaining unit choose union representation, then the union becomes the representative of all of the employees in the bargaining unit. The union negotiates on their behalf and represents workers – whether or not they are members of the union – in grievances and other matters.

It is important to point out that in the United States, no worker is required to join a labor union as a condition of employment. In fair share states, i.e., states where employers and unions are allowed to negotiate fair share arrangements by which workers in the bargaining unit pay their fair share toward union representation – all workers in the bargaining unit pay either dues or a similar fee, but no worker is required to join the union as a condition of keeping their job. In so-called "right to work" states, employers and unions are prohibited from entering into fair share arrangements. Workers can choose not to join the union or pay dues or fees and still enjoy the benefits of union representation, such as higher wages, better health benefits, anti-discrimination and anti-harassment protections, and representation in grievance or disciplinary proceedings.

H.R. 6745 would allow workers in so-called "right to work" states to not only forego union membership or fees, but also to opt out of the wages and benefits negotiated by the union and negotiate with their employer on their own. This approach would create chaos in the labor-management system. It would cause divisiveness among workers, which would undermine productivity and morale. And it would create practical and legal problems for employers. If an employer negotiated with an individual in the bargaining unit and gave them better wages or benefits than workers in the bargaining unit, the employer would run the risk of being charged with an unfair labor practice for discriminating against the union workers. Moreover, it is worth noting that employers opposed the NLRB's Specialty Healthcare decision[19] because they said it would lead to "microunits" and create problems for employers who might have to bargain with several separate bargaining units.[20] H.R. 6745 would create the same problem, or worse.

In conclusion, this Subcommittee and Congress should be prioritizing legislation to strengthen the ability of workers to join together with their co-workers and form unions at their workplaces to improve their wages, benefits, and working conditions. Extensive research – including a comprehensive report by the Treasury Department last fall[21] -- documents the importance of unions to a fair economy, to pay equity for women and people of color, and to raising living standards for all workers, both union and non-union. Particularly given the surge

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[19] 357 NLRB 934 (2011).

[20] https://www.jdsupra.com/legalnews/nlrb-brings-back-micro-units-paving-the-3535802/

[21] https://home.treasury.gov/system/files/136/Labor-Unions-And-The-Middle-Class.pdf

of interest in organizing that we are seeing today, our focus should be on facilitating worker organizing and collective bargaining, not taking an already-weak law backwards and weakening workers' rights.

Again, thank you for the opportunity to testify today, and I would be happy to answer any questions.