MINORITY VIEWS
H.R. 511, "TRIBAL LABOR SOVEREIGNTY ACT OF 2015"
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Introduction

The Tribal Labor Sovereignty Act of 2015 (H.R. 511) strips workers of their rights to organize and collectively bargain at any enterprise owned and operated by an Indian tribe that is located on tribal lands. It does this by excluding such tribal enterprises from the jurisdiction of the National Labor Relations Act by amending the definition of a covered "employer."

This bill arises in a dispute between two solemn and competing principles: the rights that Indian tribes possess as "distinct, independent political communities, retaining their original natural rights in matters of local self-government,"[1] and the right of workers to organize, bargain collectively, and engage in concerted activities for mutual aid and protection.

Rather than attempting to reconcile these competing interests, H.R. 511 chooses sovereignty for some over the rights of others, and it strips hundreds of thousands of workers—most of whom are not members of tribes—of their voice in the workplace in one fell swoop just because they happen to work at a tribal enterprise on tribal lands.

As the AFL-CIO has noted, "workers cannot not be left without any legally enforceable right to form unions and bargain collectively in instances where they are working for a tribal enterprise which is simply a commercial operation competing with non-tribal enterprises."

This bill, which enjoys the support of the U.S. Chamber of Commerce, cloaks its anti-union agenda in the respectable garb of tribal sovereignty. It is another attempt in the quest to dismantle labor unions and strip workers of their ability to bargain for better pay and working conditions.

History of NLRB Jurisdiction Concerning Indian Tribal Enterprises

The National Labor Relations Act (NLRA) is silent with respect to its applicability to tribal enterprises. Prior to 2004, the National Labor Relations Board (NLRB) did not exercise jurisdiction over enterprises located on tribal lands,[2] but did do so for tribal enterprises located off tribal lands.[3] This bright-line geographic test was both over-inclusive and under-inclusive. For example, this test allowed the NLRB to assert jurisdiction over an off-reservation hospital run by a tribal consortium primarily serving tribal members—a function of tribal self-governance and should have been excluded from coverage.[4] But the test also failed to include commercial

[1] *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978).
[2] In the 1976 *Fort Apache Timber Co.* case, the Board declined to assert jurisdiction, holding that sovereign tribal governments, including a tribe's "self-directed enterprise on the reservation," were "implicitly exempt" from the NLRA's definition of "employer." 226 NLRB 503, 504-06 (1976).
[3] Unlike the enterprise at issue in *Fort Apache Timber, Co*., the Board ruled in 1992 that a tribally-owned and controlled factory operated off of the reservation was subject to NBLRB jurisdiction. *Sac & Fox Industries,* 307 NLRB 241 (1992).
[4] *Yukon-Kuskokwim Health Corp. v. N.L.R.B.*, 328 NLRB No.86 (1999), *remanded*, 234 F.3d 714 (D.C. Cir. 2000).

enterprises on tribal lands where the majority of employees were not tribal members, the majority of its customers were not members of the tribe, and its functions did not touch on essential matters of self-governance.

The 2004 NLRB's Decision in the *San Manuel* Case Is Rooted in Longstanding Judicial Doctrine Regarding Laws of General Applicability to Indian Tribes

In 2004, during the Bush Administration, the NLRB altered its jurisdictional test over tribal enterprises in the *San Manuel Indian Bingo and Casino* case. A 4-1 majority that was led by former Republican Chair Robert Battista asserted NLRA jurisdiction over tribal enterprises, except where doing so would:

> 1) touch on tribal rights of self-governance in purely intramural matters;
> 2) abrogate rights guaranteed by an Indian treaty; or
> 3) be contrary to congressional intent as indicated in the legislative history or statutory language.

The *San Manuel* decision is rooted in longstanding judicial doctrine used to determine when federal statutes of general applicability should apply to Indian tribes:

- The Supreme Court stated in the 1960 *Tuscarora Indian Nation* case that "it is now well settled by many decisions of this Court that a general statute in terms applying to all persons includes Indians and their property interests."[5]

- Narrowing that doctrine, a 1985 Ninth Circuit Court of Appeals case known as *Donovan v Coeur d'Alene Tribal Farm*[6] determined that the Occupational Safety and Health Administration (OSHA) had jurisdiction to enforce federal health and safety laws at a farm operated by a tribe and located on a tribe's reservation provided that the law did not: 1) touch on tribal rights of self-governance in purely intramural matters; 2) abrogate rights guaranteed by Indian treaty; or 3) be contrary to congressional intent as indicated in the legislative history or statutory language. In applying this test, the Court stated:

  > "The operation of a farm that sells produce on the open market and in interstate commerce is not an aspect of tribal self-government. Because the Farm employs non-Indians as well as Indians, and because it is in virtually every respect a normal commercial farming enterprise, we believe that its operation free of federal health and safety regulations is neither profoundly intramural . . . nor essential to self-government."

Using the same three-prong test in *Coeur d'Alene,* the NLRB's *San Manuel* decision carefully balances tribal sovereignty and the fundamental right of workers to organize. The *Coeur d'Alene* framework has since been applied by the Second, Sixth, Seventh, Ninth, and Eleventh Circuits.[7]

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[5] *FPC v. Tuscarora Indian Nation*, 362 U.S. 99, 116 (1960).
[6] *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113 (9th Cir. 1985).
[7] *Soaring Eagle Casino & Resort v. NLRB* (July 1, 2015) granted the NLRB jurisdiction based on 6th Circuit precedent involving another tribal casino (*NLRB v. Little River Band of Ottawa Indians Tribal Government* (June 9,

NLRB Policy Balances Tribal Sovereignty and Workers' Rights to Organize and Bargain

In the *San Manuel* decision, the NLRB singled out its desire "to balance the Board's interest in effectuating the policies of the Act with its desire to accommodate the unique status of Indians in our society and legal culture."[8] The Board noted that when a tribe "is fulfilling traditionally tribal or government functions" that do not involve "non-Indians or substantially affect interstate commerce," then "the Board's interest in effectuating the policies of the NLRA is likely to be lower."

Thus, the NLRB has found that some enterprises – such as a health clinic that serves primarily tribal members – are not suitable for federal jurisdiction where it is "fulfilling the Federal Government's trust responsibility to provide free health care to Indians."[9] The NLRB likewise decided that it lacked authority to assert jurisdiction over a casino run by the Chickasaw tribe in Oklahoma, because doing so would abrogate an 1830 treaty which exempted the tribe from federal laws unless they involved "legislation over Indian Affairs".[10] Both the tribal health clinic and the Chickasaw Tribe casino decisions block NLRB jurisdiction because these enterprises fall within one of the 3 exceptions articulated in *Coeur d'Alene.*

Using this same 3 prong test, the NLRB has exercised jurisdiction to protect worker rights guaranteed under the NLRA which involve casinos patronized and operated overwhelmingly by non-tribal members, because neither treaty rights, nor essential self-governance matters, were implicated.[11]

Tribal Enterprises are Governed by Other Employment Laws, but H.R. 511 Only Singles Out Workers' Rights to Organize Unions and Collectively Bargain

Tribal sovereignty is not absolute with respect to federal laws of general applicability. Using the *Coeur d'Alene* framework, numerous courts have upheld the applicability of other federal employment laws to Indian tribes including:

- Fair Labor Standards Act (FLSA)[12]
- Occupational Safety and Health Act (OSHA)[13]
- Employee Retirement Income Security Act (ERISA)[14]

2015)); however, the majority in the *Soaring Eagl*e case disputed whether the *Coeur d'Alene* framework is the proper basis for determining whether federal statutes of general applicability should apply to Indian tribes.

[8] *San Manuel Indian Bingo and Casino*, 341 NLRB 1055, 1062 (2004) (Chairman Battista and Members Liebman and Walsh; Member Schaumber, dissenting), enforced, 475 F.3d 1306 (D.C. Cir. 2007).

[9] *Yukon Kuskokwim Health Corp.*, 341 NLRB 1075 (2004) (on remand from the D.C. Circuit, 234 F.3d 714 (2000)).

[10] *Chickasaw Nation d/b/a Winstar World Casino*, 362 NLRB No. 109 (June 4, 2015).

[11] *See, e.g.*, *Little River Band of Ottawa Indians Tribal Gov't*, 361 NLRB No. 45 (Sept. 15, 2014), *enforced* No. 14-2239 2015 WL 3556005 (6th Cir. June 9, 2015); *Casino Pauma*, 362 NLRB No. 52 (Mar. 31, 2015); *Soaring Eagle Casino & Resort, An Enterprise of the Saginaw Chippewa Indian Tribe*, 361 NLRB No. 73 (Oct. 27, 2014); *Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino*, 353 NLRB No. 32 (2008)

[12] *Solis v. Matheson*, 563 F.3d 425 (9th Cir. 2009). (The overtime provisions of the Fair Labor Standards Act apply to a retail business located on an Indian reservation and owned by Indian tribal members).

[13] *Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174 (2nd Cir. 1996) (applying OSHA to a tribe-operated construction business).

[14] *Smart v. State Farm Ins.*, 868 F.2d 929 (7th Cir. 1989) (concluding ERISA applied to a health center owned and operated by an Indian tribe on its reservation). Also: *Lumber Industry Pension Fund v. Warm Springs Forest*

- Title III (public accommodations) of the Americans with Disabilities Act (ADA)[15]

Thus, the effort to focus solely on the National Labor Relations Act to the exclusion of other federal labor laws, suggests that animus toward labor unions motivates this legislation—which has been wrapped in the laudable garb of sovereignty.

Parity and Sovereignty are Not Valid Grounds for Taking Away Workers' Rights, Especially Where Tribes Are Exempted from Labor Laws that Cover State and Local Governments

Proponents' primary argument in favor of H.R. 511 is that the NLRA does not apply to state and local governments, and tribes should have parity since they are also a sovereign government. Under this principle, tribes contend that they should be able to decide whether to allow employees to form unions or not under a tribal labor relations ordinance, just as state governments are free to decide whether to allow public employees to form unions or not. This parity argument falls short in three important ways:

1) *Tribal casinos and similar businesses are commercial enterprises* in direct competition with similar non-tribal businesses. Although these enterprises raise revenues for the tribe, these are not inherently governmental functions. Thus, the NLRB's regulation of labor relations does not impair an essential element of the tribe's sovereignty, especially in matters where the majority of employees are not tribal members. Courts have found that the total impact on tribal sovereignty from NLRA jurisdiction is "not sufficient to demand a restrictive construction of the NLRA."[16]

2) *Approximately 75% of the 600,000 employees of tribal casinos are non-Indians.*[17] Employees of tribal enterprises, who are not enrolled members of the tribe, are prohibited from having any voice or the right to advocate for the establishment or repeal of labor and employment laws, unlike comparable employment in local or state government. Since the majority of employees at tribal enterprises lack parity with the rights enjoyed by state and local government employees to petition their employer, the parity argument between tribal government and state and local government lacks a valid basis.

3) *Tribes are exempted from employment laws which apply to state and local governments.* State and local governments are covered by Title VII of the Civil Rights Act and the non-discrimination provisions of the Americans with Disabilities Act, whereas Indian tribes are expressly exempted from coverage. If tribes want parity with state and local governments, they should be prepared to be covered by the same federal statutes as those applicable to local and state governments.

Stripping Workers' Rights and Remedies Can Lead to Legally Sanctioned Worker Exploitation

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Products Industries, 939 F.2d 683 (9th Cir. 1991). (Permitting the pension fund to sue the tribally-operated mill under ERISA will not usurp the tribe's decision-making powers).

[15] *Florida Paraplegic Association v. Miccosukee Tribe of Florida*, 166 F.3d 1126 (11th Cir. 1999) (Affirming that Title III of the Americans with Disability Act applies to restaurant and gaming facility operated by an Indian tribe).

[16] *San Manuel Indian Bingo and Casino*, 475 F.3d 1306 (D.C. Cir. 2007).

[17] Dwanna L. Robertson, *The Myth of Indian Casino Riches*, Indian Country Today Media Network (June 23, 2012) http://indiancountrytodaymedianetwork.com/2012/06/23/myth-indian-casino-riches.

As noted above, Title VII of the Civil Rights Act prohibits employment discrimination by all governments *except* tribal governments and enterprises. As a result, employees of a tribal enterprise who are subjected to sexual harassment or other forms of discrimination cannot bring a claim to the Equal Employment Opportunity Commission (EEOC) or in federal courts—even when the alleged perpetrator and victim are both non-tribal members employed at the tribal enterprise.

For example, a woman who took a job with a "swamp safari" run by a tribe in Florida filed suit against the tribe after her employers "repeatedly touched her, made sexual comments and degrading remarks, and even suggested that she could make a 'quick $10,000' from a wealthy client."[18] The U.S. District Court for the Southern District of Florida dismissed her case for lack of subject matter jurisdiction, citing the tribe's sovereign immunity. She was not affiliated with the tribe and had no further recourse.

In another case, several female former employees of Thunder Valley, a tribal casino in northern California, filed a class-action discrimination lawsuit in 2005. One woman reported having been sexually assaulted by a casino executive. A second woman reported that the same executive fondled and forcibly kissed her as well. Several other women reported suffering sexual harassment, age and sex discrimination, and wrongful termination. None of the plaintiffs were tribal members, nor was the alleged attacker. Regardless, their case was dismissed for lack of subject-matter jurisdiction and because of tribal sovereign immunity.[19]

An hourly worker—an enrolled member of the Pomo Tribe—who is employed at a tribal casino in Sonoma County, California testified before the Education and the Workforce Committee that without NLRA protections workers felt they had no recourse to address sexual harassment. He stated:

> "I have seen sexual harassment at the casino. A general manager going up to women telling them if they want promotions they had to sleep with him. The women were fired. We all complained. Managers at the Stations Casinos [which was managing the casino on behalf of the tribe] told us it was a sovereign nation.
>
> It was bad enough that Title VII of the Civil Rights Act doesn't apply to Native businesses. Congress should not make the situation worse by taking away protections under the National Labor Relations Act. The NLRA enables workers who have been subjected to harassment and other forms of discrimination to get together and complain about it. Take away the NLRA, you don't only have sexual harassment but no ability to speak about it."[20]

Carving tribes out of Title VII coverage led directly to these unjust results. Similarly, carving tribes out of the NLRA may give rise to new forms of legally-sanctioned worker exploitation.

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[18] Scott D. Danahy, *License to Discriminate: The Application of Sovereign Immunity to Employment Discrimination Claims Brought By Non-Native American Employees of Tribally Owned Businesses*, 25 FLA. S. LAW REV. 679 (1998).

[19] Shivani Sutaria, *Employment Discrimination in Indian-Owned Casinos: Strategies to Providing Rights and Remedies to Tribal Casino Employees*, 8 J. LAW & SOCIAL CHALLENGES 132 (2006).

[20] Oral testimony of Gary Navarro**,** Legislative Hearing on H.R. 511, the *Tribal Labor Sovereignty Act of 2015*, Committee on Education and the Workforce, U.S. House of Representatives, June 16, 2015.

H.R. 511 Would Jeopardize the Enforcement of Existing Labor Contracts and Undermine Established Bargaining Relationships

Thousands of employees at commercial tribal enterprises—such as casinos—are currently covered by collective-bargaining agreements. If H.R. 511 were enacted, it is doubtful these labor contracts would remain fully enforceable. When a labor contract expires, a tribe could unilaterally terminate the established bargaining relationship with the union without legal consequence. Without a union, these jobs will likely revert to low-wage service jobs, instead of being jobs that allow workers to climb the ladder to the middle class.

Union Agreements Help Hourly Service Workers Escape Low Wages and Benefits at Tribal Gaming Enterprises

Most Indian casinos are large scale commercial operations, which overwhelmingly employ non-Indians and serve non-Indian customers. There were 449 tribal gaming facilities in 28 states, which earned more than $28 billion in revenue in 2013.[21] An estimated 43% of all legal gaming revenues in the U.S. is now generated at tribally-owned casinos.

- According to a 2013 report by UNITE HERE, the average low-wage California tribal casino worker makes $10.02 per hour or $20,841 annually. At this level, a family of four with one breadwinner would be living at 88% of the federal poverty level.
- UNITE HERE, which represents over 10,000 casino workers in California, reports that workers with collective bargaining agreements earned $7,558 (41%) more in combined wages and health insurance benefits than the industry average in California.[22]
- Where unions have organized at casinos in California, workers formerly trapped in poverty level jobs now have a foothold to get into the middle class as their wages have increased, their health care costs have declined, and the number of families requiring government assistance for health care has decreased significantly.

Tribal casinos are not obligated to obey state minimum wage laws, which have a negative impact on casino workers in states where the minimum wage is higher than the federal minimum wage. Unions help close that gap.

The Congressional Budget Office (CBO) Determined That Enactment of H.R. 511 Would Have an Adverse Economic Impact on Workers at Tribal Enterprises

The Congressional Budget Office found that "[B]y excluding tribal enterprises located on tribal land from the definition of employer for purposes of the National Labor Relations Act, the bill would eliminate the right of employees of such enterprises to file a claim, individually or through a union, regarding certain labor practices. Currently, employees may file a claim against tribal employers over which the NLRB asserts jurisdiction alleging unfair labor practices under the act that prohibit or interfere with collective activities to improve wages and working conditions. By

[21] *Indian Gaming: Regulation and Oversight by the Federal Government, States, and Tribes*, U.S. Government Accountability Office, GAO-15-355 (2015), http://www.gao.gov/assets/680/670603.pdf; NIGC Tribal Gaming Revenues, National Indian Gaming Commission, http://www.nigc.gov/LinkClick.aspx?fileticket=_15QAX4uZyA%3d&tabid=67.

[22] T*he Emerging Standard: An Analysis of Job Quality in California's Tribal Gaming Industry*, UNITE HERE (October 2013).

eliminating the right of employees to file such claims with the NLRB, the bill would impose a 'private-sector mandate'" on such workers under the Unfunded Mandates Reform Act.

CBO found employees of tribal enterprises are burdened with economic costs under H.R. 511, which include "the value of forgone monetary awards resulting from claims that would have been filed with the NLRB in the absence of the bill" including a "reinstatement of discharged employees and back pay for the period of unemployment." [23] CBO noted that by eliminating the right of employees "to form a union and bargain collectively" there would be a broader adverse impact, but CBO did not consider this broader impact to be part of the direct cost of the mandate.

Tribal Labor Relations Ordinances Are Not an Adequate Alternative to NLRA Jurisdiction Absent Minimum Standards

Proponents of H.R. 511 point to the adoption of Tribal Labor Relations Ordinances (TLRO) by some tribes as evidence that there is an adequate alternative for the protections offered by NLRA that will preserve tribal sovereignty.

Some tribes have been required to adopt TLROs, such as those in California, where the state has required TLROs as a condition of state-tribal gaming compacts under the Indian Gaming Regulatory Act. Tribes in other states have negotiated TLROs with unions who had first won recognition under the NLRA. However, other tribes in other states have chosen not to adopt a TLRO at all, because there was no requirement under a state compact. Each tribe enacts its own labor-management relations laws, if at all, without transparency or political accountability to non-tribal members employed by its commercial businesses. Moreover, there is no uniform set of rights and responsibilities for employers and workers that have to be included in tribal labor ordinances. Many TLRO's provide inadequate protections, and the field is marked by widespread inconsistency in the protection of rights, for example:

- The Fair Employment Practices Code of the Little River Band of Ottowa Indians in Michigan requires labor organizations to apply for and obtain a license from the tribe before organizing; it precludes bargaining over layoffs or recall of employees; and gives the Tribal Court exclusive authority over disputes involving the duty to bargain in good faith, which are not subject to appeal. These and other requirements severely limit freedom of association.

- The United Auto Workers (UAW) and three other unions reached an agreement with the Mashantucket Pequot Tribe at the Foxwoods Casino regarding the terms of a TLRO, which governs their collective bargaining relationship. However, this mutually agreeable TLRO would not have been established, except for the fact that the UAW had petitioned for and won an NLRB election to represent workers at the casino. If H.R. 511 were enacted, and the Tribe then chose to reinstate restrictive labor laws that it had previously adopted, there would be no legal or political recourse for the workers—the overwhelming majority of whom do not belong to the Mashantucket Pequot Tribe.

[23] Congressional Budget Office Cost Estimate for the Tribal Labor Sovereignty Act of 2015 (H.R. 511), August 24, 2015, https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr511.pdf.

- Tribes must adopt a TLRO under their compact between the State of California and tribal casinos with more than 250 employees. While there are a number of similarities between the California TLRO and the NLRA, the tribes can restrict workers' choices when voting which union they want to select; long established rights to display union buttons while at work are prohibited; and unfair labor practices are adjudicated through a standing panel of 10 arbitrators rather than a labor relations agency. On the other hand, some compacts include neutrality agreements which allow for card check recognition instead of secret-ballot elections, and waive sovereign immunity to allow unions to seek enforcement of arbitration decisions in state court. However, if a tribe fails to adopt an acceptable TLRO, only the State of California has enforcement rights.

There is no federal requirement that TLROs must be at least as effective as the rights and remedies provided under federal labor law. If TLROs are to serve as a nationwide alternative to the NLRA, there will need to be statutory minimum standards and each TLRO would need to be assessed by a competent authority to ensure that workers' rights are substantially the same as those under the NLRA, even if they are not identical in all respects.

The U.S. Requires Its Trading Partners to Implement Internationally Recognized Labor Standards, But H.R. 511 Exempts U.S. Workers When Employed by Indian Tribe

This bill advances a double standard: it deprives workers of the right to organize and bargain collectively at commercial enterprises operated by Indian tribes, while the U.S. government insists that our international trading partners abide by these same core rights as a way to create a level playing field for U.S. workers. As a member of the International Labor Organization (ILO), the United States is obligated to respect and promote the rights outlined in the ILO Declaration on Fundamental Principles and Rights at Work, including:

- Freedom of association and the effective recognition of the right to collective bargaining;
- Elimination of all forms of forced or compulsory labor;
- Effective abolition of child labor; and
- Elimination of discrimination in respect of employment and occupation.

When negotiating with potential trading partners, Democrats and Republicans alike have insisted that other fully-sovereign nations adopt laws that would implement the core ILO standards. The U.S. Congress has ratified four free trade agreements— with Peru, Panama, Colombia and the Republic of Korea— which includes these rights and provides for dispute resolution for violations. Yet within our own borders, H.R. 511 would strip hundreds of thousands of the right to freedom of association and the right to collective bargaining at Indian tribal enterprises.

In short, H.R. 511 "repudiate[s] fundamental human rights that belong to every worker in every nation."[24]

The Tribal Labor Sovereignty Act of 2015 (H.R. 511) Will Adversely Affect the Economy

Committee Democrats have advanced policies to increase opportunity and reduce income inequality. One of the most effective tools to reduce income inequality is the right to organize and collectively bargain for better wages and working conditions. By providing workers with

[24] Legislative Alert from the AFL CIO, July 21, 2015, regarding the Tribal Labor Sovereignty Act (H.R. 511).

bargaining power, workers can reconnect the historical linkage between productivity and wage growth.

Weakening collective bargaining rights for workers employed at tribal enterprises would exacerbate the well documented pay-productivity gap that has persisted for the past 40 years. Between 1948 and 1973, productivity increased 96.7% while wages for the typical worker increased 91.3% in inflation adjusted terms. However, between 1973 and 2013, productivity increased 74.4% while compensation for the typical worker only increased 9.2%. [25] The broken link between productivity and pay is one reason for persistent wage stagnation in our economy.

Workers with collective bargaining agreements have better wages, more access to benefits, and safer working conditions. For example, 95% of employees have access to employer-provided health care versus 64% of non-union workplaces. Additionally, 94% of unionized workers last year have access to retirement benefits through employers, compared to 64% at nonunion workplaces.[26] These trends hold true in workplaces across the country, but are especially pertinent in the casino and gaming industry, which H.R. 511 would overwhelmingly affect.

Previous House Consideration of Legislation to Block NLRB Jurisdiction over Tribal Enterprises

Floor amendments were offered to both the Fiscal Year 2005 and the 2006 House Labor, HHS Appropriations Acts which would have blocked the NLRB from enforcing the *San Manuel* decision. These amendments, which were offered by Representative J.D. Hayworth, were twice rejected on roll call votes: 225 to 187 on September 9, 2004, and 256 to 146 on June 24, 2005.[27]

Amendments

No Democratic amendments were offered at the July 22, 2015 markup.

H.R. 511 Is Unnecessary Because the National Labor Relations Board's Current Approach Balances Tribal Sovereignty and Workers' Rights

This legislation is not needed, because the NLRB's case-by-case approach balances two competing principles—protection of workers' rights and the preservation of tribal sovereignty. The bill's all-or-nothing approach is too sweeping, and there is no principled basis for excluding hundreds of thousands of workers from coverage under labor laws just because they happen to work in a commercial enterprise on tribal lands.

This bill cloaks an anti-union agenda in the respectable garb of tribal sovereignty. It is another attempt in the Majority's quest to dismantle labor unions and strip workers of their ability to bargain for better pay and working conditions. We urge the full House of Representatives to reject this legislation.

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[25] *The Erosion of Collective Bargaining Has Widened the Gap Between Productivity and Pay*, David Cooper and Lawrence Mishel, Economic Policy Institute (January 6, 2015). http://www.epi.org/publication/collective-bargainings-erosion-expanded-the-productivity-pay-gap/.

[26] *Employee Benefits in the United States*, New Release, Bureau of Labor Statistics, July 24, 2015.

[27] *Congressional Record*, September 9, 2004, pp. H.6951-6952 and June 24, 2005, pp. H.5153.

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