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Before the U.S. Senate Committee on Health, Education, Labor, and Pensions
Hearing on Labor Law Reform Part 2: New Solutions for Finding a Pro-Worker Way Forward

October 22, 2025

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 dedicated to championing worker freedom, fair competition, and modern labor policy for a modern workforce. Our ultimate goal is to empower workers to thrive in the 21st century economy. We educate policymakers and the public on the benefits of freedom, innovation, and collaboration between workers and job creators. 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.

America's workers are the backbone of our economy and the foundation of our shared prosperity. Yet, our federal labor laws were written for the Industrial Revolution, with one-size-fits-all contracts and that promote adversarial relationships between workers and employers.

Yet one-size-fits-all doesn't work, because today, our workforce is dynamic, diverse, and independent. Millions of Americans build careers in finance, health care, retail, professional services, and self-employment. They are entrepreneurs, employees, small business owners, and independent contractors—each pursuing opportunity in their own way.

The purpose of my testimony is simple: to discuss the benefits of policies that empower every American worker. Empowerment does not come from rigid government mandates or one-size-fits-all solutions. It comes from freedom, flexibility, and trust—especially trusting workers to decide how, where, and with whom they work. The solutions I'll outline build on the issues raised during the committee's recent labor policy hearing, offering practical, worker-centered reforms to address those challenges. This includes updating outdated labor laws, protecting the rights of independent contractors, defending secret ballot elections, ensuring fair and equal collective bargaining standards, and rejecting policies that strip workers of their freedom and agency.

Worker Freedom: Updating Outdated Labor Laws

When Congress passed the National Labor Relations Act (NLRA) in 1935, one in three nonfarm workers in America were employed in manufacturing.¹ Yet today, fewer than eight

¹ Bureau of Labor Statistics. (1991). Employment, hours, and earnings, United States, 1909–1990 (Bulletin No. 2370).
<https://fraser.stlouisfed.org/title/employment-earnings-united-states-189/employment-hours-earnings-united-states-1909-90-5435>

percent work in manufacturing.² That said, jobs in manufacturing still increased over 10 percent in right-to-works states during the last decade but fell by 0.2 percent in states without those worker protections.³ The economy has transformed dramatically—but our labor laws have not.

In today's knowledge-driven economy, the skills required for success evolve quickly, and even traditional blue-collar industries now demand advanced technical expertise. At the same time, greater competition among businesses for both talent and customers has elevated workers' expectations for flexibility, mobility, and opportunity.

Unfortunately, over decades, layers of regulation and shifting legal interpretations have made labor laws increasingly complex—even for the experts who navigate them daily. By focusing on leveling the playing field, empowering workers through transparency, information, and trust, policymakers can restore balance. Workers should have clear, accessible information and the ability to make informed decisions about their workplace representation, career paths, and what is best for them and their families.

With thoughtful reform and this committee's leadership, we can create a system that protects workers' rights, ensures accountability for employers and unions, and reflects the diversity and dynamism of the modern workforce.

Choice: The Foundation of Worker Empowerment

Choice lies at the heart of any effort to empower the American worker. It recognizes that true freedom of association includes the right to associate—or not to associate—and to make that choice freely.

Under current law, many workers are compelled to accept union representation and pay fees to organizations they never voted for, or that a majority of their colleagues never supported. Even in states with right-to-work laws, workers can still be bound by collective bargaining agreements that limit their flexibility or advancement.

A fair and forward-looking solution would restore workers' ability to choose. Employees should have the right to elect and join a union if they wish, or to negotiate directly with their employer if they prefer. Representation should be earned, not imposed. Last Congress, Representative Eric Burlison (R-MO) introduced the *Worker's Choice Act* (H.R. 6745)⁴ to expand freedom and flexibility for employees in right-to-work states, giving them the ability to decline union representation and negotiate directly with their employers—just as more than 93% of private sector workers already do.⁵ Senator Tim Scott (R-SC) recently included Worker's Choice in his *Employee Rights Act* (ERA, S. 2984), further affirming that true worker empowerment comes from voluntary representation and the freedom to choose one's own path.⁶

² Bureau of Labor Statistics. "Employment by Major Industry Sector." Accessed April 24, 2025. <https://www.bls.gov/emp/tables/employment-by-major-industry-sector.htm>.

³ https://nilrr.org/wp-content/uploads/2025/05/2025-Spring-Right-to-Work-Benefits.FINAL_Published.pdf

⁴ Worker's Choice Act, H.R. 6745, 118th Cong. (2023).

⁵ Bureau of Labor Statistics, *2024 Union Membership Rate*, <https://www.bls.gov/news.release/pdf/union2.pdf>.

⁶ Employee Rights Act, S. 2984, 119th Cong. (2025).

Further, the decision to unionize a workforce should reflect the will of the majority or quorum of all affected employees, not merely those who cast ballots. Under current NLRA interpretation,⁷ unions are certified based on a majority of votes cast—even if most workers in the unit do not participate. Nor are unionized employees afforded an opportunity to have a regular or easy say on whether a union should continue representing them. In 2023, of the nearly eight million workers represented by unions under the NLRA, 95 percent of them did *not* vote for the union at their workplace.⁸ A recent survey conducted by Big Village found that 68 percent of Americans believe “employees in right-to-work states who opt out of union representation should be free to negotiate contracts, wages, and working conditions directly with their employer.”⁹

Additionally, a recent study by I4AW and the Mackinac Center for Public Policy details how 40 percent of private-sector unions were certified without majority support of the full bargaining unit, and one-fifth were certified without a quorum.¹⁰ The NLRA’s plain language, however, requires support from “the majority of the employees in a unit.”¹¹

Even the NLRB operates under a quorum rule—at least three of its five Board members must be lawfully seated to exercise its full authority, and a majority of that quorum is needed to issue decisions. Holding union elections to a similar standard—requiring support from a majority of all employees, or at least a quorum—would help ensure that workers are not compelled to join or finance a union that lacks broad, active support among the workforce.

In the House, Representative Bob Onder’s (R-MO) *Worker Enfranchisement Act* (H.R. 2572) would require the participation of at least two-thirds of eligible workers in a unionization election.¹² If that threshold is met, the union would be certified as the exclusive representative; if not, certification would not occur.

Americans agree with this approach: a recent U.S. Chamber of Commerce survey found that 60 percent of Americans believe the law should change and unions should win the majority of all workers before representing a workplace.¹³ These findings make clear that reform is needed to ensure that union representation truly reflects the will of the workers.

Protecting worker empowerment also depends on protecting worker privacy. Employees should have control over their personal contact information, with the right to choose how, and through which channels, they wish to be contacted by union representatives. Such protection is also afforded under the Employee Rights Act.

The bottom line is that having the ability to choose is pro-worker, empowering individuals to decide what representation works best for them. It strengthens democracy in the workplace and affirms that the legitimacy of representation must rest on voluntary consent. By restoring

⁷ Nat’l Labor Relations Board (“NLRB”), About NLRB: Conduct Elections, <https://www.nlr.gov/about-nlr/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”).

⁸ F. Vincent Vernuccio & Akash Chougule, *Unions Need Democracy* (2024), https://i4aw.org/wp-content/uploads/2024/08/I4AW-Report_Unions-Need-Democracy_Final-1.pdf.

⁹ Big Village, *The Employee Rights Act Public Support* (2025), <https://employeeightsact.com/wp-content/uploads/2025/07/CUF-ERA-Public-Support-2025.pdf>

¹⁰ 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>.

¹¹ 29 U.S.C. § 159(a).

¹² Worker Enfranchisement Act, H.R. 2572, 119th Cong. (2025).

¹³ Chamber of Commerce, *What American Voters Really Think About Unions* (2025), <https://www.uschamber.com/employment-law/what-american-voters-really-think-about-unions>.

these principles, Congress can ensure every American worker has a genuine voice in deciding how—and by whom—they are represented.

Worker Information: Ensuring Transparency and Accountability in Union Representation

Worker freedom relies on information, transparency, and accountability. When workers choose union representation, they should be confident that their leadership operates with integrity, their dues are spent responsibly, and their rights and beliefs are respected.

The *Labor-Management Reporting and Disclosure Act* of 1959 (LMRDA) established important safeguards to promote democratic governance within unions and protect workers' rights as members. Yet, after more than six decades, many of these disclosure and reporting requirements are outdated. Modernizing the LMRDA would strengthen financial transparency, improve member access to information, and ensure that workers can easily see how their dues are used—particularly for activities unrelated to collective bargaining or contract administration.

Reforms should reaffirm and strengthen workers' Beck rights, ensuring that no employee is compelled to fund political, ideological, or other non-representational activities without explicit consent.

Additionally, Representative Burgess Owens (R-UT) Start Applying Labor Transparency (SALT) Act (H.R. 2952)¹⁴ would provide workers with needed transparency in the workplace. The SALT Act requires so-called union “salts” to file the same disclosure forms that management hired consultants file with the Department of Labor. Workers deserve to know if they are talking to someone who is paid to persuade them on unionization, whether it is management or union.

By enhancing transparency and protecting workers' rights to choose how their money and voice are used, including through legislation like the Employee Rights Act, Congress can ensure that unions remain accountable to the workers they represent.

Worker Protection: Safeguarding Employees from Harassment and Intimidation

As I testified before the House of Representatives earlier this year, protecting workers also means ensuring that every workplace remains safe, respectful, and free from harassment or discrimination.¹⁵ Employers should have the ability to protect their employees from discriminatory, harassing, or demeaning language. This behavior has no place in the workplace—and it certainly should not be protected. Unfortunately, in its 2023 decision in *Lion Elastomers*, the NLRB disagreed, holding that racist, sexist, and vulgar rhetoric is permissible in the workplace so long as it occurs in the context of “union activity.”¹⁶

In June 2024, I4AW released a report exploring this deeply concerning interpretation. The report details the conflicting obligations placed on employers under federal law with respect to preventing workplace discrimination and harassment.

¹⁴ <https://www.congress.gov/bill/119th-congress/house-bill/2952>

¹⁵ F. Vincent Vernuccio, Testimony before the House Comm. on Educ. and Workforce, *Restoring Balance: Ensuring Fairness and Transparency at the NLRB* (2025), https://edworkforce.house.gov/uploadedfiles/vernuccio_testimony.pdf

¹⁶ *Lion Elastomers LLC II*, 372 NLRB No. 83 (2023).

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. Yet the plain language of Section 7 only 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, so long as that speech is union related. This leaves employees vulnerable to such disturbing behavior in the workplace. Under the NLRB's 2023 standard, employees disciplined for offensive conduct could even be reinstated and even receive back pay—undermining workplace integrity and encouraging further misconduct. 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.¹⁷

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.¹⁸

The Employee Rights Act also addresses this issue by affording employers the ability to enforce basic standards of respect and civility and protect their employees—not only to comply with civil rights laws but also to maintain a safe and inclusive work environment.

All workers deserve a safe and respectful workplace—and 80 percent of Americans agree.¹⁹ 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.

Worker Flexibility: Protecting Independent Work and Expanding Economic Opportunity

In today's 21st Century economy, workers deserve the freedom to decide how, where, and with—or for—whom they work.

Independent contracting has become a vital part of that freedom. Tens of millions of Americans rely on contract work to earn a living, supplement their income, or balance professional and family responsibilities. In 2023, 38 percent of the workforce—64 million Americans—performed some form of independent contracting work.²⁰

Contract work empowers workers to set their own hours, choose their clients or platform, and determine how and when they work. It offers flexibility for parents, caregivers, students,

¹⁷ *Lion Elastomers, LLC II v. NLRB*, 108 F.4th 252 (5th Cir. 2024).

¹⁸ Equal Emp. Opportunity Comm'n, *Enforcement Guidance on Harassment in the Workplace* (2024), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace>

¹⁹ *Supra* note 10.

²⁰ Upwork, *Gig Economy Statistics and Market Takeaways for 2025* (2024), <https://www.upwork.com/resources/gig-economy-statistics#:~:text=2.,of%20the%20global%20labor%20force.>

retirees, and entrepreneurs alike. For many, this independence provides not only income, but the freedom to succeed on their own terms.

Unfortunately, this model of empowerment faces growing challenges from policymakers who view independence as something to be restricted rather than respected. Actions by federal agencies during recent administrations created confusion and instability for millions of workers, contrary to the wishes of 76 percent of Americans who believe independent workers should be “free to work how and when they want under clear legal guidelines.”²¹

In its 2023 *Atlanta Opera* decision, the Biden administration’s NLRB narrowed the definition of independent contracting, adopting a complex and burdensome test that threatened worker’s entrepreneurial opportunities.²² Likewise, the Biden administration’s Department of Labor issued a rule that attempted to reclassify many independent contractors as employees, limiting their flexibility and earning potential. While the Trump administration has stated that it will not enforce the rule and is in the process of reconsidering it,²³ the ever-swinging pendulum of policy changes between presidential administrations only leads to economic uncertainty and instability for America’s workers.

These efforts to reclassify independent contractors rest on a misguided assumption: that Washington knows better than workers what work arrangements suit them best. As I testified before the House of Representatives earlier this year, IAWW and our partners have heard from many workers who know firsthand the value of independent contracting. The Independent Women’s Forum (IWF), a leader on this issue, recently shared a compelling example of independent workers succeeding—and the risks they face from policies that threaten their flexibility.

IWF spoke with 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 that independent contracting “has been a real blessing to lay out our business strategy the way we chose, and it’s worked well for us.” But when California approved the disastrous AB5 law to limit independent contracting, the Myers chose to avoid California like many other independent contractor drivers.²⁴

Additionally, Kim Gavin, a freelancer of 22 years who addressed this very committee earlier this year, testified that there is an “enormous difference between the misclassification of employees and policymaking that hurts entrepreneurial Americans who wish to be their own bosses.” Proposals to reclassify independent contractors threaten to force many freelancers, like her, out of business and would undermine her autonomy and financial stability.²⁵

Thankfully, several Members of Congress and Senators have introduced legislation to strengthen independent work and enable access to benefits. If enacted, this legislation would

²¹ *Supra* note 10.

²² NLRB, *Board Modifies Independent Contractor Standard under National Labor Relations Act* (2023), <https://www.nlr.gov/news-outreach/news-story/board-modifies-independent-contractor-standard-under-national-labor>.

²³ *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.”)

²⁴ Independent Women’s Forum, *Department of Defense Truck Driver Says Law Undermining Independent Contractors Also Undermine National Security* (2025), <https://www.iwfeatures.com/profile/department-of-defense-truck-driver-says-laws-undermining-independent-contractors-also-undermine-national-security/>.

²⁵ Kim Gavin, Testimony before the Senate Comm. on Health, Educ., Labor, and Pensions, *Freedom to Work: Unlocking Benefits for Independent Workers* (2025), <https://www.help.senate.gov/imo/media/doc/93f09de0-d4e4-898e-3a03-801afdd098fd/Kavin%20Testimony.pdf>.

help ensure that independent workers are free from shifting political winds in Washington while gaining access to benefits that support flexibility, security, and long-term prosperity for the 27 million Americans who choose independent work.²⁶

First, Senator Scott's *Modern Worker Empowerment Act* (S. 2228)²⁷ would amend the *Fair Labor Standards Act* (FLSA) to codify in statute the common law rules for determining who qualifies as an independent contractor. In the House, Representative Kevin Kiley (R-CA) introduced a similar but broader version of the *Modern Worker Empowerment Act* (H.R. 1319), which would not only amend the FLSA to define independent contractor but also harmonize that definition with a matching amendment to the NLRA.²⁸ Senator Scott included the House version in his recently introduced Employee Rights Act. Together, these bills would provide clarity and consistency across federal labor laws, protecting the freedom and flexibility that defines independent work and ensuring that independent contractors can continue to operate on their own terms.

In addition, Chairman Bill Cassidy (R-LA) introduced the *Unlocking Benefits for Independent Workers Act* (S. 2210),²⁹ and Representative Kiley introduced a similar *Modern Worker Security Act* (H.R. 1320).³⁰ These measures would create a statutory safe harbor allowing businesses to voluntarily offer benefits to independent contractors without jeopardizing their classification. Complimentary proposals, including Senator Rand Paul's (R-KY) and Chairman Tim Walberg's (R-MI) *Association Health Plans Act* (S. 1847, H.R. 2528)³¹ and Chairman Cassidy's *Independent Retirement Fairness Act* (S. 2217).³², would further expand certainty and access to health care and retirement benefits for independent contractors.

Together, these bills would modernize America's labor laws to reflect the realities of today's workforce by preserving the independence that millions of workers value, while providing greater access to workplace benefits that work best for them and their families.

Worker Rights: Modernizing Labor Policy Through the *Employee Rights Act*

In addition to the legislation I mentioned above, Senator Scott's Employee Rights Act also embodies the principles of worker empowerment and freedom. It updates labor law to match the realities of the modern economy.

The ERA guarantees secret ballot elections, ensuring that workers can decide on union representation free from coercion or intimidation—from employers or unions alike. It protects the integrity of the vote by rejecting the “card check” process that eliminates worker privacy and opens the door to harassment. As I shared in testimony before the House of Representatives in 2023, there are countless examples of how card check invites intimidation and coercion.³³

²⁶ <https://www.help.senate.gov/rep/newsroom/press/chair-cassidy-scott-paul-release-legislative-package-empowering-independent-workers-to-access-portable-benefits>.

²⁷ Modern Worker Empowerment, S. 2228, 119th Cong. (2025).

²⁸ Modern Worker Empowerment, H.R. 1319, 119th Cong. (2025).

²⁹ Unlocking Benefits for Independent Workers Act, S. 2210, 119th Cong. (2025).

³⁰ Modern Worker Security Act, H.R. 1320, 119th Cong. (2025).

³¹ Association Health Plans Act, S. 1847, H.R. 2528, 119th Cong. (2025).

³² Independent Retirement Fairness Act, S. 2217, 119th Cong. (2025).

³³ F. Vincent Vernuccio, *Protecting the Secret Ballot: The Dangers of Union Card Check* (2019), <https://www.mackinac.org/26958>

The Big Village survey found that 67 percent of Americans, and 72 percent of Americans in a union household, believe employees should “have the right to a supervised secret ballot election when deciding whether or not to join a union.”³⁴

The ERA also safeguards worker privacy, allowing employees to control what personal information is shared with union organizers. That same Big Village survey found that 76 percent of Americans, and 80 percent of Americans in a union household, believe employees should be “allowed to opt out of having their personal information shared with a union during an organizing campaign.”³⁵

The ERA also includes opt-in protections, so workers’ dues cannot be used for political activity without consent. A remarkable 75 percent of Americans—and 81 percent of those in union households—support this reform.³⁶

Finally, the ERA provides legal clarity for independent contractors and joint employment relationships, preserving entrepreneurial opportunities and small business flexibility. Notably, it codifies standards that protect the right to self-employment, while reducing uncertainty and litigation.

Together, these reforms create a balanced framework that empowers workers, holds institutions accountable, and supports innovation and growth in the American workplace.

Worker Empowerment: Restoring Freedom, Fairness, and Opportunity for Every American Worker

American workers deserve a labor system that reflects who they are today—not who they were a century ago. The economy has evolved, and so have the needs, aspirations, and expectations of the modern workforce. From factory floors to digital platforms, today’s workers demand flexibility, fairness, and the freedom to choose the path that best fits their lives and families.

Updating our labor laws is about ensuring those rights keep pace with the realities of a 21st century economy. Modern reforms should safeguard workers’ ability to decide how, where, and with whom they work; to freely choose or refrain from representation; and to access fair and transparent information about their workplace and unions. They should protect workers from harassment, coercion, and rigid mandates—whether from employers, union organizers, or government overreach.

At the end of the day, empowerment means trust—trusting workers to make their own choices, to represent their own interests, and to pursue the opportunity that best fits their needs and those of their families. By restoring that trust and modernizing America’s labor framework, Congress can renew the promise of worker freedom, fairness, and opportunity for generations to come.

³⁴ *Supra* note 10.

³⁵ *Supra* note 10.

³⁶ *Id.*