



December 10, 2024



Members of the United States Senate,



On behalf of our organizations and the millions of American workers and taxpayers we represent, we strongly urge you to listen to the American people and allow the duly elected incoming President and Senate to appoint the next members of the National Labor Relations Board (NLRB or Board) and reject the nomination of Lauren McFerran.



Under Ms. McFerran's leadership during the Biden-Harris Administration, the NLRB has advanced a destructive and legally questionable labor law regime. It has not only been rejected by Congress and the courts but also overwhelmingly rejected by the American people when President-elect Donald Trump won 312 electoral college votes and the popular vote in last month's election. At the same time, the American people also ended the Democratic Senate majority. This lame-duck Administration and Senate majority should not be permitted to extend their failed policies via the NLRB majority deep into President Trump's term – until August 2026 – and deprive him of an appointment to the Board by reconfirming Ms. McFerran.



The Biden-Harris NLRB majority led by Lauren McFerran has repeatedly prioritized special interests over the rights of workers and employers alike, perverting the intent of the National Labor Relations Act (NLRA). Most notably, the Board attempted to eliminate secret ballot union elections,¹ allowing unions to be certified via “card-check” authorization, which has subjected workers to well-documented instances of harassment and intimidation by union organizers – and which the Board has long held is “inferior to the election process.”²



The NLRB has also sought to undermine freelance work,³ a growing segment of the workforce that includes as many as [65 million Americans](#). A new survey from the Bureau of Labor Statistics shows that [more than 80 percent](#) of freelancers prefer their independent status to traditional employment, yet the Board under McFerran has sought to deprive them of this freedom.



The Board also attempted to eliminate small business franchising as we know it, a critical component of entrepreneurial opportunity across all 50 states that employs nearly 9 million Americans and facilitates nearly \$900 billion of economic activity. The confusing and unworkable joint-employer rulemaking would have turned small business



¹ *Cemex Construction Materials Pacific, LLC.*, 372 NLRB No. 130 (2023)

² *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 603 (1969)

³ *Atlanta Opera*, 372 NLRB No. 95 (2023)

owners into middle-managers, had it not been nullified by a U.S. District Court in March 2024. The following month, the legislative branch rebuked the Board as well, passing a bipartisan Congressional Review Act resolution to nullify the rule.

The Biden-Harris NLRB led by Lauren McFerran even went as far as to prevent employers in some instances from protecting their employees from racist, sexist, or other discriminatory language in the workplace – if it occurred in the context of union activity⁴. This outrageous standard not only flies in the face of basic decency, it also [conflicts with Title VII](#) of the Civil Rights Act of 1964 banning discrimination in the workplace against protected classes. Meanwhile, the same Board attempted to infringe the free speech rights of Tesla CEO Elon Musk, forcing him to delete a social media post the Board believed violated the NLRA – but that decision was rejected by a federal court as well.⁵

This dreadful track record should be contrasted against that of the Board majority during President Trump’s first term in office. Among other actions, the Board under President Trump improved workplace democracy by extending the timeframe for union elections to take place in order to ensure workers are better informed before voting, and reduced barriers to removing a union that lacked majority support of the workers it purported to represent. The Board under President Trump also advanced a sensible joint-employment standard and protected freelance status. This track record put the interests of workers first, and helped facilitate an economic environment conducive to socioeconomic progress and job growth for Americans from all walks of life.

The lame-duck Senate should not facilitate the entrenchment of failed and rejected labor policies deep into the new Administration by reconfirming Lauren McFerran to the NLRB. President Trump’s past nominees to the Board had a strong track record of properly interpreting the NLRA and facilitating a successful labor law environment. He must be given the opportunity to create this environment once again.

On behalf of millions of workers and taxpayers, we strongly urge you to reject the renomination of Lauren McFerran to the National Labor Relations Board.

Sincerely,

Akash Chougule, Vice President
Americans for Prosperity

Grover Norquist, President
Americans for Tax Reform

David McIntosh, President
Club for Growth

Ryan Walker, Executive Vice President
Heritage Action

⁴ *Lion Elastomers LLC*, 369 NLRB No. 88 (2020)

⁵ *Tesla, Inc. v. NLRB*, No. 21-60285 (5th Cir., Oct. 25, 2024)

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