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## Ban CP

### 1nc

#### The United States Federal Government should eliminate its existing collective bargaining rights for private workers in the United States.

#### The counterplan sparks a labor movement. Labor innovation and state fill-in.

Velazquez 25, Professor of Law @ Indiana (Alvin, “The Death of Labor Law and the Rebirth of the Labor Movement,” Indiana Legal Studies Research Paper Number 543)

The elimination of the NLRA as outlined above will leave labor in a pre-Act situation that will resemble “the law of the jungle” and what Justice Oliver Wendell Holmes observed as the “power of combination”, but with some new tools that labor did not fully utilize in the 1930s.139 In their article urging scholars to study labor unions as a social movement, Fisk and Reddy describe how law “channeled labor from its mass movement origins in the 1930s, into a powerful institution from the 1940s through the 1960s, to its much weakened form today.”

140 This Article seeks to build on their contribution. Law can again cause the repeat of that cycle. Specifically, the Court striking down the Act entirely and lifting preemption can create stronger conditions for organizing workers immediately under long dormant labor laws that U.S. territories as well as blue and red states have on their books.141 For example, Puerto Rico’s Constitution bluntly states: “Persons employed by private businesses… shall have the right to organize and to bargain collectively with their employers through representatives of their own free choosing in order to promote their welfare.”142 In the absence of NLRA preemption, residents of Puerto Rico would enjoy a constitutional right to collectively bargain. It is not alone. Union dense states such as Illinois have such laws on the books, and low-union density and politically conservative states including Missouri and Florida would as well.143

The potential for union growth would be significant. In 2024, only 234,000 workers, or 8.6% of the workforce, were members of a union in the state of Missouri, out of a total of 2.734 million total participants in the workforce.144 However, if Missouri’s protections go into effect after the Court strikes down the NLRA, then even a 10% increase in membership would significantly improve organized labor’s ability to build strength. The existence of more favorable laws from the past will not build worker power though. For these laws to provide an avenue for worker organizing, unions will need to prepare. As Sachs observes, the “preconditions for mobilization are common across multiple approaches to social movements.”145 In reality, unions will have to not only use what Michael Oswalt defines as “improvisational techniques” to compel their employers to come to the table and bargain, but advocate for improvisational laws.

146 Before getting into the role of social movements in a post-NLRA environment though, this Article will explore two tools that become available as a result of the Court setting aside the Act: (1) states crafting creative labor protections for workers and (2) the protections of the Norris-LaGuardia Act.

A. The Possibilities for State Collective Bargaining Reform

If the Court were to strike down the NLRA, then organized labor and its allies could leverage already existing protections on the books at the state level and push for further innovation without worrying that courts would preempt state and local labor legislation. As noted above, several states and Puerto Rico already have provisions in their statutes or in their constitutions protecting collective bargaining that would go into effect should the Court strike down the NLRA. Gali Racabi conducted a 50-state survey and concluded that nineteen states have laws providing for collective bargaining in the private sector already on the books.147 These laws set a baseline. There would be room for states to further experiment in the absence of preemption, including bargaining at a sectoral level rather than at the company level as NLRA provides.148

Of course, state level bargaining reform relies on collapsing the entire Act via the non-delegation or unitary executive doctrines in order to get rid of NLRA preemption. Befort notes that “[t]he federal preemption landscape consists of a complex web of rules and precedent, and courts often appear to decide cases on the basis of highly technical distinctions. In short, many perceive the topic of federal preemption as a great mystery to be avoided if at all possible.”149 If the Court interprets the severability clause as discussed in Part I, then organized labor and its lawyers can avoid the quagmire that is federal preemption.

### 2nc – Solvency Cards

#### Otherwise – death by a thousand cuts.

Velazquez 25, Professor of Law @ Indiana (Alvin, “The Death of Labor Law and the Rebirth of the Labor Movement,” Indiana Legal Studies Research Paper Number 543)

The Court ruling that the administrative apparatus of the NLRA is unconstitutional would leave a vacuum in labor law, and anger over the death of collective bargaining rights could be widespread. The labor movement and its allies could channel this anger, alongside the deepening inequality in this country, and their remaining resources, to galvanize a new social movement.24

With enough of a movement, labor could sway discourse from the dead letters of the NLRA to a more moral framework that allows labor to bargain for the common good.25 Labor could consider using the death of the NLRA to enter into a new “grand bargain” of labor law26 as part of a general strike that unions such as the United Auto Workers have declared for May 1, 2028.27 The alternative is to continue to have collective bargaining rights die as a result of a thousand cuts.

### 2nc – Perm Deficit

#### Maintenance of federal rights will be interpreted broadly to pre-empt state protections

Harris 25, Burnes Center for Social Change Senior Fellow (Seth, et al, “Power At Work Blogcast #96: Would workers have more power without the NLRA and NLRB?,” https://www.youtube.com/watch?v=TKDIOjOzHjU&t=1s&ab\_channel=TheBurnesCenterforSocialChange, Transcribed by YouTube and Brett Bricker)

Labor law scholars and activists and policy makers have been watching the decline of the NL for at least three decades, and we have been watching this sinking ship sink for quite a while, and up until now, the instinct of labor reformers was to try and reform the national declarations act and try to pass things through Congress and try to protect and then kind of then kind of beef up, if possible, the National Labor Relations Board, and that was the main trajectory that we thought was possible with regard to private sector labor governance. We now face another juncture in this decades long crusade to do something about private sector labor governance, and I think that we need to think about alternatives to reforming the NLRA and protecting the national negotiations board, and the one alternative which is out there is using state laws and state agencies to do private sector labor governance. It's not obvious that we have to choose federal law or state law, but the way that preemption doctrine, not statutory law, has been developed is that we supposedly have to choose and what I do in my working paper and blog post is offer some paths to state regulation of private sector labor governments, because I want to kind of open up our imagination to what is possible. And what I find, what I found is that 19 states currently have on the books private sector labor rights for workers, which means the equivalent of Section seven rights to organize collectively bargain and act concertedly. They also have their own definitions of unfair labor practices, again mimicking the federal labor law, and they also have an agency and a dispute resolution procedure for resolving issues, and that was the state of the draft that they sent, that I posted, that I heard about private blog after that, I also found that 14 other states recognize the rights of private sector workers to organize and bargain collectively as a public policy. So a total of 33 states have private sector labor rights, and they're not perfect. They're not they would not solve all of our problems. They would not solve all of the problems that the labor was unable to solve. But it's something, and when workers, Policy Advocates and organizers are trying to find ideas about what can we do now in lieu of this sinking ship, I think that going to states and to the local level might be the way to go, or a way to go, and that's the possibility that I want to raise this paper to claim that we might not necessarily see the NLRA dead by the end of the Trump administration, but what I hope To see gone is this fixation on the federal level as the only source of power for private sector workers, which I think has proved to be a devastating strategy for labor in the US. And so that's the paper, and that's the intervention. Does that make sense.

It makes perfect sense. I just want to clarify one point for our audience, because preemption is something labor lawyers talk about all the time, but it's not necessarily obvious to to ordinary people, people who are not read in on these kinds of things. So preemption means that federal labor law governs to the exclusion of state laws. So those state laws apply only where federal law does not right now, right so only to the very small number of workers who are not covered, or, I should say, the very small number of employees who are not covered by federal labor law. And so that means that we have these state laws in place, but other than in a very limited number of circumstances, they don't really operate right now. Is that fair?

It is fair. NLRA preemption is extremely broad in the landscape of federal preemptions, it's completely court made. It's not in the text of the NRA, that kind of pension, the preemption of state level governance is not in the text of the NRA, but Supreme Court created over the 60s and 70s, and basically it says that local governments and states cannot regulate labor activities that are arguably covered or prohibited by The National Labor Relations Act or even stuff that Congress meant to be excluded from any and all regulations. So even if you are excluded from the National Labor Relations Act, labor law of reemphasion might still grab a hold of you, and it's not obvious. I do have to say that there is a fair amount of workers who are excluded from the National Labor Relations Act, which we know that labor apprehension does not reach. So independent contracts, agricultural workers, public sector workers, employees of small employers and kind of the list go on and on, which for them, those state laws are the only possible so Basically, we have a completely court made preemption regime, which is now questionable because the NLRA has become a disabled institution, an institution that does not function in the way that Congress meant it to function.

#### That pre-emption constrains labor innovation. Starting from scratch is key.

Galvin 19, Professor of Political Science @ Northwestern (Daniel, “From Labor Law to Employment Law: The Changing Politics of Workers’ Rights,” *Studies in American Political Development*, 33)

Critically, however, these twin institutional and organizational developments have not emerged on a blank slate. For even as labor law has become an increasingly insufficient foundation for building worker power, it has remained fixed in place, exerting a powerful, jealous, and continuous governing authority in its expansive domain. Indeed, labor law has become almost as significant for what it prohibits as for what it allows: In addition to denying collective bargaining rights to millions of vulnerable workers by excluding key industries and occupations from coverage (domestic work, agricultural work, independent contractors), the law has been interpreted by courts as preempting any and all state and local efforts to regulate labor-management relations in the private sector.20 Preemption thus eliminates potentially generative sources of labor law innovation and experimentation while boxing in reformers, severely limiting their range of options. Unable to start from scratch and design new institutions better suited to changing economic and political conditions, workers and their advocates have had to structure their innovations to carefully circumvent the stubbornly persistent labor law without intruding into its broad purview. In this way, labor law has insinuated itself into the new state-level employment laws that have emerged, as well as the recent workaround proposals already mentioned. As I will elaborate, the constraints that labor law imposes are evident in the new laws’ delimited substantive content, distinctive institutional forms, and alternative delivery mechanisms.

### 2nc – Yes Movement

#### \*The CP shakes the foundations of labor law. That overcomes worker complacency.

Velazquez 25, Professor of Law @ Indiana (Alvin, “The Death of Labor Law and the Rebirth of the Labor Movement,” *Indiana Legal Studies Research Paper* Number 543)

A. Failure to Spark a Counter-Insurgency

The first and most serious objection is that the Court’s proposed hamstringing of the Board will fail to spark an effective labor counterinsurgency, especially in the short-term. Brishen Rogers notes that organizing is less about aggregating preferences and is instead a disruptive and emotionally charged collective action.303 Several objectors might argue that looking to the 1930s as a model for how labor unrest could lead to labor law reform is misguided and dangerous because the historical and political factors for disruption to succeed are uncommon.

304 Even though inequality in the United States mirrors the 1930s, an objector might argue that the economic situation during the Great Depression was so dire that even business interests understood that they had to acquiesce to collective bargaining for the United States to avoid falling into communism.305 To use Rogers’s language, people today will not be angry enough to actually go out and organize.306

This argument has significant weight. The Depression elevated language about class consciousness into everyday vernacular. Bernstein describes how 1,856 work stoppages took place in 1934 as an “eruption.” 307 In comparison, the Department of Labor tracked 33 strikes and stoppages in 2023, 308 which was a twenty-three-year high.

309 Even though Gen Z may have a less deferential attitude to the workplace than previous generations and be more open to activism, critics may argue they are not in position to capitalize on an organizing moment. Additionally, the situation in the United States is not so dire as to make a labor-based insurgency seem like an effective route to seek reform because Americans are materially better off today than in the 1930’s. Finally, strike actions may be less effective because the “fissured workplace” makes building solidarity extremely difficult because the interest of workers who are employed by the main company are not always aligned with those who have a more distant relationship with the main employment brand.310

The above objection seems to posit a question of timing. What serves as a trigger point to spark a movement and a moment can be unpredictable. 311 Even if the Court’s decision on the Board’s constitutional viability does not spark a movement in the short term, it could add fuel to the fire for major labor reform in the United States in the medium to long term. It is true that the central proposal in this Article places faith in Gen Z to act, and implicitly on millennials and Gen Xers to support Gen Z. 312

However, recent events have demonstrated that workers are willing to engage in insurgency even when the law constrains them or threatens them with sanctions. For example, as noted above, the Red for Ed campaign demonstrated a situation in which professional workers struck and engaged in an insurgency without union sanction. In that case, teachers in several conservative states were threatened with losing their jobs for walking out, and yet they did so despite not making hunger-inducing wages.313 In other words, the financial situation was already bad enough for white-collar workers that they are willing to risk their jobs for a potential raise. That campaign led to legislative settlements in the form of legislatively mandated pay raises, and it demonstrated that teachers were willing to defy statutorily imposed legal constraints with the help of union infrastructure. 314

In a similar way, members of Gen Z (on both political sides) have shown a penchant for engaging in protests and seeking to use collective action to make wage demands at companies like Trader Joe’s, Chipotle, and Amazon. They have engaged in what Michael Oswalt has called “improvisational unionization.”315 He observes that the messy tactics undergirding improvisational unionization can be useful for forwarding labor law reform.316 His observations, although made in the context of union sponsored campaigns, match occurrences in the unorganized or newly organizing workplace. Campaigns such as Amazon’s received little support from nationally established unions. In fact, it was only after four years of campaigning for a first contract that the self-organized Amazon Labor Union (ALU) finally affiliated with the Teamsters. Unions such as the ALU have been organizing at these companies despite incredible difficulties with obtaining first contracts that exist under the current legal regime. These organizing campaigns occurred on their own under “hot shop” conditions with little investment (at first) from organized labor, demonstrates that these workers have considered the risks and still decided to move forward with taking workplace action without institutional support.

Such bold action gives hope that, even if the Supreme Court takes away the Board, labor will channel movement energy because inequality is growing amongst all races. In turn, that means that at some point, growing inequality may cause further labor insurgency because the Court’s decision would weaken one of the proven bulwarks of the fight against inequality— labor unions. As Reverend Barber points out, discussion of who is poor used to focus on African American and Latino communities. He concentrates on how working-class white communities also suffer under the yolk of poverty. College educated workers, however, are also finding that higher education is no longer an automatic ticket to middle class comfort.317 One only need to think about how the deployment of generative artificial intelligence tools has already transformed and will continue to transform the white-collar workplace.

318 The threat of AI turned unions that the public perceived as business unions into organizing forces who were willing to engage in disruptive tactics for 148 days!319 Additionally, one might consider how adjunct professors understand that reality.320 Overall, the widespread growth of poverty creates the potential for new coalitions that can break through some of the culture war fog that is currently dividing the working class.

#### Labor survives the vacuum. It organizes quickly and maximizes existing state protections.

Velazquez 25, Professor of Law @ Indiana (Alvin, “The Death of Labor Law and the Rebirth of the Labor Movement,” *Indiana Legal Studies Research Paper* Number 543)

C. Organized Labor’s Death While Waiting for Government Action

An objector may argue that the Supreme Court setting aside the NLRA raises serious questions about how long labor can survive without regulatory clarity and the financing that comes from a stable stream of dues dollars. Specifically, they could point to the fact that union density rose after enactment of the NLRA. This shows that the key to union density was having public institutions shaping the relationship between capital and labor. There are two responses to this line of objection.

First, the Court’s action could have the effect of incentivizing organized labor to work quickly toward a major march like the proposed May Day 2028 strike. The real question is not whether Congress would act, but rather whether organized labor would adapt its tools to a new reality and use organizing to build worker power. In his forthcoming paper, Michael Oswalt discusses how smaller unions without resources make use of bricolage principles to form resilient unions.344 He defines bricolage as “making due with whatever is at hand.”

345 In many ways, this method is how the unions that existed before the New Deal behaved. Unions existed before the Act gave them legal sanction and continued to exist. In other words, history has shown that organized labor can survive and make gains for workers even when there are no regulatory structures governing labor relations. However, even if the NLRA is done away with, workers would not be starting from scratch. In some states, they would be able to rely on the legal protections that are already on the books waiting to be activated. As Racabi rightfully points out, “…the legal infrastructure for collective action already exists in many places. We don’t have to invent it from scratch; we have to develop strategies to utilize it and strengthen its capacities with personnel and budgets.”346

Another point to highlight is that only 10 percent of the workforce is in a union despite the existence of the NLRA. 347 However, one-third of that percentage is in the public sector and therefore not covered by the NLRA, but rather by local, state, and federal labor organizing schemes.348 That means doing away with the NLRA would have no effect on those units who are organized under state public sector law.349 Additionally, even though there appears to be a boom in union interest, the numbers tell a story of a movement still experiencing decline.350 Additionally, unlike the unions of pre-NLRA times, the unions of today have several tools that they can use to keep functioning. First, organized unions in the private sector who are covered by unexpired CBAs would not lose the protection of those agreements because they are private agreements. Since most agreements average between three and five years in duration, that alone would provide some time for organized labor to develop new tactics in the midst of a vacuum.351

Next, as discussed above, the unions of today have the benefit of the Norris-LaGuardia Act (NLGA) anti-injunction rule.352 The unions of yesteryear did not get to maximize the benefits of that law before Congress enacted the NIRA and NLRA. The NLGA’s protection of certain types of peaceful strikes and activities from court action provides unions with an opportunity to engage in insurgency at the state level. Of course, judges that are hostile to the interests of organized labor or workers seeking to organize generally may develop doctrines to work around or undermine the protective effect of NLGA. They could, for example, expand the reach of the Court’s ruling in Glacier Northwest v. Teamsters to disincentivize strikes by imposing damages for actions that the NLGA prohibits from enjoining.

353 In that case, the Court held NLRA preemption did not protect the Teamsters from liability for causing damage to cement trucks because of strikers walking off the job in the middle of deliveries. 354 A Court looking to harm labor could return to the tortification of labor law in favor of employers and bankrupting unions.355

Finally, as discussed above, states are likely to move in quickly and fill the breach. For example, even though the United States does not have a comprehensive data protection law or artificial intelligence law, federal agencies and the State of California could move to fill the gap if unencumbered by the NLRA’s preemption law. 356 This ability alone would allow organized labor to seek labor law reform at the state level equivalent to, if not better than, parallel federal law reforms in a time period before labor peace provisions would cease to be effective.

### 2nr – Federalism Good

#### Optimized follow-on. The FG takes the best parts of state innovation and follows on after proof of concept

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State and local action has been critical for safeguarding workers' rights during this challenging time. However, this action at the state and local level can and should continue even in light of the Biden administration's welcome pro-worker approach. Sustained and even increased momentum among states and localities is important, for various reasons.

First, as Justice Brandeis wrote: "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the [\*89] rest of the country." 221This concept of states (and now localities too) serving as laboratories of democracy has allowed experimentation and advancement in laws and rights in a number of areas, not least among them worker protection laws. Paid sick days and paid family leave are both examples of this phenomenon: paid sick days began in one city, and paid family and medical leave began in one state, but both have now grown to cover millions of workers nationwide in a number of different places. With years of evidence from multiple jurisdictions of their feasibility, positive impact for workers, and lack of harm to employers, 222 national consensus has grown that these laws should be passed at the federal level, 223 with conservatives agreeing to the concept of at least paid parental leave, even though their proposals are generally lackluster. 224 Creativity in state and local worker protection legislation enables the development of cutting-edge approaches that address new developments in workplace challenges, including those emerging from new business models or from technological changes. States and localities can test policies that are not yet within the Overton window of the national conversation, on which there is not yet a national consensus. Even in prior eras with worker-friendly leaders at the federal level, states and localities have often taken the lead on important workplace and other policy issues, while the federal government later, with proof of concept, follows. 225

### 2nr – AT Red States

#### Non-unique – right to work.

Sherer 24, Deputy Director of EPI’s Economic Analysis and Research Network (EARN) and directs EARN’s Worker Power Project, supporting research-organizing partnerships among EARN groups, labor and grassroots organizations to advance racial, gender, and economic justice through state and local policies that expand workers’ ability to unionize and collectively bargain (Jennifer, “Data show anti-union ‘right-to-work’ laws damage state economies,” Economic Policy Institute, https://www.epi.org/blog/data-show-anti-union-right-to-work-laws-damage-state-economies-as-michigans-repeal-takes-effect-new-hampshire-should-continue-to-reject-right-to-work-legislation/)

So-called “right-to-work” laws constrain workers’ collective bargaining rights, resulting in lower wages and benefits for all workers

RTW laws are designed to diminish workers’ collective power by prohibiting unions and employers from negotiating union security agreements into collective bargaining agreements, making it harder for workers to form, join, and sustain unions. As a result, states with RTW laws generally have lower unionization rates than non-RTW states. Private-sector workers in RTW states are less likely to be covered by a union contract than peers in non-RTW states, even after controlling for other factors that can be related to unionization (such as industry, occupation, education, age, gender, race, ethnicity, and foreign-born status).

Consequently, workers in states with RTW laws have lower wages, reduced access to health and retirement benefits, and higher workplace fatality rates. On average, workers in RTW states are paid 3.2% less than workers with similar characteristics in non-RTW states, which translates to $1,670 less per year for a full-time worker.1

#### Spills out

Velazquez 25, Professor of Law @ Indiana (Alvin, “The Death of Labor Law and the Rebirth of the Labor Movement,” Indiana Legal Studies Research Paper Number 543)

Unions are the parties best able to provide paid organizing staff to do the work that Yang and Zhang describe---to give shape to a social movement that can adopt online activist techniques and translate them to protests, but they must be willing to do so. In the introduction, this Article suggested that UAW President Sean Fain’s call for a general strike provides a goal for the labor movement with a definite date.289 Fain’s call provides a goal. Unions have infrastructure, but from time to time it needs new fuel to make it go. In fact, unions provided the infrastructure to the “Red for Ed” movement which spread beyond Republican controlled states into Democratic controlled states. 290 As Tarlau observes,

“The 2018 #RedForEd movement swept across the country and mobilized teachers for collective action in places unions had failed, resulting in more workers on strike than the previous three decades. Often, these strikes were much larger than the unions themselves. And, in many ways, these were quintessential 21st-century movements, seemingly spontaneous, sparked by social media, and highly suspicious of traditional organizations and their leaders. Facebook was critical to their emergence. Nonetheless, these networked teacher movements fed into the infrastructure of the unions, bringing union members and non-members together to discuss what was happening, make decisions on what to do, and put into motion statewide strikes. Without this infrastructure, coordinating prolonged, statewide strikes might not have been possible. Without the “piston-box” of the union, this “steam” might have dissipated. As a new wave of labor activism currently spreads across the United States, the question of how this energy can help to reimagine and reinvent our labor unions will be critical.291

The proposal set out in this Article envisions a different approach. If the Court sets aside the NLRA, then unions will have to use their political strength in places like California to build a model regime, and to build their financial resources to expend resources organizing in states with a weaker union culture. After solidifying their power in states with a culture of unionism, they could use the constitutional protections in the Republican governed states to maintain a toehold and build an infrastructure that could activate the rights under state labor law that have lied long dormant under Garmon preemption.

#### State rights development is smooth. Even in red states.

Andrias 24, Patricia D. and R. Paul Yetter Professor of Law, Columbia Law School, J.D., Yale Law School. (Kate, November 21, 2024, “Constitutional and Administrative Innovation Through State Labor Law,” Wisconsin Law Review, Vol. 2024, Issue 5, pp. 1467-1511, Ulven)

B. Dynamic Labor Federalism

Yet, federalism can also be a tool for achieving progressive change when reform is blocked at the federal level.46 The California fast-food example discussed above illustrates one way in which unions and worker advocates are engaged in significant innovation at the state and local level, albeit constrained by principles of federal preemption.47

Frequently, worker movements that lack power to enact legislation at the national level nonetheless possess enough legislative influence in some states and localities to take advantage of a very different political economy.48 In particular, due to geographic sorting of the population, states are more likely to have unified party control: Eighty percent of the states as of January 2024 were controlled by a single political party.49 In jurisdictions where control is Democratic, pro-worker reforms are easier to achieve, although by no means guaranteed.50 States also have governance systems that are more majoritarian: Only seven states have processes equivalent to the filibuster; many have mechanisms for ballot initiatives or referenda; and many have elected judiciaries and constitutions that are easier to amend.51 Finally, while racial inequality remains pervasive and intractable in many states, other states and localities have taken affirmative steps to undo the effects of systemic racism.52

To be sure, as Andrew Elmore has documented, structural inequality between labor and business is replicated at the state level, even in “blue” jurisdictions.53 Corporations are often able to dominate state initiatives and legislative processes in order to limit pro-worker reforms. However, in blue states, the combination of geographic sorting and fewer veto points, a differently constituted judiciary, and a less entrenched racial hierarchy means that more pro-worker legislation and constitutional law is possible. In “red” states, reform tends to be decidedly anti-worker, but even in those environments, there are openings for popular pro-worker reform using direct democracy mechanisms. For example, numerous conservative states have increased their minimum wage via ballot initiative, despite staunch Republican opposition in state legislatures.54 In any event, in both red and blue states, the legal regime is far less ossified than at the federal level.

#### Even red states have a backstop in place

Racabi 25, professor of law @ Cornell (Gali, “In Lieu of the NLRA,” https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1161&context=clsops\_papers)

However, constitutional rights do not provide a framework and a comprehensive process for organizing workers. This Part surveys some of the main ways states offer such a statutory framework and institutional mechanisms for regulating private sector labor relations. The goal of this review is to showcase the existing frameworks available in case of diminishing importance of NLRA preemption.

Those comprehensive schemes differ from the occasional individual labor rights scattered across states’ labor codes. Even “red” states such as Alabama and Florida have made statutory headways toward protecting workers’ labor rights.16 In a way reminiscent of Section 7 of the NLRA, Florida statutorily recognizes:

Employees shall have the right to self-organization, to form, join, or assist labor unions or labor organizations or to refrain from such activity, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.17

Other states, including right-to-work states, have sporadic policy declarations along with organizing and union-related rights in their labor codes. 18

#### The CP’s blue-state wins give the organizing budget necessary for wins in red states

Velazquez 25, Professor of Law @ Indiana (Alvin, “The Death of Labor Law and the Rebirth of the Labor Movement,” Indiana Legal Studies Research Paper Number 543)

There is an important counterpoint to consider when thinking about the possibilities of states regulating the workforce in favor of labor organizing—the reality that Republican controlled states may use the freedom from preemption to enact laws that make it all but impossible for workers to organize. There is a short- and long-term perspective to this. In the short term, there is a very real possibility that Republican controlled legislatures would introduce and pass legislation repealing their statutory based labor law regimes and do so fairly easily. In states such as Missouri that have constitutional provisions, there would have to be voter mobilization to repeal those protections, but voters would receive those protections in the meanwhile.342 However, the reality is that workers in Republican led states in the private sector with no constitutional or statutory protections such as South Carolina, where union density is 1.5%, could lose their ability to collectively bargain in the short term.343 The reality though is that collective bargaining and union power is disappearing throughout the United States via death through a thousand cuts under the current regime. This article attempts to present a mechanism for accelerating death to facilitate resurrection. The ability to resuscitate labor in blue states provides the ability for it to begin building the resources needed to initiate organizing in red-states with an organizing budget for doing so.

## Case

### 1nc – Solvency

#### Collective bargaining rights are enforced through the NRLB – that means rights are ineffectual even if granted.

**McFerran 25**, Senior fellow at the Century Foundation, former chairman of the National Labor Relations Board “Trump Executive Order Could Prevent Independent Agencies from Protecting Workers’ Rights,” The Century Foundation, February 21, 2025, <https://tcf.org/content/commentary/trump-executive-order-could-prevent-independent-agencies-from-protecting-workers-rights/>) rose

On February 18, President Trump issued an [executive order](https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-accountability-for-all-agencies/) purporting to assume control over [independent administrative agencies](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=44-USC-496203623-1695366633&term_occur=999&term_src=title:44:chapter:35:subchapter:I:section:3502), including those that hear and decide individual cases involving workers’ rights and protections, such as the [National Labor Relations Board](https://www.nlrb.gov/) (NLRB). Independent agencies were carefully designed by Congress—decades ago—to ensure that they can act in accordance with the law, unaffected by political influence or presidential favoritism. Giving the White House such direct and unprecedented control over independent agency leaders’ decisionmaking—including the ability to override their legal judgments and defund their work on specific matters—destroys these agencies’ neutrality.

In terms of the workplace, this radical assertion of White House influence strongly suggests that critical worker rights and protections could go unenforced—or even that particular White House allies could effectively be treated as exempt from accountability for the laws that protect American workers.

The Executive Order Functionally Eliminates These Agencies’ Independence

The order, entitled “Ensuring Accountability for All Agencies,” purports to “improve the administration of the executive branch” and “increase regulatory officials’ accountability to the American people” by asserting unprecedented new presidential powers to control the operations and decisionmaking of agencies designed by Congress to be insulated from political influence. These new powers include:

giving the president and the U.S. attorney general the ability to override the agency’s own interpretation of the law it administers;

giving the director of the Office of Management and Budget (OMB) the authority to control expenditure of the agency’s funds, including defunding “particular activities, functions, projects or objects”;

requiring independent agencies to submit any new regulations to OMB for substantive review;

requiring all “agency heads” (including, it would seem, each individual member of bipartisan boards such as the NLRB, whether Republican or Democrat) to employ a “White House Liaison” as a senior staffer in their offices;

requiring independent agency chairmen to “regularly consult with and coordinate policies and priorities with the directors of OMB, the White House Domestic Policy Council and the White House National Economic Council”; and

giving the director of the OMB the authority to establish and evaluate the “performance standards and management objectives” for independent agency heads.

The scope of the order’s impact on the ability of independent agencies to make policies or regulations is clear on its face: instead of exercising independent, expert judgment (as Congress intended), these agencies would now make policy on behalf of the White House and serve their statutory missions only when expressly given White House permission. While the order purports to restore “sufficient accountability to the President,” it is more accurately viewed as a clear intrusion on the authority of Congress to determine that insulating such agencies from political control over their day-to-day decisionmaking serves the public welfare. Indeed, the full scope of the White House’s efforts to intrude on independent agencies’ autonomy is made clear by a [second order](https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency-regulatory-initiative/), issued the next day, requiring all federal agencies—including independent agencies—to work with their “DOGE team leads” and OMB and identify for possible elimination all existing agency regulations that are not, in the view of these external actors, based on the “best reading” of the underlying law. Independent agencies have not historically been subject to such a highly politicized regulatory review process, because they have, up until now, been treated as actually independent.

The Executive Order Will Especially Compromise Adjudicative Independent Agencies

The implications of such a radical takeover of independent agency autonomy are especially critical for the small group of independent agencies that do business primarily by adjudication—in other words, agencies that make law through the consideration of individual cases affecting specific parties, rather than through generally applicable rules or policies. The NLRB is one such agency, along with others such as the [Federal Mine Safety and Health Review Commission](https://www.fmshrc.gov) or the [Occupational Safety and Health Review Commission](https://www.oshrc.gov). Presidential control of the day-to-day decisionmaking of these agencies compromises the entire adjudicative process, denying the people involved in these cases the ability to get a fair and impartial consideration of their claims. For workers who rely on the NLRB and other independent worker protection agencies to protect [critical workplace rights](https://www.nlrb.gov/about-nlrb/rights-we-protect/your-rights), this directly impacts the ability of individual workers to get justice without bias from outside political influences; hypothetically, the president could affect the outcome of a charge filed against a company owned by political ally to the president, or prevent a union from being certified or a worker being reinstated to their job at a company owned by a donor to the president. The possibilities for abuse are alarming to contemplate.

In simplest terms, the NLRB is an agency with two separate functions: prosecuting (through the general counsel) and adjudicating (through the five-member board) complaints alleging unfair labor practices, such as when an employer disciplines or fires workers who speak up about their working conditions, or when an employer refuses to bargain with the workers’ union. The general counsel also oversees elections where workers determine whether they want union representation, and the board decides disputes that arise out of the election process.

While members appointed to the NLRB are all [politically accountable](https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act)—they are nominated by the president and confirmed by the Senate—the NLRB (and other independent agencies) was clearly intended by Congress to serve as an impartial, expert administrator of the law, free from political influence. The NLRB and other independent agencies were never envisioned to be supervised by the White House, much less function as a tool of the president.

To be sure, the new executive order does not expressly give the White House authority to dictate, decide, or override the outcome of individual cases before independent agencies like the NLRB. However, the unprecedented level of control that the White House is now asserting over these agencies could certainly be used that way. It is not hard to imagine how dangerous abuses could arise. To use the NLRB as an example, such abuses could include:

denying the NLRB general counsel the ability to use agency funds to prosecute particular types of complaints filed by workers, or even complaints against particular industries or parties;

instructing the NLRB chairman to “coordinate policies and priorities” with the White House by prioritizing consideration of cases brought by employers against unions over cases that would give backpay to discharged workers or affirm the results of union elections;

refusing to allow the agency to defend itself and its decisions in federal court if challenged by outside parties or industries that are friendly with the White House, or if the White House disagrees with the agency’s resolution of the case; and

working through the newly appointed “White House Liaisons” in each board member’s office to influence which cases are prioritized or compromise the confidentiality of the deliberative process, especially for minority board members from the political party opposing the president’s.

#### Rights can’t deter or control employers.

Magner 20, JD, Field Attorney at National Labor Relations Board (Brandon, “Does the NLRB Actually Matter?,” Labor Law Lite Substack, https://brandonmagner.substack.com/p/does-the-nlrb-actually-matter)

The National Labor Relations Board, the United States’ sole enforcer of federal labor law, turned 85 this year. It has few friends or allies. Conservatives condemn it as a nuisance that hinders corporate decision-making; libertarians want it abolished. The Left views it as an ineffectual and outdated hall monitor; liberals have long mostly ignored it.

The NLRB began its existence as arguably the most radical and successful agency of the New Deal, enthusiastically enforcing the National Labor Relations Act against many of the most powerful corporations in the country until it was red-baited into submission. The Labor Board’s statutory scheme has underwent only one major revision since its inception; its powers and procedures otherwise remain virtually frozen into their World War II-era structure.

For the uninitiated, that framework is as follows. The NLRB is empowered with overseeing and enforcing federal labor law. Its two primary functions are (1) the supervision of union representation elections to establish collective bargaining relationships and (2) the investigation and prosecution of unfair labor practices committed by employers and unions. The General Counsel acts as a prosecutor, sending cases to a five-person board which serves in a quasi-judicial role on appeal from decisions rendered by administrative law judges. The Labor Board’s headquarters lie in D.C., but the bulk of the investigative and case handling work is performed in its 48 individual field offices stationed around the country.

The agency’s workload has risen and fallen with the fortunes of the labor movement. In 1980, the Labor Board docketed a record 44,063 unfair labor practice charges and employed 2,921 full-time permanent staff. In 2019, those numbers stood at 18,552 charges and 1,286 personnel. Some of that decline is due to internal sabotage by Republican appointees, but the Labor Board undoubtedly has less to do when private-sector union density stands at 6.2%.

This decline in responsibility and prestige was predicted by the NLRB’s most frequent customer: organized labor. As early as 1984, then-AFL-CIO President Lane Kirkland—noting the many restrictions placed upon unions under the NLRA—argued that unions would be better off if the Act were repealed and replaced with the old “law of the jungle.” The current federation President, Richard Trumka, expanded upon this reasoning in a 1987 law review article written during his time leading the United Mine Workers. These arguments must be contextualized within the labor movement’s general disgust with the exceptionally anti-union Reagan Board, which Trumka artfully described as “that gulag of Section 7 rights.” But they were also part of unions’ increasingly negative rhetoric following the Labor Law Reform Act’s death-by-filibuster during the Jimmy Carter administration, which had promised to cut down on employers’ wanton violations of the NLRA primarily by bolstering the NLRB’s available remedies.

Those shortcomings persist today. As decreed by the Supreme Court, the Labor Board is without power to order punitive damages against violators of the law. It cannot compel parties to agree to any contract provisions, even ones that employers deliberately stonewall negotiations over. It cannot ban the use of permanent replacements, offensive lockouts, or management rights clauses. It cannot prevent employers from closing their plants for explicitly anti-union purposes and must allow the vast majority of partial closings to be completed without any sort of bargaining input from the affected unions. It must cede authority to commercial arbitration, federal immigration laws, and the vast universe of employers’ state property rights.

#### Decisions won’t go the way of labor, and if they do, they’ll take forever which kills unions.

**Tameez 25**, writer at Nieman Journal Lab, Harvard. (Hanaa’, “What will a conservative National Labor Relations Board mean for news unions?” Nieman Lab, January 30th, 2025, <https://www.niemanlab.org/2025/01/what-will-a-conservative-national-labor-relations-board-mean-for-news-unions/>) rose

A right-ward power shift on the already cash-strapped and short-staffed NLRB will likely make the agency more employer-friendly and union organizing [more difficult](https://www.law360.com/employment-authority/articles/2287984/unions-to-face-hurdles-organizing-under-trump-nlrb), the labor board’s observers say. Workers across industries, including in journalism, will have to be their own best advocates if they can’t expect enforcement of federal laws.

But first, what does the NLRB do exactly?

The NLRB is a “[quasi-judicial](https://www.nlrb.gov/about-nlrb/who-we-are)” body made up of presidential appointees (confirmed by the Senate) that upholds federal labor laws. It hears and decides cases on labor law violations under the [National Labor Relations Act](https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act), administers union elections, investigates unfair labor practice charges (ULP) by employers, workers, and unions, and can help mediate disputes between employers and employees.

In the news industry, that has looked like: [ruling](https://thenewsguild.wpenginepowered.com/wp-content/uploads/2021/07/BDO.02-CA-262640.DBD_.02-CA-262640.NBCUniversal-Final.docx-1.pdf) NBCUniversal couldn’t roll back staff wage increases in 2020; declaring McClatchy couldn’t impose pageview quotas on its journalists while [settling](https://newsguild.org/nlrb-rules-for-idaho-newsguild-pageview-quotas-are-not-allowed/) an unfair labor practice charge from the Idaho Statesman News Guild in 2021; and [seeking](https://onlabor.org/tracking-attacks-on-the-nlrb-mixed-result-in-dc-agency-wins-elsewhere/) an injunction against the Pittsburgh Post-Gazette in 2024 to stop alleged unfair labor practices while its unionized workers are on strike and trying to negotiate a contract.

The agency has 26 field offices across the country that [investigate](https://www.nlrb.gov/resources/nlrb-process) cases in their corresponding regions. If warranted, the regional office files a complaint and then an administrative law judge hears the case in a regional hearing to make a decision. Either party in the case can appeal the decision to a federal appellate court, which can decide to enforce or overturn the NLRB’s ruling. The NLRB itself can’t enforce its own rulings and its stances usually [correlate](https://www.jstor.org/stable/26356886) with those of the ruling party of the time.

The agency has been [chronically underfunded](https://www.epi.org/publication/bidens-nlrb-restoring-rights/) and [understaffed](https://www.theguardian.com/us-news/2022/aug/17/us-labor-agency-union-activity) with a [steadily increasing](https://www.nlrb.gov/news-outreach/news-story/union-petitions-filed-with-nlrb-double-since-fy-2021-up-27-since-fy-2023) workload in recent years, which has weakened its impact and reliability. It can take months or even years for the NLRB to issue a decision in a case, leaving workers in limbo.

[Hamilton Nolan](https://www.hamiltonnolan.com/) is a longtime labor journalist who covers unions, the labor movement, and inequality for In These Times. As a reporter for Gawker in 2015, he was part of the union organizing committee for the Gawker Media union. He said that with a Republican-led NLRB, newsroom unions in disputes with their employers will be less likely to rely on the government as a good-faith referee.

“It will be bad in the sense that Trump is breaking the government machinery that oversees the union organizing process,” Nolan said. “Republicans are making it bureaucratically harder to enforce labor law and get new unions certified. But the fact is that this will only be temporary, and it shouldn’t hold any workers back from organizing. We need unions now more than ever.”

According to [new data](https://www.bls.gov/news.release/union2.nr0.htm) from the Bureau of Labor Statistics, there were 14.3 million unionized workers in the United States in 2024, making up just 9.9% of eligible wage and salary workers. That’s a slight decline from [10.8%](https://www.bls.gov/news.release/archives/union2_01222021.pdf) in 2020 and [10.7%](https://www.bls.gov/news.release/archives/union2_01262017.pdf) in 2016. But according to [Jon Schleuss](https://www.linkedin.com/in/jonschleuss/), president of The [NewsGuild-Communications Workers of America,](https://newsguild.org/) the organization saw a huge wave in media union organizing during the first Trump administration. About 3,400 media workers unionized with The NewsGuild-CWA alone between 2017 and 2020, during Trump’s first presidency. Since 2016, nearly 8,000 media workers from 146 companies have unionized with The NewsGuild-CWA. Schleuss said he expects another wave of organizing during Trump’s second term.

“This is a moment when workers, regardless of industry, are going to be trying to reduce the chaos in their lives and especially at work,” Schleuss said. “They’re going to want to form unions, probably at a higher rate.”

Several media organizations in recent years have voluntarily recognized unions formed by their newsrooms. Among those are the [Texas Tribune](https://newsguild.org/the-texas-tribune-guild-formally-recognized-as-a-union/), [Politico](https://newsguild.org/politico-ee-staffers-win-union-recognition/), [The Atlantic](https://www.nyguild.org/front-page-details/the-atlantics-business-and-technology-workers-win-voluntary-recognition-of-their-union), [Grist](https://newsguild.org/grist-union-wins-voluntary-recognition/), and [ProPublica](https://newsguild.org/propublica-guild-wins-voluntary-recognition/), to name a few.

However news publisher resistance to the National Labor Relations Act of 1935 — the federal law that protects employees’ rights to unionize, collectively bargain, and advocate for better working conditions without retaliation — has been part of the story from the beginning. The 1937 Supreme Court ruling in [Associated Press v. Labor Board](https://supreme.justia.com/cases/federal/us/301/103/), for example, declared that the AP had illegally fired journalist Morris Watson in 1935 for his union organizing activity, and that “the publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others.” That type of hostility continues today, Media Guild of the West president [Matt Pearce](https://bsky.app/profile/mattdpearce.com) said.

“What we’re returning to is a kind of pre-1930s period where employer-labor relations were much more volatile, with more strikes and more disruption to commerce,” Pearce said. “The rules were put in place for a reason. And it’s entirely possible we’re all going to relearn what those reasons were.”

Long wait times

The NLRB has seen a [steady increase](https://www.nlrb.gov/news-outreach/news-story/union-petitions-filed-with-nlrb-double-since-fy-2021-up-27-since-fy-2023) in its workload in recent years; the NLRB received 3,286 union election petitions between October 1, 2023 and September 30, 2024, a 27% increase from the previous year and more than double since 2021. It also received over 21,000 unfair labor practice charges, up 7% from the year before. There are currently over 26,000 open unfair labor practice charges, according to the NLRB’s case search portal.

But the agency’s [chronic underfunding](https://www.epi.org/publication/bidens-nlrb-restoring-rights/) and [understaffing](https://www.theguardian.com/us-news/2022/aug/17/us-labor-agency-union-activity) have limited ~~handicapped~~ its ability to enforce labor laws in a fair and timely manner, labor leaders say. The NLRB went nine years without a budget increase between 2014 and 2023. The agency’s budget was $299 million in 2024, and requested an increase to $320 million for FY 2025, which the NLRB’s own union has said “[does not come close to providing us with the resources we need to enforce federal labor law](https://x.com/TheNLRBU/status/1767617322473206051).”

In 2023, the average processing time for a union petition request for an election was 37 days, while the processing time between a petition filing and the certification of election results was 56 days, according to a 2024 report [the agency issued](https://www.nlrbedge.com/p/nlrb-processing-times-have-dramatically). The average processing time for an unfair labor practice charge to be investigated and disposed (concluded) is 124.2 days (four months), up 50% from the year before.

“Sometimes **it’s as if there’s no NLRB at all**,” Pearce said. “Part of my skeptical reaction is that there’s not going to be much difference, because even if you have a conservative board, it could take a long time for charges to get processed even if you’re going to get rejected by a more employer-friendly, Trump NLRB board.”

Regardless of the board’s partisan slant, those long wait times have real-life implications, putting workers and their livelihoods at risk.

“If the employer is retaliating against employees – if it’s firing employees illegally or implementing changes to benefits or pay without negotiation – that’s harmful,” Schleuss told me.

The dangers of long processing times are already playing out in Connecticut. In August 2024, more than 100 Hearst Connecticut reporters, photographers, editors, and digital producers [formed](https://newsguild.org/newsletter-introducing-connecticuts-whale-union-%F0%9F%90%8B/) the Connecticut News Guild. Because Hearst said it would not voluntarily recognize the union, the union had to file a petition for its regional NLRB office to administer an [election](https://www.nlrb.gov/about-nlrb/what-we-do/conduct-elections#:~:text=Alternate%20path%20to%20union%20representation,filed%20within%20those%2045%20days.). As of this writing, the regional NLRB office still hasn’t set an election date. A union can’t bargain for a contract with an employer until after election results are certified by the NLRB.

According to Connecticut News Guild organizing committee member [Martha Shanahan](https://x.com/martha_shan), the No. 1 question she gets from guild members is when the election will be. She can’t give them an answer. “As it drags out longer and longer, people are going to get tired of hearing that,” Shanahan said.

“Our election being delayed this long is affecting us because it’s just getting much more likely that we might lose people’s hearts or people might get discouraged,” she added. “Our support is still strong, and we do still feel confident that we’ll win the election when we get there. But every week and month that goes by, it’s just that much more time for people to lose momentum.”

### 2nc – AT Durable Fiat

#### Conservatives take that and run – every interpretation that actually benefits employers can be spun to be the opposite.

**McFerran 25**, former chairman of the NLRB, senior fellow at the Century Foundation, “The GOP Is Trying to Rebrand Its Anti-Worker Agenda. Don’t Believe Them” The Century Foundation, November 20th, 2025, <https://tcf.org/content/commentary/the-gop-is-trying-to-rebrand-its-anti-worker-agenda-dont-believe-them/>) rose

In the wake of passing a budget bill that [sacrificed the well-being of working families](https://www.clasp.org/press-room/press-releases/senate-budget-reconciliation-bill-sacrifices-the-well-being-of-working-families-to-give-tax-breaks-to-billionaires/) to support tax giveaways for corporations and billionaires, Republicans on Capitol Hill are trying to recast themselves as the party of working people. As part of this effort, last week Senate HELP (Health Education Labor and Pensions) Committee Chair Bill Cassidy (R-LA) introduced a [slate of proposals](https://www.help.senate.gov/rep/newsroom/press/chair-cassidy-colleagues-unveil-bills-to-strengthen-workers-rights-deliver-president-trumps-pro-worker-agenda) supposedly intended to “strengthen workers’ rights” and “deliver on President Trump’s pro-worker agenda.” Cassidy has also held [hearings](https://www.help.senate.gov/hearings/labor-law-reform-part-2-new-solutions-for-finding-a-pro-worker-way-forward) on labor law reform, touting the need to find “A Pro-Worker Way Forward.”

While this newfound focus on workers’ rights should be a positive development, unfortunately, a closer look reveals that the new Republican “pro-worker” agenda is largely a repackaging of many of the same anti-worker and anti-union ideas that big corporations have been pushing for quite some time. While this rebranding includes a few new ideas, there is nothing that will make significant progress to help workers succeed, and many ideas that will set workers back. Calling this legislative package “pro-worker” brings to mind a quote from the famed philosopher [Inigo Montoya](https://www.youtube.com/watch?v=dTRKCXC0JFg): “You keep using that word. I do not think it means what you think it means.”

### 2nc – Penalties

#### Employers can simply refuse to negotiate or fire unionizing workers. When they do, the NLRB cannot assign financial penalties – which makes refusing to negotiate and firing unionizing workers financially optimal, because the cost of violating the law is the same as the cost of compliance would have been in the first place. If the aff wanted to say they changed that structure, they should’ve put it in their monstrosity of a plan.

Stansbury 21, senior fellow at the Peterson Institute for International Economics, assistant professor of Work and Organization Studies at MIT, PhD in economics from Harvard. (Anna, August 2021, “Do US Firms Have an Incentive to Comply with the FLSA and the NLRA?” Peterson Institute for International Economics, https://www.piie.com/sites/default/files/documents/wp21-9.pdf)

Labor Organizing Protections and the NLRA

The cost-benefit trade-off for employers considering violating the NLRA is even starker than for the FLSA. Sanctions on firms that commit unfair labor practices in the course of an employee organizing drive are almost always negligible, particularly when compared against the possibly large financial benefit to shareholders of avoiding unionization. Even the offense with the largest potential sanction—dismissal of a worker for union organizing—carries a maximum penalty of having to reinstate the worker with back pay. My estimates in this paper suggest that for an average firm, even if firing a union organizer would reduce the probability of unionization by less than 2 percent, and perhaps by as little as 0.15 percent, it would be financially worthwhile to do so.

It is therefore no surprise that so many firms are found to have fired workers during union organizing drives, and that workers worry about being fired if they try to organize a union. Indeed, Kim Bobo (2011, p. 1766), founding director of Interfaith Worker Justice, reported that “Whenever I am speaking with a group about unions, I always ask, ‘What would happen if you tried to organize a union at your workplace?’ Every single time the response is the same: ‘I would get fired.’”

The lack of incentive for employers to comply with the NLRA has been evident for some time. The Dunlop Commission (1994), for example, argued that the low penalty was a major cause of the increase in the NLRA violation rate (see also Kleiner 2001), and there have been repeated legislative attempts to increase penalties for unfair labor practices. As noted by Kleiner and Weil (2012, p. 49), “given the absence of any appreciable deterrence measure…it should…come as no surprise that the Act for decades has been ineffective in curbing behaviors that are antithetical to its fundamental aims.”

What can be done to reduce firms’ incentives to commit unfair labor practices? Since the NLRA does not allow for any remedies other than “makewhole” remedies, it seems extremely unlikely that meaningful incentives to comply can be created through the existing legal framework: even if firms’ violations are certain to be detected, it is often financially worthwhile to break the law because the penalties are so small relative to the potential benefits to profits from avoiding unionization.

#### The plan has to be enforced through the NLRB. View this as a topicality violation with a precision impact if they answer it.

McFerran 8-31-2025, JD @ Yale, senior fellow at The Century Foundation, having previously served as chairman of the National Labor Relations Board (NLRB) during the Biden administration, from 2021 to 2024 (Lauren, “An Unhappy Labor Day at the NLRB,” The Century Foundation, https://tcf.org/content/commentary/an-unhappy-labor-day-at-the-nlrb/)

As the country pauses on Labor Day to honor the contributions of workers and the labor movement, the government watchdog that is responsible for protecting working people’s rights is facing a crisis. Both President Trump and his powerful corporate allies are waging war against this small, independent agency, threatening its ability to serve the public and undermining the power and voice of working people across the country.

What is the National Labor Relations Board and why is it important?

The National Labor Relations Act gives workers a legal right to form and join unions and to bargain collectively for better wages and working conditions. The act also protects workers from retaliation when they join together and speak up about unfair treatment, whether in a union or not. Almost all private sector workers—not just those who are in unions or want to be in a union—have important rights under this law.

The National Labor Relations Board (NLRB) is the agency that enforces this law. If a worker thinks their employer has violated their rights, they can come to the NLRB: the agency’s general counsel (GC) will investigate their case, and will prosecute the case if it appears that an unfair labor practice has occurred. If the parties can’t reach a settlement, the case is then tried before an agency judge and—ultimately—the National Labor Relations Board, which acts as a court to decide the case.

Importantly, the GC is the only one who can bring a case before the NLRB—workers can’t bring claims on their own. And the NLRB is the only court that can initially decide these cases—workers cannot bring these claims to other federal courts until the NLRB has spoken. The NLRB is the only game in town, so its work is critically important to make workers’ rights a reality.

What has happened to the NLRB this year?

The NLRB in recent months has faced relentless attacks, primarily from the Trump White House, but also from some of the biggest and most powerful corporations in the country that want to make sure there’s no one watching how they treat their workers.

President Trump’s unlawful actions have left the NLRB without a quorum and unable to decide cases.

The NLRB is supposed to have five members, and the U.S. Supreme Court has said it must have three members to decide cases. While the law says that board members can only be fired for misconduct (“malfeasance or neglect of duty”), in January, President Trump fired Board Member Gwynne Wilcox without cause. Because there were already two vacancies on the NLRB, this illegal termination left the NLRB without a quorum and unable to hear cases. So now while workers who want to join a union or who think their rights on the job have been violated can still come to the agency for help, unless their employer voluntarily cooperates with the NLRB’s proceedings, without a quorum, the workers’ cases will sit in limbo indefinitely. The agency currently has no way to compel employers to bargain with their workers’ union, or to stop unfair treatment on the job.

### 2nc – Backlog/Delay

#### It was already underfunded.

**Rhinehart 24**, former senior counselor to the Secretary of Labor, former general counsel for the AFL-CIO, Senior Fellow, Economic Policy Institute, (“Testimony prepared for the U.S. House Subcommittee on Health, Employment, Labor, and Pensions for a hearing on ‘Big Labor Lies – Exposing Union Tactics to Undermine Free and Fair Elections’” Economic Policy Institute, May 22nd, 2024, <https://www.epi.org/publication/testimony-prepared-for-the-u-s-house-subcommittee-on-health-employment-labor-and-pensions-for-a-hearing-on-big-labor-lies-exposing-union-tactics-to-undermine-free-and-fair-elections/>) rose

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](https://www.epi.org/publication/testimony-prepared-for-the-u-s-house-subcommittee-on-health-employment-labor-and-pensions-for-a-hearing-on-big-labor-lies-exposing-union-tactics-to-undermine-free-and-fair-elections/#_note11) NLRB personnel are responsible for protecting the organizing and bargaining rights of more than 100 million workers.[12](https://www.epi.org/publication/testimony-prepared-for-the-u-s-house-subcommittee-on-health-employment-labor-and-pensions-for-a-hearing-on-big-labor-lies-exposing-union-tactics-to-undermine-free-and-fair-elections/#_note12) 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.

#### And recent cuts directly affected enforceability.

**Pedrow et. al. 6-17**, members of Ballard Spahr Labor and Employment Group, (Brian Pedrow\*, Shirley Lou-Magnuson\*\*, Ian Maher\*\*\*, “President Trump’s Budget Goes To Work Against Enforcement Agencies with Significant Cuts to DOL and NLRB” Ballard Spahr, June 17th, 2025, <https://www.hrlawwatch.com/2025/06/17/president-trumps-budget-goes-to-work-against-enforcement-agencies-with-significant-cuts-to-dol-and-nlrb/>) rose

The National Labor Relations Board (NLRB) also reduced its budget request by $14 million from $299.2 million in FY 2025 to $285.2 million in FY 2026.  The NLRB also plans on reducing staff by 99 employees through its participation in the Deferred Resignation Program and offers of voluntary early retirement.  The most significant cuts are to the NLRB’s Casehandling and Mission Support activities.  Casehandling — encompassing unfair labor practice proceedings, representation proceedings, and compliance proceedings — will have a reduced headcount of 61 employees and budget reductions of $8.9 million.  Mission Support, which includes administration, human resources, ethics, training, accounting, facilities, property, security, and technology infrastructure, will reduce its budget by $4.5 million and its headcount by 29 employees.  For more details see the NLRB’s FY 2026 Justification of Performance Budget for the Committee on Appropriations [here](https://aboutblaw.com/bioc).

#### There’s a huge case backlog – and when cases have long wait times, rights do not matter.

Bruenig 25, labor lawyer and public policy expert. (Matt, February 18,“The Futility of the NLRB”, NLRB Edge, https://www.nlrbedge.com/p/the-futility-of-the-nlrb, accessed on 8-10-2025)

In August of last year, I wrote a piece for the New York Times in which I argued that the Starbucks unionization campaign illustrates the inherent limitations of the National Labor Relations Board in facilitating mass unionization in America. The piece analyzes how much NLRB effort was required to produce 11,000 new union members at Starbucks and then concludes that the NLRB does not have even a tiny fraction of the budget that would be required to certify millions of new union members in a short period of time.

If this is how many government resources are required to certify just over 11,000 new union members, then it would clearly be unsustainable for the government if the enthusiasm we’ve seen at Starbucks were to spread to other companies and other unions. Without reforms, a huge wave of unionization would find itself p̶a̶r̶a̶l̶y̶z̶e̶d̶ \*stalled in the bottleneck of the N.L.R.B. process.

I was reminded of this while reading the first General Counsel memorandum (“GC memo”) of the Trump administration, which I summarized at NLRB Edge yesterday. The memo, GC 25-05, rescinds a long list of Biden-era guidance and signals that the new GC is going to try to roll back various worker protections. This is fairly standard when Republicans control the NLRB.

Interestingly, Acting GC William Cowen begins the memo by referencing the resource limitation problem I discussed in my NYT Starbucks piece.

Over the past few years, our dedicated and talented staff have worked diligently to process an ever-increasing workload. Notwithstanding these efforts, we have seen our backlog of cases grow to the point where it is no longer sustainable. The unfortunate truth is that if we attempt to accomplish everything, we risk accomplishing nothing.

Cowen is right that having a huge case backlog that makes it impossible to resolve unfair labor practices quickly makes the NLRB process essentially pointless. Most workers cannot wait for years to be reinstated to their job after being illegally fired, which also means that employers do not need to concern themselves with following the law.

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