HOW BIDEN’S LABOR AGENDA PUTS POLITICS OVER PEOPLE

WEAPONIZING THE FEDERAL GOVERNMENT TO BENEFIT POLITICAL BACKERS AT THE EXPENSE OF AMERICAN WORKERS

Senate Committee on
Health, Education, Labor & Pensions
Senator Bill Cassidy, M.D., Ranking Member

President Biden touts himself as the "most pro-union President leading the most pro-union administration in American history."[1] Unfortunately, instead of championing this slogan to support American families and workers, he has allowed his political allies to heavily influence federal policy and benefit off of insider relationships.[2] He's acted unilaterally to weaponize the federal bureaucracy to become an extension of organized labor and promote liberal ideology. These actions have stalled economic growth and disadvantaged American workers—including the millions who choose not to unionize. The ceding of power to labor unions has turned federal agencies into slush funds for special interest groups, leaving workers and their families behind in the process.

THE BIDEN ADMINISTRATION HAS DECIDED IT KNOWS WHAT IS BEST FOR AMERICAN WORKERS—AND GETS IT WRONG

The Biden administration has pursued ideological policies that strip workers of opportunity, flexibility, pay, and protection against discrimination. For example, the finalized independent contractor rule signals to 27 million Americans that what they want simply does not matter. The administration has failed to understand that the heart of independent contracting is freedom to pursue professional endeavors in a schedule and format of an individual's choosing. The administration claims the rule is about giving independent contractors more formal labor protections that govern their work hours and wages. They presumptively assume independent contractors can—and want to—be full-time employees. Poll after poll has found that this is not true.[3] Yet the administration has moved forward regardless because the independent contractor rule was never about protecting workers—it was about the Biden administration leveraging control over this subset of professionals. Truck drivers, financial advisors, housing contractors, direct sellers, musicians, actors, journalists, hair stylists, software designers, physicians, and gig workers now face confusing and hard-to-interpret standards that could result in them losing their source of income.

Similarly, over nine million franchise workers are affected by the National Labor Relations Board's (NLRB) joint employer regulation. Once again, small business owners are forced to shoulder the burden of the Biden administration's regulatory priorities that favor special interests. The new rule makes franchisors liable for another employer's labor law violations, despite not managing their workers.[4] In practice, this means franchisors may no longer require their franchisees to implement health and safety, equal employment opportunity, or other standard employment practices that benefit workers. This will undermine the franchise model that has empowered those underrepresented in the business community, such as women and people of color, while leading to higher operational costs and fewer opportunities to create jobs.

Finally, the U.S. Department of Labor (DOL) chose to undermine workers by mandating new overtime regulations under the Fair Labor Standards Act. Four years ago, the Trump administration raised the salary threshold determining who is eligible for overtime. The Biden administration's new 65 percent increase, from

1 *Remarks by President Biden in Honor of Labor Unions*, The White House (September 8, 2021), https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/08/remarks-by-president-biden-in-honor-of-labor-unions/.

2 *Ibid*.

3 News Release, U.S. Bureau of Labor Statistics, Contingent and Alternative Employment Arrangements (June 7, 2018), https://www.bls.gov/news.release/conemp.htm.

4 Press Release, U.S. Senate Committee on Health, Education, Labor, and Pensions, Ranking Member Cassidy, Manchin Announce CRA to Overturn New Biden Rule Threatening American Franchise Model, Local Businesses (October 26, 2023), https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-manchin-announce-cra-to-overturn-new-biden-rule-threatening-american-franchise-model-local-businesses-1.

$35,568 to $58,656 in annual wages, will destroy jobs and make it harder for nonprofits to provide services. Workers can expect fewer hours and lower base pay as a result of the rule, and those that live in lower cost-of-living states, particularly in the South, will face much greater impacts.[5] Colleges and universities will also be hit hard. As non-profits and public entities, institutions of higher learning are less able to absorb the increase in cost, which will result in layoffs and tuition hikes. Fourteen higher education associations, representing 4,300 two- and four-year public and non-profit colleges and universities in all 50 states, said an overtime threshold increase will severely undermine employees' ownership over their own schedules.[6] The administration's ignorance of basic economic principles will adversely affect millions of workers who will face lower family incomes, increased unemployment, and higher prices for consumer goods.

The Biden administration is devaluing and undermining the vital role independent contractors, small businesses, employees, and employers play in the community and economy. However, it was never about the worker. It was always about increased federal control.

GIVING LABOR UNIONS A LEG UP

In 1983, 20.1 percent of private sector employees belonged to a union.[7] In 2023, private-sector unions shrank to only six percent of the U.S. workforce. That leaves 94 percent of employees choosing not to be unionized.[8] Decreasing membership isn't the result of falling revenue, it's the result of a change in priorities. Labor unions are more top-heavy and better resourced than in the past.[9] Yet over the past 12 years combined, unions have spent $937 million on strike benefits.[10] Compare that with *$1.8 billion* spent on politics and lobbying in 2020 alone.[11] Labor unions are actively choosing politics over people.

It's no secret why big unions devote significant resources to politics and lobbying: union lobbying pays off. In 2021, President Biden and his Democratic congressional allies bailed out union pension funds to the tune of $86 billion dollars.[12] For comparison, 2021 revenue from union dues totaled $15.2 billion (just over $1,000 per

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5 Rachel Greszler, *How the Administration's Overtime Rule Could Cost Workers More Than They Gain—Including Flexibility and Income Security*, The Heritage Foundation (December 19, 2023), https://www.heritage.org/jobs-and-labor/report/how-the-administrations-overtime-rule-could-cost-workers-more-they-gain.

6 Letter from Bailey Graves, CUPA-HR Government Relations Team, to Jessica Looman, Acting Administrator, Wage and Hour Division, U.S. Department of Labor (Feb. 8, 2022), https://www.cupahr.org/wp-content/uploads/advocacy/CUPA-HR-Overtime-Letter-to-DOL.pdf.

7 Megan Dunn and James Walker, *Union Membership In The United States*, U.S. Bureau of Labor Statistics (September 2016), https://www.bls.gov/spotlight/2016/union-membership-in-the-united-states/pdf/union-membership-in-the-united-states.pdf. It is worth noting 1983 is the earliest year for which comparable data is available.

8 *Union Members Summary*, U.S. Bureau of Labor Statistics (January 23, 2024), https://www.bls.gov/news.release/union2.nr0.htm.

9 *Ibid.*

10 *Labor's Fortress of Finance: A Financial Analysis of Organized Labor and Sketches for an Alternative Future: 2010-2021*, Radish Research (Last accessed: December 2023), https://www.radishresearch.org/_files/ugd/2357dd_135794f88aa140f2962ee-5c71ac31ff0.pdf; Audrey Conklin, *US organized labor spent over $1.8 billion on politics, lobbying during 2020 election: report*, Fox Business (July 23, 2021), https://www.foxbusiness.com/politics/organized-labor-political-spending-2020-election.

11 Audrey Conklin, *US organized labor spent over $1.8 billion on politics, lobbying during 2020 election: report*, Fox Business (July 23, 2021), https://www.foxbusiness.com/politics/organized-labor-political-spending-2020-election.

12 Fact Sheet, The White House, President Biden Announces Historic Relief to Protect Hard-Earned Pensions of Hundreds of Thousands of Union Workers and Retirees (December 8, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/12/08/fact-sheet-president-biden-announces-historic-relief-to-protect-hard-earned-pensions-of-hundreds-of-thousands-of-union-workers-and-retirees/.

union worker annually).[13] In 2022, unions petitioned only 74,114 private-sector workers to unionize—*0.068 percent* of the 109 million eligible private sector workers.[14] American taxpayer dollars are being spent to do what unions won't—invest in labor organizing.

The NLRB is the federal government's referee in labor disputes: conducting union elections, investigating unfair labor practice charges, facilitating settlements, deciding cases, and enforcing court orders. However, in the recent *Cemex Construction* decision, the NLRB sacrificed an employee's choice to unionize—or not—for rules that facilitate unionization. The new rules drastically change the process for unions seeking recognition and threaten to renew "card check," where an employer must accept signed authorization cards from a majority of workers—without a secret ballot election.[15] During card checks, workers are asked to sign a card that authorizes union representation. This exposes workers to pressure and intimidation, and deprives them of the democratic right to a secret ballot election. Separately, the NLRB has also condensed the timeframe for union elections down to as little as three weeks after a petition is filed.[16] Shortening the union election timeframe hinders an employer's ability to reply to the petition. This rule is intended to stifle perceived opposition, but in reality prevents workers from making informed decisions about whether to unionize.[17]

In addition to tipping the scales in union elections, the Biden administration's policies give well-resourced unions an advantage when competing for federal contracts. Through the use of project labor agreements and overhauling Davis-Bacon Act regulations, DOL has ensured government dollars easily flow to contractors that hire union labor, follow union work rules, and pay into union benefit and pension plans. Veiled as initiatives to spur efficiency and protect workers, the truth is these regulatory requirements will effectively eliminate the ability of small, rural, and nonunion contractors from competing for federal government construction contracts. This eliminates nearly 90 percent of non-union construction workers that could not work on projects paid for by their own tax dollars. In addition, these policies can increase project costs—federal taxpayer dollars—by up to 20 percent.[18]

Finally, the Biden administration is giving unions an advantage by allowing them to organize H-2A visa holders. These visas are granted to employers to hire temporary foreign workers to alleviate agricultural workforce shortages. Under this regulation, employers are prohibited from talking to their workers about unionization, but union organizers may be guests in employer-provided housing. The regulation will discourage smaller farmers and growers from participating in the H-2A program, exacerbating labor shortages that are already acute in the agricultural sector. It is estimated about 115,700 more agricultural workers will be needed every year until

13 *Labor's Fortress of Finance: A Financial Analysis of Organized Labor and Sketches for an Alternative Future: 2010-2021*, Radish Research (Last accessed: December 2023), https://www.radishresearch.org/_files/ugd/2357dd_135794f88aa140f2962ee-5c71ac31ff0.pdf.

14 *Election Reports – FY 2022,* National Labor Relations Board (Last accessed: December 2023), https://www.nlrb.gov/reports/agency-performance-report/election-reports/election-reports-fy-2022.

15 *Board Issues Decision Announcing New Framework for Union Representation Proceedings*, National Labor Relations Board (August 25, 2023), https://www.nlrb.gov/news-outreach/news-story/board-issues-decision-announcing-new-framework-for-union-representation.

16 Louis J. Cannon, Jr., Donna M. Glover, and Reba Letsa, *Not-So-Joyful News for Employers: The NLRB Paves the Way for Union Recognition Without an Election and Shortens Election Timelines*, Baker Donelson (August 28, 2023), https://www.bakerdonelson.com/not-so-joyful-news-for-employers-the-nlrb-paves-the-way-for-union-recognition-without-an-election-and-shortens-election-timelines.

17 Representation-Case Procedures, 88 Fed. Reg. 58076 (August 25, 2023).

18 *April 2023 Update: ABC's Fight Against Government-Mandated Project Labor Agreements Intensifies*, The Truth About Project Labor Agreements (April 20, 2023), https://thetruthaboutplas.com/2023/04/20/april-2023-update-abcs-fight-against-government-mandated-project-labor-agreements-intensifies/.

2032.[19] Additionally, the rule will increase food costs. Inflation, driven by economic policies championed by the Biden administration, has resulted in historic food price increases. In 2022 and 2023, food prices increased by 9.9 percent and 5.8 percent, respectively.[20] The cost of eggs increased 70 percent over this same time period. This is unsustainable for most families. Despite that, the proposed regulation will constrain food production even further, leading to higher increases in food prices.[21]

FAIR OVERSIGHT ABANDONED IN FAVOR OF BIG LABOR

Congress passed the Landrum-Griffin Labor-Management Reporting and Disclosure Act (LMRDA) to prevent union racketeering and corruption.[22] The Office of Labor-Management Standards (OLMS) is tasked with enforcing LMRDA and holding labor unions accountable. However, recent actions taken by OLMS demonstrate deference to unions as opposed to true oversight.

For example, OLMS has *rescinded* financial disclosure requirements on union-related trusts, which history has shown will result in unchecked union corruption.[23] The Department of Labor argued the disclosure requirements should be rescinded because they "ignored that the vast majority of union officers and employees do their work diligently and without incident."[24] However, these disclosures are needed, as corruption continues to occur. In July 2022, an OLMS investigation led to a 57-month sentence of a former union official who was convicted of embezzling $2.1 million in union funds.[25] Further, in May 2023, Newton Jones, the president of the International Brotherhood of Boilermakers (IBB), was ousted by the IBB executive council after a hearing revealed corruption and misappropriation of funds under his leadership. Mr. Jones' misconduct included using union funds to pay his wife over $100,000 "for apparently no union purpose," spending $20,000 on flights to Ukraine for personal business, and submitting "$40,000 in receipts for meals in North Carolina—some 'quite lavish and expensive'—with no justification for the expenses."[26] Removing important transparency requirements simply because the Biden administration viewed them as "unjustified paperwork" once again

19 *Occupational Outlook Handbook: Agricultural Workers*, U.S. Bureau of Labor Statistics (December 2023), https://www.bls.gov/ooh/farming-fishing-and-forestry/agricultural-workers.htm#tab-6.

20 *Summary Findings: Food Price Outlook, 2024*, U.S. Department of Agriculture (March 25, 2024), https://ers.usda.gov/data-products/food-price-outlook/summary-findings/.

21 Isabel Hicks, *Montana Farmers Saw Rise in Labor Costs in 2022*, Bozeman Daily Chronicle (Dec. 31, 2022), https://www.bozemandailychronicle.com/news/agriculture/montana-farmers-saw-rise-in-labor-costs-in2022/article_ccf38602-8871-11ed-a1af-13d131a07526.html (noting the "chronic shortage of agricultural labor" in the United States). See also Skyler Simnitt & Philip Martin, *U.S. Fruit and Vegetable Industries Try to Cope with Rising Labor Costs*, U.S. Department of Agriculture (Dec. 28, 2022), https://www.ers.usda.gov/amberwaves/2022/december/u-s-fruit-and-vegetable-industries-try-to-cope-with-rising-labor-costs/; Justin Ferguson, *Labor Shortages Continue to Impact Farmers*, American Farm Bureau Federation (Nov. 1, 2022), https://www.fb.org/focuson-agriculture/labor-shortages-continue-to-impact-farmers.

22 The Select Committee highlighted a host of financial improprieties and abuses in the administration of union and management health and welfare funds, including $10 million in union funds that had "either been stolen, embezzled or misused." *See generally The Legislative Recommendations of the McClellan Committee,* 81 Monthly Labor Revision 518, 518-20 (1958).

23 *See* 29 U.S.C. § 401(b).

24 Press Release, U.S. Department of Labor, OLMS-News 03-21 (December 30, 2021), https://www.dol.gov/agencies/olms/about/newsletter/2021/3.

25 Press Release, U.S. Attorney's Office., Eastern District of Michigan, Former UAW Official Sentenced to 57 Months in Prison For Embezzling Over $2 Million in Union Funds (July 26, 2022), https://www.justice.gov/usao-edmi/pr/former-uaw-official-sentenced-57-months-prison-embezzling-over-2-million-union-funds#:~:text=DETROIT%2D%20Timothy%20Edmunds%2C%20the%20former,Ison.

26 Judy L. Thomas, *'This misuse is shocking.' Kansas City, KS-based union president ousted by executive staff*, Yahoo!News (June 5, 2023), https://ca.news.yahoo.com/misuse-shocking-kansas-city-ks-103000141.html.

demonstrates that union preferences outweigh policies that protect taxpayer dollars.[27]

OLMS is not pursuing similar reporting requirements for union organizers who join a workplace with the specific intention of encouraging employees to join a union, also known as "salts." Salts work to gain the trust of their co-workers before strategically raising the topic of unionization. These individuals withhold their true identities from co-workers in an attempt to build trust and force the intended outcome. Recent media reports found salts helped to organize union elections at several major companies.[28] Another analysis found that Service Employees International Union affiliate Workers United paid 41 union salts nearly $2.5 million in 2022.[29]

However, OLMS is not rescinding reporting writ large. In fact, OLMS chose to increase disclosure requirements for federal contractors and subcontractors who choose to use a labor relations consultant to discuss organizing and collective bargaining rights with employees. In addition, employers subject to this rule will be required to report the federal agencies with which they have contracts. Companies who choose to hire consultants to help with unionization efforts could risk their government contracts, creating a chilling effect on the decision to use labor relations consultants.

The Biden administration is also opening doors for unions through a rule that allows employees to choose a third party to accompany an inspector during a workplace safety inspection.[30] Known as "walkaround rights," the change allows union representatives to walk side by side with Occupational Safety and Health Administration (OSHA) inspectors even if the workplace is not unionized—in effect, piggybacking a union organizing effort onto an OSHA inspection.[31] Allowing the union official to participate in an inspection suggests to workers that the union has government support, eliminating the neutrality government inspectors are supposed to have and politicizing worker safety and health. The presence of a union organizer, especially in a non-union workplace, could very well cause an employer to deny OSHA access. OSHA would then have to seek a warrant from a district court. Such a delay is detrimental to worker safety and health. OSHA's mission is to ensure worker and workplace safety. The government should be a neutral arbiter between unions and employers. This proposed rule furthers the Biden administration's agenda of promoting unionization at the expense of OSHA's vital mission.

WHY IT MATTERS

The Biden administration's attempts to serve its political allies is a shortsighted strategy that harms workers more than it helps labor unions. Employees deserve safe workplaces, to have all the information before a crucial union vote, proper oversight of both employers and unions, and a fair union election process that advantages neither side over the other. The advancement of policies that tip the scale proves the Biden administration's agenda has never been about the American worker, but instead handouts to political allies.

27 Press Release, U.S. Department of Labor, OLMS-News 03-21 (December 30, 2021), https://www.dol.gov/agencies/olms/about/newsletter/2021/3.

28 See, e.g., Josh Eidelson, *The Undercover Organizers Behind America's Union Wins*, Bloomberg (Apr. 3, 2023), https://www.bloomberg.com/news/features/2023-04-03/starbucks-amazon-labor-union-wins-helped-byundercover-salts#xj4y7vzkg.

29 *Analysis: Workers United paid nearly $2.5 million to organizers, "salts" and activists at Starbucks*, LaborUnionNews.com (Apr. 25, 2023), https://laborunionnews.substack.com/p/analysis-workers-united-paid-nearly.

30 88 Fed. Reg. 59825 (August 30, 2023).

31 All workplaces are subject to either federal OSHA jurisdiction or state OSHA jurisdiction. The OSH Act provides that states may adopt state plans, 29 U.S.C. § 667(a). Federal OSHA must approve a state plan as long as it is at least as effective as federal OSHA standards, § 667(c)(2), and provides for entry and inspection of workplaces, §667(c)(3). There are 22 states and territories whose state plans cover both public and private-sector employees and an additional seven states and territories whose state plans cover only state and local government employees, 88 Fed. Reg. 59832.