

**NOMINATION HEARING FOR DEPUTY SECRETARY
OF LABOR AND MEMBERS OF THE NATIONAL
LABOR RELATIONS BOARD**

HEARING

OF THE

**COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS**

UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

ON

**NOMINATION FOR DEPUTY SECRETARY OF LABOR AND MEMBERS OF
THE NATIONAL LABOR RELATIONS BOARD**

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JULY 13, 2017
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THURSDAY, JULY 13, 2017

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR,
AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 9:33 a.m., in room SD-430, Dirksen Senate Office Building, Hon. Lamar Alexander, chairman of the committee, presiding.

Present: Senators Alexander, Isakson, Cassidy, Paul, Young, Murray, Franken, Kaine, Bennet, Murphy, Hassan, Casey and Warren.

OPENING STATEMENT OF SENATOR ALEXANDER

The CHAIRMAN. The Senate Committee on Health, Education, Labor, and Pensions will please come to order.

This morning, we're holding a hearing on three nominations, Patrick Pizzella for Deputy Secretary of the Department of Labor and Marvin Kaplan and William Emanuel to serve as members of the National Labor Relations Board. Senator Murray and I will each have an opening statement. Then I'll introduce the nominees. After their testimony, Senators will each have 5 minutes of questions, and we'll take whatever time Senators would like to take for questions after that, if they want a second round.

Today's hearing is an important one for our Nation's workers and employers. It's important to get the Department of Labor properly staffed and to ensure the open seats on the NLRB are filled. We need a full Board. I'm certainly not the only one of us who thinks so.

One Democratic Senator said at a hearing on May 16, 2013,

"I strongly support a fully functioning NLRB with five members. I think confirming the entire slate will ensure that the NLRB is working for American workers and employers."

Another Democratic Senator said at the same hearing,

"What we don't need now—the last thing we need here in this country is more rancor, more division, more ideology, at a time when we need the Board fully functioning. We need five people to get confirmed here. Any Senator who is standing in the way of getting five people confirmed and having a functioning Board has a lot of explaining to do."

Our chairman then, Senator Harkin, said in September 2014,

“Keeping the NLRB fully staffed and able to do its work will send a strong message to the American people that, yes, Washington can work, and our government can function. It will give certainty to businesses and ensure workers that someone is looking out for their rights and ready and able to enforce our Nation’s labor laws.”

Back when we had a requirement for 60 votes on cloture on the floor of the Senate, I voted for cloture on three of the NLRB Board members, two of whom I voted against in the end, just so we could make sure that the Senate had a chance to consider them by majority vote. I did the same for the NLRB General Counsel, and I did the same for Secretary Perez. My hope is that we can have our hearing, move our nominees out promptly to the floor and confirm them so the government can function.

The Department of Labor is charged with enforcing laws to keep workers safe, to ensure workers are paid, to ensure employers comply with our laws, and the agency also keeps critical data on our employment market. Secretary Acosta is off to a fine start with just over 60 days in office. He has many positions to fill, and today, we’re considering the President’s nomination to fill one of the most important ones of those.

Patrick Pizzella brings a wealth of relevant experience in both Democratic and Republican administrations. He currently serves as Acting Chairman of the Federal Labor Relations Authority. Mr. Pizzella has served as a member of the Federal Labor Relations Authority since November 2013, after being nominated by President Obama in August 2013, and confirmed by the Senate on a voice vote.

He served under President George W. Bush from 2001 to 2009 as Assistant Secretary of Labor. He was nominated by President Bush in April 2001, approved in May without a hearing by the HELP Committee under Senator Kennedy, and confirmed by the full Senate 2 days later. He served at the U.S. Office of Personnel Management, the Small Business Administration, the General Services Administration.

We received his ethics paperwork on June 23, including his public financial disclosure and ethics agreement. Based on these documents, OGE finds that Mr. Pizzella is, “in compliance with applicable laws and regulations governing conflicts of interest.” The committee received his committee paperwork on June 29, meeting our requirement that it be at least 5 days before a hearing.

The NLRB was created in 1935 by the National Labor Relations Act in response to strife between employees and employers in the industrial workplace. The Board has five members with 5-year staggered terms and a general counsel with a 4-year term. There’s no statutory requirement regarding party affiliation, but the tradition has been for the President to appoint members on a 3-2 ratio favoring the current administration, with nominations for the two minority seats recommended by the Senate minority leader.

The two nominees today are for positions that have been vacant, one for 23 months, since President Obama declined to nominate a Republican for the then minority seat, and the other for 11 months. My hope is that these nominees will help restore some balance to

the Board. After years of playing the role of advocate, the Board should be restored to the role of neutral umpire.

Board partisanship didn't start with President Obama. That's for sure. It became worse in the last several years. Board decisions designed to help labor unions have contrasted with the States' movement toward right-to-work laws. Six new States became right-to-work in the last 6 years, bringing the total to 28. When the Board is too partisan, it creates instability in the workplaces. These legal whipsaws create confusion for employers, employees, and unions and doesn't serve the intent of the law, which is stable labor relations and a free flow of commerce.

Here are three actions I considered harmful by the last administration. One, the joint employer decision. That was the biggest attack on opportunity for small business men and women in this country to make their way into the middle class that anyone has seen in a long time, threatening to destroy the American dream for owners of the Nation's 780,000 franchise locations.

The ambush elections rule. The NLRB's ambush election rule can force a union election in as little as 11 days, before an employer and many employees even have a chance to figure out what's going on.

The micro-union decision. Factions of employees within single stores now have a path to forming their own unions. In 2011, the Board suddenly adopted a new way to define what makes a local union bargaining unit, changed the law so that any group of employees with an overwhelming community of interest could become a bargaining unit and, therefore, a union.

Nominee Marvin Kaplan is currently Chief Counsel for the Occupational Safety and Health Review Commission, where he has served since August 2015. From 2009 to 2015, Kaplan worked as counsel for the House Education and Workforce Committee and the House Oversight and Government Reform Committee. From 2007 to 2009, he was Special Assistant at the Department of Labor, Office of Labor-Management Standards.

William Emanuel is currently an attorney at Littler Mendelson in Los Angeles, working on labor and employment matters. He spent his career in the private sector, representing trade associations, hospitals, health care organizations, schools, and others. He has previously represented his clients before the NLRB and has filed *amicus briefs* on behalf of trade associations.

The committee received Mr. Kaplan's HELP paperwork on June 26. Also on June 26, we received Mr. Kaplan's Office of Government Ethics paperwork, including his public financial disclosure and ethics agreement. Based on these documents, OGE determined that Mr. Kaplan, "is in compliance with applicable laws and regulations governing conflicts of interest."

The committee received Mr. Emanuel's HELP application on June 30. On July 6, we received his OGE paperwork. Based on these documents, OGE determined that he is "in compliance with applicable laws and regulations governing conflicts of interest."

I look forward to hearing the witnesses' testimony.
Senator Murray.

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. Thank you very much, Chairman Alexander. I do want to thank Mr. Emanuel and Mr. Kaplan and Mr. Pizzella for being here today.

Before we begin, Mr. Chairman, I'm sure you're not surprised that I'm going to once again object to the fact that we have not had a hearing on the Trumpcare plan. We've heard reports that the Republicans are considering a variety of ideas and are planning on introducing a bill today that will be voted on next week that we haven't had any hearings on or any look at. What we are hearing is that it will have the same results of higher costs for working families, loss of coverage for tens of millions of people, and reverting back to the days when women were discriminated against by insurance companies.

I just want to remind the Chairman, if Republican leaders abandon this ideological commitment to undermining our healthcare system and giving a tax break to corporations and billionaires, Democrats are willing—we are ready and willing to work with you to continue fixing our healthcare system in ways that make healthcare more affordable and workable for people.

I do want to just say quickly that I really am concerned about the rushed and unprecedented manner of this hearing today. The Department of Labor and the National Labor Relations Board are really vastly different agencies. They operate independently of each other. I'm disappointed that you did not hear my request for separate hearings on these extremely important positions, but we're here today.

Instead, I do think Mr. Emanuel's and Mr. Kaplan's nominations are being jammed through this committee actually at a very unprecedented speed while other less controversial nominees continue to await a hearing. With these appointments, I'm very concerned that President Trump is once again breaking his campaign promises of putting workers first and actually ignoring the core mission of the NLRB.

The National Labor Relations Act gives workers the right to join together and participate in collective bargaining. It guarantees workers a voice allowing them to speak up for fair wages and benefits and for safe working conditions. Strong unions created our middle class, and for many working families in the 20th century, a good union job with a right to collective bargaining helped them move up the economic ladder.

As we all know, over the past few decades, our economy has favored corporations and those at the top, and we have seen a decline in unions and union membership across the country, and with that, the middle class in this country has shrunk, and the rich got richer, leaving a lot of working families behind. I believe it is critical now more than ever that we are doing everything we can to ensure that every worker has a fair shot.

Mr. Emanuel and Mr. Kaplan, as I look at your records, I see patterns of anti-worker, anti-union, even anti-NLRB measures.

Mr. Emanuel, you have spent decades advocating for corporations and special interests by taking on workers by their efforts to unionize. I have strong reservations about your ability to protect

those workers now, since you've spent a career fighting against them.

Mr. Kaplan, during your time as a Labor staffer in the House of Representatives, you prepared and you actually staffed hearings where your employers railed against the NLRB and the agency's core mission. In fact, I couldn't find one example of you supporting the rights of workers and unions. Your lack of legal experience, as we talked about, practicing before the NLRB is really concerning to me.

I hope you are prepared today to explain how you believe your careers, both of you, of fighting against workers' rights qualifies you to work those issues out now, as the NLRB and its main goal is to promote collective bargaining and to stand up for workers.

While the Department of Labor's goals are broader, its main objective is the same, to stand up for our workers. DOL makes sure that workers' rights and safety and livelihoods are protected and seeks to expand economic opportunity to more workers and families in the country. Yet, as we know, since Day 1, President Trump has rolled back worker protections, he has promoted policies that make it harder for working families to be financially secure, and he says he wants to slash the Department of Labor's budget by 20 percent.

Mr. Pizzella, I will be interested in hearing whether you agree that rolling back worker protections, prioritizing corporate special interests, and gutting DOL is in the best interest of our workers.

I look forward to your testimony today. I will listen to your responses, and I hope that we can really begin to understand where the President wants to take our country with your words today.

Thank you.

The CHAIRMAN. Thank you, Senator Murray.

We'll now hear testimony from each of those before us, and if you could keep your remarks to about 5 minutes, that will leave more time for questions.

Mr. Pizzella, welcome.

**STATEMENT OF PATRICK PIZZELLA, ALEXANDRIA, VA,
NOMINATED TO BE DEPUTY SECRETARY OF LABOR**

Mr. PIZZELLA. Thank you, Mr. Chairman. Chairman Alexander, Ranking Member Murray, and members of the committee, thank you for the opportunity to appear before you this morning. I want to thank you and your staff for all the courtesies shown to me as I have prepared for this hearing.

Before I begin, I would like to recognize my wonderful wife, Mary Joy, who is joining me today. She herself previously served at the Departments of Energy, State, and the General Services Administration. There is no shortage of Federal service in our family.

I want to express thanks to my parents, who are no longer with us, but as members of the greatest generation would be very proud today. Probably most importantly, I would like to pay a special thanks to all four of my late grandparents, who more than 100 years ago, unable to speak, read, or write English, all got on separate boats and decided to come to America from somewhere in Italy. And because of their courageous journey, I sit in this chair today.

This is the fifth time a President of the United States has nominated me for a position of public trust. I am honored to be nominated by President Donald Trump for the position of Deputy Secretary of Labor, and if confirmed, I will do my best to advance the President and Secretary of Labor Acosta's agenda for America's workforce.

The Department of Labor's mission is to foster, promote and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. With a discretionary budget of about \$10 billion and a mandatory budget of about \$34 billion and over 15,000 employees, the challenges are large.

My first experience at a Federal agency was in 1981, and since then I have spent almost 25 years in the executive branch at seven different agencies. I believe the nearly 8 years I spent as Assistant Secretary of Labor for Administration and Management from 2001 to 2009 has prepared me well for the position this committee is considering me for today.

I will try to answer your questions, and, if confirmed, I look forward to working with all of you.

Thank you.

[The prepared statement of Mr. Pizzella follows:]

PREPARED STATEMENT OF PATRICK PIZZELLA

Thank you Mr. Chairman. Chairman Alexander, Ranking Member Murray and Members of the committee, thank you for the opportunity to appear before you this morning. I want to thank you and your staff for all the courtesies shown to me as I have prepared for this hearing.

Before I begin, I would like to recognize my wonderful wife Mary Joy (MJ) who is joining me today; she herself previously served at the Departments of Energy, State and the General Services Administration.

I want to express thanks to my parents who are no longer with us, but as members of the "greatest generation" would be very proud today.

Probably, most importantly, I would like to pay a special thanks to all four of my late grandparents. Who more than 100 years ago, unable to speak, read or write English all got on separate boats and decided to come to America from somewhere in Italy. And because of their courageous journey I sit in this chair today.

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I will try to answer your questions, and if confirmed, I look forward to working with all of you.

Thank you.

The CHAIRMAN. Thank you, Mr. Pizzella.
Mr. Kaplan.

STATEMENT OF MARVIN KAPLAN, CRESSKILL, NJ, NOMINATED TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

Mr. KAPLAN. Thank you, Chairman Alexander, Ranking Member Murray, and members of the committee. It is a great honor to appear before you today with my fellow nominees and be considered as a potential member of the National Labor Relations Board.

Unfortunately, my wife, Dr. Ladin Yurteri-Kaplan, and son, Eliaydin Kaplan, are not able to join me today. My wife, a first generation Muslim American, is my greatest supporter and critic. My son is the best thing that has ever happened to me and a constant reminder that it is our responsibility to leave the world better than we found it. I would like to thank them for their support and sacrifices so that I may continue my career in public service.

I would also like to thank my parents, Elliot and Jeanne Kaplan. My father worked tirelessly to make sure we were provided for. He instilled in me the importance of fair play, hard work, and patience. My mother taught me compassion, acceptance, and understanding. They also imparted to me a deep love for this country and a desire to serve it.

Finally, I would like to thank my in-laws, Sualp and Gonca Yurteri. Despite the rigors of running a successful small marble business, they have found time to help take care of my son. I would not be able to pursue this opportunity without their support.

Following graduation from law school at Washington University in St. Louis, after a short stint at a law firm, I devoted myself to public service, focusing on labor and employment law. I began my public service career at the U.S. Department of Labor's Office of Labor Management Standards in 2007. In 2009, I came to Capitol Hill, working for the House Oversight and Government Reform Committee and subsequently for the Education and the Workforce Committee. Currently, I am chief counsel to the Occupational Safety and Health Review Commission chairman.

In each of these positions, I have gained extensive labor and employment law experience and developed skills that are essential for success at the National Labor Relations Board.

At the Department of Labor, I met and worked with employees, unions, employers, attorneys, congressional staff, and various interest groups to ensure union democracy, financial integrity, transparency. It was a unique professional opportunity to develop and implement labor policy. During this time, the Office of Labor Management Standards was regularly the subject of congressional oversight. We endeavored to be responsive to all congressional inquiries while simultaneously protecting the integrity of ongoing investigations and the deliberative process.

I departed the Department of Labor with a substantive understanding of union structure and collective bargaining, a respect for congressional oversight, and a deep understanding of the administrative policymaking process.

In 2009, I became counsel for the Oversight and Government Reform Committee. The committee has broad oversight jurisdiction, covering almost the entire Federal Government. While oversight can be contentious, I was always respectful of the Administration's position and attempted to find a mutually agreeable outcome. My

time at the House Oversight and Government Reform Committee highlighted the importance of transparency and accountability.

I joined the U.S. House Education and the Workforce Committee in 2012. As Workforce Policy Counsel, I continued to conduct oversight of the Department of Labor and the National Labor Relations Board and provided legal and policy advice on all workforce issues, from labor/management relations to pensions. My duties and responsibilities required extensive study of the National Labor Relations Act.

I regularly met with Members of Congress, minority staff, employees, administration officials, including the General Counsel and Members of the National Labor Relations Board, unions, employers, attorneys, and various interest groups. It was an unparalleled opportunity to debate the most fundamental labor and employment policies with a broad range of interested parties. These discussions were bolstered by dozens of committee hearings. I always approached these issues with an open mind.

In 2015, I accepted a position at the Occupational Safety and Health Review Commission. The Commission, like the National Labor Relations Board, involves appellate level decisionmaking. As counsel and now chief counsel, I review appeals of administrative law judge decisions. That review involves the examination of an extensive hearing record, the analysis of the judge's opinion, and the evaluation of competing appellate arguments. From start to finish, this deliberative process is collaborative, requiring an open mind and the patience to reach decisions and flesh out opinions.

If confirmed, I will fairly and faithfully enforce the National Labor Relations Act as it is written and consistent with its amendments. I will approach each case impartially, respect longstanding precedent, stay true to the tenets of statutory construction, endeavor to bridge the divisions at the National Labor Relations Board, seek public input when appropriate, and cooperate with congressional oversight.

Thank you for the opportunity to offer these remarks. I welcome your questions. I also would like to thank all the members that took time to meet with us. It was very informative and very helpful to get your opinions in a one-on-one.

[The prepared statement of Mr. Kaplan follows:]

PREPARED STATEMENT OF MARVIN KAPLAN

Thank you Chairman Alexander, Ranking Member Murray, and members of the committee. It is a great honor to appear before you today with my fellow nominees and to be considered as a potential member of the National Labor Relations Board.

Unfortunately, my wife, Dr. Ladin Yurteri-Kaplan, and son, Eliaydin Kaplan, are not able to join me today. My wife, a first generation Muslim American, is my greatest supporter and critic. My son is the best thing that has ever happened to me and a constant reminder that it is our responsibility to leave the world better than we found it. I would like to thank them for their support and sacrifices so that I may continue my career in public service.

I would also like to thank my parents, Elliot and Jeanne Kaplan. My father worked tirelessly to make sure we were provided for. He instilled in me the importance of fair play, hard work, and patience. My mother taught me compassion, acceptance, and understanding. They also imparted to me a deep love for this country and a desire to serve it.

Finally, I would like to thank my in-laws, Sualp and Gonca Yurteri. They have been part of my life for the last 19 years. Over that time, through hard work and devotion, they have built a successful small marble and stone business. Despite the

rigors of their work, they have found time to help take care of my son. I would not be able to pursue this opportunity without their support.

Following graduation from law school at Washington University in St. Louis, where I concentrated on labor and employment law, and after a short stint at a law firm, I devoted myself to public service, focusing on labor and employment law. I began my public service career at the U.S. Department of Labor's Office of Labor Management Standards in 2007. In 2009, I came to Capitol Hill, working for the House Oversight and Government Reform Committee and subsequently, for the Education and the Workforce Committee. Currently, I am chief counsel to the chairman of the Occupational Safety and Health Review Commission. In each of these positions, I have gained extensive labor and employment law experience and developed skills that are essential for success as a member of the National Labor Relations Board.

At the Department of Labor, I met and worked with employees, unions, employers, attorneys, congressional staff, and various interest groups to ensure union democracy, financial integrity, and transparency. It was a unique professional opportunity to develop and implement labor policy. During this time, the Office of Labor Management Standards was regularly the subject of congressional oversight. We endeavored to be responsive to all congressional inquiries while simultaneously protecting the integrity of ongoing investigations and the deliberative process. I departed the Department of Labor with a substantive understanding of union structure and collective bargaining, a respect for congressional oversight, and a deep understanding of the administrative policymaking process.

In 2009, I became counsel for the U.S. House Oversight and Government Reform Committee. The committee has broad oversight jurisdiction, covering almost the entire Federal Government. At the direction of then-Ranking Member Issa, I was responsible for ensuring compliance with dozens of oversight requests and conducting numerous investigations aimed at ensuring that Departments and Agencies were operating in an open and transparent manner, accountable to all stakeholders, and acting within the bounds of the authority given to them by Congress. While oversight can be contentious, I was always respectful of the Administration's position and attempted to find a mutually agreeable outcome. My time at the U.S. House Oversight and Government Reform Committee highlighted the importance of transparency and accountability.

I joined the U.S. House Education and the Workforce Committee in 2012. As Workforce Policy Counsel, I continued to conduct oversight of the Department of Labor and the National Labor Relations Board, and provided legal and policy advice on all workforce issues, from labor/management relations to pensions. My duties and responsibilities required extensive study of the National Labor Relations Act. I regularly met with Members of Congress, minority staff, employees, administration officials, including the General Counsel and members of the National Labor Relations Board, unions, employers, attorneys, and various interest groups. It was an unparalleled opportunity to debate the most fundamental labor and employment policies with a broad range of interested parties. These discussions were bolstered by dozens of committee hearings. I always approached these issues with an open mind.

In 2015, I accepted a position at the Occupational Safety and Health Review Commission (Commission). The Commission, like the National Labor Relations Board, involves appellate level decisionmaking. As counsel and now chief counsel, I review appeals of administrative law judge decisions. That review involves the examination of an extensive hearing record, the legal analysis of the judge's opinion, and the evaluation of competing appellate arguments. From start to finish, this deliberative and decisional process is collaborative, requiring an open mind and patience to reach decisions and flesh out opinions.

If confirmed, I will fairly and faithfully enforce the National Labor Relations Act as it is written and consistent with its amendments. I will approach each case impartially, respect longstanding precedent, stay true to the tenets of statutory construction, endeavor to bridge the divisions at the National Labor Relations Board, seek public input when appropriate, and cooperate with congressional oversight.

Thank you for the opportunity to offer these opening remarks. I welcome your questions.

The CHAIRMAN. Thank you, Mr. Kaplan.
Mr. Emanuel, welcome.

**STATEMENT OF WILLIAM EMANUEL OF SANTA MONICA, CA,
NOMINATED TO BE A MEMBER OF THE NATIONAL LABOR
RELATIONS BOARD**

Mr. EMANUEL. Thank you, Senator.

Chairman Alexander, Ranking Member Murray, and members of the committee, I am honored to appear before you today as a nominee for the National Labor Relations Board. My wife, Betsy, is seated directly behind me. She has made it possible for me to accept this position by agreeing to leave her home and family in California and move with me to Washington, DC, for which I am grateful. Our three children are very busy with their careers and family responsibilities back in California and could not be here today.

I am grateful to President Trump for nominating me for this position. There is no greater honor for a labor lawyer than serving as a member of the National Labor Relations Board.

I believe that I am well-qualified for this position. I practiced law as a labor and employment lawyer in Los Angeles for my entire career, which has spanned several decades. During that time, I have focused primarily on traditional labor law issues which involve the NLRB and the National Labor Relations Act. In addition to litigating labor cases before the NLRB and the courts, my practice has included collective bargaining, strikes and picket lines, labor arbitration cases, labor injunction litigation, union organizing campaigns, unfair labor practice charges, and the other issues that labor lawyers confront on a daily basis.

In addition, I represented a major hospital association during the deliberations by Congress over the healthcare amendments to the National Labor Relations Act which were enacted in 1974. This involved negotiating the language of the amendments with labor union representatives and then also testifying at two hearings before the Senate Labor Committee regarding the legislation. Subsequently, I testified before the NLRB when it adopted special rules for hospital bargaining units, which were adopted in 1989.

I have also served for many years as a contributing editor of the leading treatise on the National Labor Relations Act, which is named *The Developing Labor Law*. In addition, I have actively participated in committees of the American Bar Association and other organizations that focus on that statute, and in 1974, the NLRB asked me to serve on an advisory committee for that agency regarding the agency's procedures, which I did. As a result of my experience in the—of my years of experience in the practice of labor law and my Bar Association activities, I am personally acquainted with all of the current Board members, which should be very helpful in discussing and resolving the complex issues to be decided by the Board in the years ahead.

In addition to my professional experience in the field of labor law, I also understand the workplace from a very practical standpoint, which I think will be helpful in this position. During my college and high school years, I worked as a railroad switchman in the Milwaukee freight yards, as a brewery worker, as a construction worker, as a bartender, as a grocery clerk, and in several other jobs.

In 1998, I was honored by being elected as a Fellow of the College of Labor and Employment Lawyers, which includes labor law-

yers on the union side as well as those who represent employers. I earned my undergraduate degree at Marquette University and my law degree at Georgetown University here in Washington.

I look forward to working with the other Board members in resolving the difficult issues that the Board will face in the next several years.

Thank you.

[The prepared statement of Mr. Emanuel follows:]

PREPARED STATEMENT OF WILLIAM J. EMANUEL

Chairman Alexander, Ranking Member Murray, and Members of the committee: I am honored to appear before you today as a nominee for the National Labor Relations Board. My wife Betsy is seated behind me. Our three children are busy with their careers and family responsibilities in California and could not be here on short notice.

I am grateful to President Trump for nominating me for this position. There is no greater honor for a labor lawyer than serving as a member of the NLRB.

I believe I am well-qualified for this position. I have practiced law as a labor and employment lawyer in Los Angeles for my entire career, which has spanned several decades. During that time, I have focused primarily on traditional labor law issues, which involve the NLRB and the National Labor Relations Act. In addition to litigating labor cases before the Board and the courts, my practice has involved collective bargaining, strikes and picket lines, labor arbitration, labor injunctions, organizing campaigns, unfair labor practice charges, and the other issues labor lawyers confront on a daily basis.

In addition, I represented a major hospital association during the deliberations by Congress over the health care amendments to the NLRA, which were enacted in 1974. This involved negotiating the language of the amendments with union representatives, and also testifying at two hearings before the Senate Labor Committee. Subsequently, I testified before the Board when it adopted special rules for hospital bargaining units, which were adopted in 1989.

I have also served for many years as a contributing editor of *The Developing Labor Law*, which is the leading treatise on the NLRA. In addition, I have actively participated in committees of the American Bar Association and other organizations that focus on that statute. In 1994, I served on an advisory committee for the NLRB on agency procedures.

As a result of my years of experience in the practice of labor law and my bar association activities, I am personally acquainted with all of the current Board members, which should be helpful in discussing and resolving the complex issues to be decided by the Board.

In addition to my professional experience in the field of labor law, I also understand the workplace from a practical standpoint. During my college and high school years, I worked as a railroad switchman, brewery worker, construction worker, bartender, grocery clerk, and in several other jobs.

In 1998, I was honored by being elected as a Fellow of the College of Labor and Employment Lawyers, which includes labor lawyers on the union side as well as those who represent employers.

I earned my undergraduate degree at Marquette University, and my law degree at Georgetown University.

I look forward to working with the other Board members in resolving the difficult issues that the Board will face in the next several years.

Thank you.

The CHAIRMAN. Thank you, Mr. Emanuel, and thanks to all of you.

We'll now have 5-minute rounds of questions by Senators. I'm going to call on Senator Isakson first.

Just on the question of whether we're rushing the nominees, Mr. Kaplan's and Mr. Pizzella's nominations have been pending for 23 days, Mr. Emanuel's for 14 days. We have all your papers. By comparison, under Chairman Harkin, the HELP Committee held hearings on several NLRB nominees with far less time for consideration. Current Board member McFerran's hearing was 8 days after

her nomination. Former Board member Schiffer's hearing was 7 days after her nomination. The committee marked her nomination up the next day. Former Board member Hirozawa's hearing was also 7 days after his nomination. His markup was also the next day.

Mr. Pizzella offered to meet with all HELP Committee members before the hearing. He met with 13 of them, including 6 of the Democratic members. Mr. Kaplan and Mr. Emanuel also offered to meet with all HELP members. Mr. Kaplan met with 10 of them, including 5 Democratic members. Mr. Emanuel met with nine, including five Democratic members.

Senator Isakson.

STATEMENT OF SENATOR ISAKSON

Senator ISAKSON. Thank you, Mr. Chairman.

Thanks to all of you for coming to my office and meeting with me. I enjoyed the meeting very much, and, as always, I learned something.

Starting with Mr. Pizzella and going to each member, would you please tell me in a brief sentence or two a description of what you think your job and responsibility will be as a National Labor Relations Board member?

Mr. PIZZELLA. I'll obviously address the Department of Labor as the Deputy Secretary possibility. I think having worked there before for 8 years—I worked under three different Deputy Secretaries and worked closely with the Secretary.

The Deputy Secretary's role has always been, at least in my experience, one where—as sort of a chief operating officer, someone who is making sure that a department with 15,000 employees that administer 180 laws is running in an efficient and effective way for a few reasons. No. 1, we have that responsibility to the American people. No. 2, in order to assist both the President's and the Secretary's agenda, we need to have a department that runs in an efficient and effective way.

I believe that the skill set I have and my focus on the agenda of the President and the Secretary will aid me in the job as Deputy Secretary.

Senator ISAKSON. Correcting my question, as Deputy Secretary, that would be your definition, not as a member of NLRB.

Mr. PIZZELLA. Right.

Senator ISAKSON. But these two gentlemen will be NLRB. In a couple of sentences, would you describe to me how you see your role as a member of the NLRB?

Mr. KAPLAN. I think it's pretty straightforward, to expeditiously, fairly, and impartially determine the cases that come before us in conjunction with our other Board members.

Senator ISAKSON. A baseball analogy—you call balls and strikes, you think?

Mr. KAPLAN. After an exhaustive review of the record, a number of meetings with the members, both Republican and Democrat, meetings with your staff, a review of the statute, a review of the precedent, a review of court precedent, a review of the legislative history, yes, et cetera, et cetera. It's a long process, but when it's done right, it results in good decisions.

Senator ISAKSON. Mr. Emanuel.

Mr. EMANUEL. I would agree with that, Senator. As Board members, we would serve in what is known as a quasi-judicial capacity, which means that we would review cases that come up from the regions and from the administrative law judges and make decisions on a case-by-case basis as to whether the decisions below were correct or not, and if not, how they needed to be amended.

We would start with the statute as it is written and the intent of Congress, and then we review the facts of the case, and many of the NLRB's cases are extremely fact-intensive, and, of course, Supreme Court precedent is important, and the court has already decided several fundamental principles. We have to take that into account. We consider the arguments of the parties, obviously, and the views of our colleagues, and then we come to a decision on a case-by-case basis.

Senator ISAKSON. Mr. Pizzella, as Deputy Secretary, there's one very important role you're going to have, which I'd like for you to opine on for just a second. I'm the chairman of the Veteran Affairs Committee and work very hard for the veterans of this country, most of whom, or many of whom are married while on duty. Their spouses work in the workplace in the community where their husband is transferred to the base of operation. Many of their jobs require licensing by the equivalency of a State labor board or a State occupational licensing board or whatever it might be—plumbers, whatever it might be.

One of the difficulties we have for our military families is that when they're transferred from, say, Fort Benning in Georgia to Fort Hood or to MacDill Air Force Base or to somewhere in another State, the transferability of the license of the trailing spouse is not treated with reciprocity in the State they go to. Do you see a role, or do you see any way you could help us to get a more seamless approach to that so that we can have better reciprocity and transferability of occupational licensing from one State to the next?

Mr. PIZZELLA. Thank you for that question, Senator. As you know, the Department of Labor has the Veterans Employment and Training Service as part of its mission. I see a role, one of certainly encouraging and trying to bring together States to be more reciprocal in the way they treat licensing and occupations. I think—we have one role. I think there's other roles, and that has to do with the State level.

Second, there's also sort of a litigation role. There's an organization in Washington called the Institute for Justice that has made a bit of crusade over the past 10 years or so in trying to break down these licensing requirements, particularly for positions that perhaps—we're not talking about doctors or lawyers. We're talking about individuals in professions that are—the skills are very transferable and portable.

I think it's threefold. It's the Department of Labor trying to provide some leadership. I think it's States trying to coordinate this a little bit. It seems to be something that everyone should somewhat agree on.

The CHAIRMAN. We need to wrap up. We're running out of time. Senator ISAKSON. Thank you, Mr. Chairman.

Mr. PIZZELLA. Thank you. I'm sorry. I didn't see that.

The CHAIRMAN. Senator Murray.

Senator MURRAY. Thank you, Mr. Chairman.

Mr. Emanuel, let me start with you. You once wrote that the, “primary purpose of the national labor law remains to assist unions in the organization of employees.” Do you still believe the National Labor Relations Act is meant to encourage collective bargaining?

Mr. EMANUEL. Certainly. That is one of the principal purposes of the National Labor Relations Act, and it’s stated right in section 1 of the statute. There are other important purposes that are stated later in the statute, specifically in the Taft-Hartley amendments of 1947, and one of those is to protect the rights of employers as well as the rights of employees, and also to protect the rights of individual employees as opposed to labor unions when difficulties arise in that area. Also, one purpose is to protect the rights of the public in connection with labor disputes affecting commerce. All of those purposes are set forth in the statute, and those are the goals that we would seek to achieve in deciding our cases.

Senator MURRAY. The preamble of the NLRA says it is the policy of the United States to encourage collective bargaining. I wanted to ask—you have 40 years of experience as a labor attorney. Can you give me an example of when you represented a union or advocated for a worker or didn’t work to discourage the practice of collective bargaining?

Mr. EMANUEL. I haven’t worked to discourage the practice of collective bargaining, Senator. I would take issue with that. I’ve been at the bargaining table on numerous occasions negotiating agreements with labor unions, and I think that supports the practice of collective bargaining. I don’t disagree that the purpose of the statute is to promote collective bargaining when employees want to be unionized and represented by a union for purposes of collective bargaining.

This is a right that employees have, and if employees choose to engage in collective bargaining through a labor organization, they have the right to do that. If that happens, then the employer has to respect that right and engage in collective bargaining as the statute says.

Senator MURRAY. Do you think that the employees have—you have a responsibility to ensure they have the ability to do that as part of the NLRB? Or do you think the NLRB should work to discourage members from doing that?

Mr. EMANUEL. The NLRB, I think, is neutral on that. The NLRB exists to protect the rights of employees if they wish to engage in collective bargaining, and the NLRB does an incredibly good job at doing that.

Senator MURRAY. You couldn’t give me an example of when you did represent a union or advocate for a worker?

Mr. EMANUEL. No, Senator. In the field of labor law, as a practical matter, lawyers practice either on the employer’s side or the union’s side, and you just don’t do both. It’s not feasible. There is a long tradition at the NLRB of labor lawyers—

Senator MURRAY. I’ve got to move on, because I only have 5 minutes, so I appreciate your—

Mr. EMANUEL. I’m sorry. Sure.

Senator MURRAY. Let me move to Mr. Kaplan. President Trump claimed to have workers' interests at heart. I'm concerned about his track record since he's been in office. Let me ask you this. President Trump's businesses have repeatedly been the subject of cases at the NLRB. For instance, in November, the Board held that a Trump Hotel in Las Vegas violated the National Labor Relations Act by refusing to bargain with the union that represented house-keeping, food and beverage, and guest services workers.

While there are a number of cases pending against the Trump organization that were settled last year, there are still a number of open cases involving President Trump's businesses before the Board. This is really an unprecedented situation, and it's really created by the President's refusal to divest his business assets.

I wanted to ask you how are you going to address these cases that may come before you against the business of the person who actually nominated you?

Mr. KAPLAN. The Board is entirely independent. We're appointed to terms, and we can only be removed for cause. If and when such a case comes before us, I can pledge I will go down to my ethics officer to ensure that there's no ethical issue with us participating in the case or me adjudicating the case. On top of that, you know, as a fundamental matter, the name on the business or the owner of the business should not have any effect on any decision we make. That's the pledge we take when we go to the NLRB and take an impartial role there. It's the same sort of thing with any business.

Senator MURRAY. So you would recuse yourself if the ethics officer said that that needed to happen?

Mr. KAPLAN. Absolutely. I would never argue with my ethics officer.

Senator MURRAY. All right. I have other questions, obviously, and a short amount of time when we have an Appropriations Committee markup at the same time as this hearing. I will have to submit them for the record. I'm especially interested in Mr. Pizzella's take on how he's going to implement a 20 percent budget cut. I will submit that for the record.

The CHAIRMAN. I'd be interested in that, too, Senator Murray.

Thank you, Senator Murray, and we understand that you have other responsibilities with the Appropriations Committee this morning.

Senator Cassidy.

STATEMENT OF SENATOR CASSIDY

Senator CASSIDY. Mr. Pizzella, over the last 8 years, there's been a lot of working families who really have struggled, and there's been weak GDP growth, tepid productivity growth, and, in a sense, as we move more toward the information economy, which should be increasing productivity, it just doesn't seem to have translated into higher wages. Part of your position will be to somehow create better job opportunities for those working families who have suffered over the last 8 years from everything that they have.

Any thoughts on that? How do you go about that?

Mr. PIZZELLA. A couple of thoughts. I do subscribe to former President Kennedy's theory that a rising tide lifts all boats. I think

anything that can be done by the executive branch with Congress to create more economic growth and an environment for entrepreneurs and businesses to start will help everybody.

Second, I think—

Senator CASSIDY. Are you suggesting by that, implicitly, that it's going to be the small businesses which lead job growth as opposed to the larger corporations?

Mr. PIZZELLA. Yes. Most new businesses started up in this country, as you know, are small businesses, and the majority of businesses that are working today fall into the small category, though the headlines often deal with the large companies.

Senator CASSIDY. So regulatory reform, tax relief would be kind of, I'm sure, a keystone—

Mr. PIZZELLA. They both would be important to helping create a better atmosphere for economic growth. I also think—I think some of you are probably familiar that President Trump and many of you and a few of the members I've met with—Senator Franken, in particular, and Senator Collins—have expressed a real interest in the apprenticeship effort that President Trump has laid out. He has issued an Executive order, I think, last month with some very specific plans and goals that the Secretary of Labor is now, I believe, in the process of putting together.

The President wants something to happen sooner rather than later, and it also involves the Secretaries of Commerce and Education so that there can be some cooperation among the executive branch agencies to make sure that some of those people who are either underemployed or unemployed, in particular, have another opportunity, another pathway, rather than what's always been a traditional pathway, and that is to get a skill through an apprenticeship program that they can turn into a career, and a skill that is portable, so if they end up moving to Louisiana from Connecticut, the skill they have will still be useful there. I think tax and regulatory relief combined with, particularly, the apprenticeship program and other aspects of the training effort will go a long way to help.

Senator CASSIDY. You have a couple of guys next to you up for NLRB. Without passing judgment necessarily on the wisdom, it's been a very active NLRB and very active in the setting of small businesses, micro-unions, for example. I keep on thinking of the immigrant who has a subway sandwich shop in Zachary, LA, who now has two folks who can unionize on.

Any thoughts as to the impact of those rulings upon the ability of small businesses to start and grow?

Mr. PIZZELLA. I think I'd be a little out of my lane on that. The National Labor Relations Board is the one that—

Senator CASSIDY. Let me go over to you, Mr. Kaplan.

Mr. KAPLAN. Could you repeat the question one more time? I just want to make sure I get it correct.

Senator CASSIDY. Mr. Pizzella mentioned that regulatory problems have—I'll put it this way. If we're going to start growing jobs so that the middle class and the working families begin to have more opportunity, you have to look at both tax relief and regulatory relief, because there's been an environment which has inhibited that growth.

The NLRB has actually put forward a fair number of regulations which have made it quite difficult for the small businesses to grow. When I speak to my small businesses back home, they're kind of pulling their hair out. One guy said, "I just spent 2 weeks staying out of jail, vis-à-vis, government regulations, as opposed to growing my business."

Any thoughts about the NLRB's decisions over the last 8 years, how that's either improved or decreased the ability of these small businesses to create jobs?

Mr. KAPLAN. I can tell you my in-laws share some of the frustration that you've stated today. They run a small business, and they have definitely had their ups and downs.

With regard to the NLRB, we adjudicate the case based on the facts that are presented to us and look at the case in an impartial manner. To that effect, we carry out the tenets of the act and the amendments. I'm not really sure, I assume you're talking about the joint employer standard and things like that. In the event that those cases come before us, I can promise you that I will look at them in a fair and impartial manner and make a determination based on the facts before me.

I'm not inclined to prejudge an issue without the benefit of staff's opinions, and, in fact, in some cases, it might be appropriate to seek public input, which would give an opportunity to these small businesses to provide us with what's happening in their situations.

Senator CASSIDY. I'm out of time. I yield back.

The CHAIRMAN. Thank you, Senator Cassidy.
Senator Casey.

STATEMENT OF SENATOR CASEY

Senator CASEY. Thank you, Mr. Chairman.

I wanted to start this morning with a reference that the Chairman made about the National Labor Relations Act. In my home State of Pennsylvania, we've had a good portion of our history, decades and decades and decades, until the more modern era, where workers were mistreated routinely. It was common practice, and that was—I think the experience of Pennsylvania was one of the reasons why we ended up with a National Labor Relations Act in the first place. It was one of the States whose experience was a predicate for finally coming together to enact the NLRA.

The language in the preamble as well as, of course, the statute itself is critically important. The language that you've all heard before,

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption and promotes the flow of commerce,"

and it goes on from there.

This isn't simply an act that decided that one group of Americans were badly treated and, therefore, we should remedy that with a statute. That's certainly part of the intent. The focus of the act, one of the intended outcomes, was that there would be the free flow of commerce. That's critically important to remind ourselves all these

years later, and some of the reasons that we had to pass this law in the first place are still with us today, as you know.

I'll start with each of you, and these are simple questions. I hope we'll get yes, yes, yes. First of all, do you agree with the National Labor Relations Act in total?

Mr. Emanuel?

Mr. EMANUEL. Yes, Senator. Yes.

Senator CASEY. Mr. Kaplan?

Mr. KAPLAN. We're bound by its language and its amendments, yes.

Senator CASEY. Mr. Pizzella?

Mr. PIZZELLA. The Department of Labor does not administer that act. I agree with it, yes.

Senator CASEY. Thank you. Should it be the policy of the United States to protect the rights of employees to bargain collectively?

Mr. Emanuel?

Mr. EMANUEL. Yes, that's one of the statements in the statute, yes.

Senator CASEY. Mr. Kaplan?

Mr. KAPLAN. Yes, I would agree.

Senator CASEY. Mr. Pizzella?

Mr. PIZZELLA. Yes, sir.

Senator CASEY. I guess I have to ask you, because you're here to seek support for nominations, what have you done in your career that would provide evidence that you support those policies? What would you do, if confirmed to the Board, to encourage collective bargaining and protecting the rights of workers?

Mr. Emanuel?

Mr. EMANUEL. During my career, Senator, I have represented many employers, giving them legal guidance on their actions under the National Labor Relations Act, what they're required to do and how they're required to do it. By providing that guidance to my clients, I have furthered the purposes of the statute, as I see it.

Senator CASEY. Any experience representing workers?

Mr. EMANUEL. No, Senator. As I mentioned earlier, in the field of traditional labor law, lawyers either represent employers or they represent labor unions and workers in conjunction with that, and you don't cross over. It's just not feasible for reasons that I don't think we need to go into. It's just not practical. My entire career was representing employers, and I've not represented unions or employees.

There are many excellent law firms that represent unions. We deal with them all the time, and they represent their clients and we represent our clients, and, hopefully, everything works out peacefully, and usually it does. Occasionally, there are disruptions, and then we deal with them, but that just goes with the territory. In the vast majority of the cases, that doesn't happen.

Senator CASEY. Mr. Kaplan, after your answer, I'll be done. I'm out of time.

Mr. KAPLAN. Yes, 6 seconds. Certainly, when I was working for Members of Congress, I was doing what they asked me to do and I was their employee. Oversight, in particular, was one of the areas where we were ensuring that the Board and the Department of Labor worked within the confines of the authorizing statute. More

than that, with regard to legislation that Chairman Kline moved while he was chairman, some of the provisions in there, I would definitely think, in general, protected employee rights but were—some of them were union—would assist a union in organizing.

Senator CASEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Casey.
Senator Paul.

STATEMENT OF SENATOR PAUL

Senator PAUL. Congratulations to all of you. I guess the first question really is to Mr. Kaplan and Mr. Emanuel. The question is about when you can decide fairly, someone's case. If a person is a Republican and owns a business, will you treat them differently than a Democrat? Will you treat a case differently if it's labor versus owners, unions versus owners? Can you go into any decisions with presuppositions that would disallow you from making a fair decision, no matter who owns the business?

Mr. KAPLAN. The short answer is no. We go in with blinders on, as it should be. It doesn't matter who owns the business. It doesn't matter who the employees are—he or she employees. It doesn't matter what they do. It's very fact-intensive, and we evaluate the facts in an impartial manner, and I can pledge that I would do that at the NLRB. We do the same thing at OSHRC. It doesn't matter who the employers are, except for repeat violations and things like that. We analyze it from the perspective of looking at the case, looking at the facts, and coming to a good decision.

Mr. EMANUEL. I agree, Senator. Our job is to enforce the law, and it doesn't matter what the names of the parties are.

Senator PAUL. Mr. Pizzella, your position is a different one, in the sense that you do work for an administration that is a political party. I think most Americans want people in government to—I think there's something that I like to refer to as petty partisanship, that you're just blindly for whatever Republicans are for.

Will you in your job look at issues based on what's best for all Americans regardless of what party they're in, understanding that we all have viewpoints over what would work best for Americans? Do you think you can do that without resorting to petty partisanship or blindly being for things just because Republicans are for them?

Mr. PIZZELLA. Yes, Senator. I think the administration of law should have nothing to do with partisan politics. I think you know that the Secretary of Labor, Secretary Acosta, is by background a former U.S. Attorney, a former Assistant Attorney General, and a former member of the NLRB. He's a lawyer's lawyer, and he has stated before this committee that respect for the individual and respect for the law are two things that guide him, and they certainly will guide the department. Partisanship will have no place in administering the laws.

Senator PAUL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Paul.

Senator Franken.

Senator FRANKEN. I know that Senator Murphy has to go somewhere. I have nowhere to go, evidently, so I will yield.

[Laughter.]

The CHAIRMAN. Senator Warren is next, but if she wants——

Senator FRANKEN. Oh, well.

Senator WARREN. We're also trying to cover Banking. That's part of the problem. Can I go ahead and do mine now? Is that all right with everybody?

The CHAIRMAN. You're next in line.

Senator WARREN. I'll do it, then.

The CHAIRMAN. Senator Franken defers.

Senator WARREN. Is that all right with you?

Senator FRANKEN. I feel tricked.

[Laughter.]

STATEMENT OF SENATOR WARREN

Senator WARREN. Are we good? OK.

I want to followup on some of these questions about impartiality. For the last few decades, productivity has increased but workers haven't shared in that growth. Hourly wages have been virtually flat, adjusted for inflation, for about 35 years now. One reason is the decline of unions, which, according to the Economic Policy Institute, accounts for about 20 percent to 30 percent of the increase in earnings in equality in the United States.

This wasn't an accident. For decades, giant corporations and their buddies in Congress have waged attacks on unions, and it's the NLRB's responsibility to stand up to these efforts by enforcing the laws that protect workers' rights.

Mr. Emanuel, you've spent most of your career as an attorney at Littler Mendelson, one of the most ruthless union-busting law firms in the country. I want to understand how Americans can trust that you're going to protect workers' rights when you've spent 40 years siding with employers against the rights of workers.

Mr. EMANUEL. Of course, Senator, I wouldn't agree with your characterization of my law firm, which is the largest law firm in the world representing many employers in labor and employment law matters, primarily employment law, but some of us practice traditional labor law. Senator, if I am confirmed, when I join the NLRB, as I said in my opening statement, that will be the greatest honor of my career, and I plan to be an excellent Board member and an honest Board member and an objective one and enforce the law, enforce the statute, the National Labor Relations Act, as it is written by Congress.

Senator WARREN. Let's talk about how it is written by Congress, because I understand the difference between a lawyer and a judge, but the National Labor Relations Act says that it is the policy of the United States to encourage workers to bargain collectively, not to be neutral about collective bargaining and unionization. That is the law, and your entire career has been to discourage union membership, and I just don't understand how we can rely on you to defend workers after a long career of making it harder for them to join unions.

Let me push to another point. You've also said, Mr. Emanuel, that if confirmed, you'll follow the White House's ethics pledge and refrain from participating in matters involving any of your former clients, which include companies like Uber and Rite Aid and Nisan for 2 years. Is that correct?

Mr. EMANUEL. That's my understanding.

Senator WARREN. That's your commitment.

Mr. EMANUEL. That's correct, yes.

Senator WARREN. I just wanted to make sure.

Mr. EMANUEL. Yes.

Senator WARREN. I'm also concerned about your lengthy history of work on three particular labor law topics that will result in serious conflict of interest. You have written extensively on whether employers can require workers to waive their rights to class actions, whether employers can prevent union workers from protesting on their property, and what the boundaries of a bargaining unit should be. Some of your views are pretty extreme and go to the heart of cases that the NLRB might decide.

For example, you have argued—and I'll quote you here—that an arbitration agreement that is inconsistent with the NLRA, the law, is nevertheless enforceable, and that, “many employers suffer when employees are able to organize in the workplace without being arrested for trespassing.”

In cases involving these three matters—class resolution, workplace organizing, and bargaining unit boundaries—if they come before the Board during your tenure, will you recuse yourself? You've already written about them. Will you recuse yourself on those?

Mr. EMANUEL. Senator, as I understand the recusal rule, I have to recuse myself from all cases involving my law firm, and if there are elements of the recusal requirement that go beyond that, I will learn that in an ethics briefing that I will undergo after I join the Board. I do not believe, however, that recusal would apply to issues, and the fact that I may have advised or written a brief on an issue in the past doesn't mean I would have to recuse myself on that issue.

Senator WARREN. I'm over time, but I just want to say on this, Mr. Emanuel, it's not the work you did as a lawyer, as an advocate. It's when you wrote and put your own name on it, independently, as a scholar and as a person who is an expert in the field, and I'm just saying you have made it clear that you have prejudged in three areas in which you've put your name on it.

Giant corporations have——

The CHAIRMAN. Everyone else is——

Senator WARREN. Fair enough. Fair enough.

The CHAIRMAN. Go ahead and complete your sentence.

Senator WARREN. Thank you. All I want to say is I think the American people deserve better.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Young,

STATEMENT OF SENATOR YOUNG

Senator YOUNG. Thank you, Mr. Chairman. I want to thank our panelists and welcome them here today.

We'll begin with the skills gap, a really important topic in my State of Indiana, the most manufacturing-intensive State in the country. We discussed this, Mr. Pizzella, when you and I visited in my office. Today's workforce is quickly changing, with the advent of new technologies seemingly every day that are disrupting how

we work, where we work, the types of industries in which we work, and our education system is struggling to keep up.

We try and consult with our community college system in the State of Indiana, Ivy Tech. It's a statewide system, and they consult with local companies to inform development of their curriculum.

In our K through 12 system, we have more Hoosier students right now than ever before that are taking career and technical education classes. In fact, as of last year, over 50 percent of all high school students in Indiana were enrolled in such classes—over 160 approved courses, and many of these courses, of course, didn't exist a couple of years ago, 5 years, certainly 10 years ago.

Mr. Pizzella, if confirmed, as I believe you will be, as Deputy Secretary of Labor, to what extent should local industries and businesses be part of the CTE discussion?

Mr. PIZZELLA. Thank you for your question, Senator. They should be a big part, and we did have a discussion about Indiana and the exceptional programs that they have in place and are growing. I didn't realize—I made a note of it—50 percent of your high school students are in the technical area, and I don't know how that rates among other States, but I bet it's very, very high, because it's good that technical training is coming back. There was, I think, a period in time when maybe it wasn't looked upon as fondly.

There are States with exceptional stories like that. I'm familiar with the State of South Carolina, who early on was a bit of a pioneer in putting in place—working with companies that they were trying to attract, local communities that had laid-off workers from industries—be it textiles or tobacco—that were no longer growing, and working with the State government, and they put together a series of technical colleges around their State. I learned about this when I was in school there, how important it was to attract particular businesses.

The reason, BMW landed in South Carolina didn't have anything to do with the sunshine. I think it was a package that they looked at. I'm a big believer in what you're advocating, and I hope to work with you on that.

Senator YOUNG. That's great. Do you think, based on your professional experiences, that our young people are sufficiently informed about their post-secondary options, about their workforce options after they finish high school? Because I'll tell you—I'll reveal my thoughts. As I travel around the State of Indiana, there are some bright spots where creative things are occurring in our high schools, even in junior high and elementary schools. I get the sense that there's a real need for improvements in this area. If, in fact, you agree, how at the Federal level might we be a force multiplier?

Mr. PIZZELLA. I do agree, and I think one of the solutions, perhaps, would be working with the Department of Education and maybe nudging guidance counselors across the country to make sure that the students that they're advising know about these pathways for technical skills and technical education and a career afterwards that may not involve a full commitment to a 4-year college, because that might not be what's suitable for them, or it might not be what they actually will enjoy. I think cooperation among the DOL and Education would be very helpful in that area.

Senator YOUNG. Continuing with my line of questioning about technology-focused curriculum in my State of Indiana, in 2015, South Bend Code School was launched as a result of a partnership with Fort Wayne, a major city located in northern Indiana. This school teaches coding and computer programming to Hoosier children ages 7 to 18. Over 100 students have completed the program, and another 600 are in the process.

To what extent, Mr. Pizzella, do you believe technology should be embedded into our courses as we prepare our next generation workforce? As Deputy Secretary of Labor, what role do you envision playing in this constant challenge of adapting to new technology and its importance in our workforce?

Mr. PIZZELLA. If I heard your question correctly, Senator, I don't believe the Department of Labor should be imposing on local communities and schools. I think we should be encouraging them to do what you're suggesting there. I also just think it makes common sense, because that's one of the areas where there's going to be real growth and real need in the future, and that's technical skills for particularly light manufacturing companies that want to expand here in America and some that want to locate here to be closer to our markets.

The CHAIRMAN. Thank you, Senator Young.

Senator Franken.

Senator FRANKEN. Thank you, and Senator Murphy now says I can go. I feel like such a chump, frankly, for what happened.

[Laughter.]

The CHAIRMAN. It was a generous and liberal gesture, though.

Senator FRANKEN. I guess sometimes being liberal ain't so smart.
[Laughter.]

STATEMENT OF SENATOR FRANKEN

Senator FRANKEN. I'd like to associate myself with Senator Young's message about skills gaps, and we talked about that at great length, Mr. Pizzella, yesterday. I'd like to talk to you about an issue which we also discussed in my office, and I told you that I would probably ask you about this in the hearing.

As many people recall, Jack Abramoff is a disgraced lobbyist who served 43 months in prison for bribing Federal officials and stealing millions of dollars from his clients, and he wasn't alone in his actions. Twenty-one other Abramoff associates were convicted in connection with the Abramoff scandals.

You were a key member of Jack Abramoff's lobbying team from about 1996 to 2001. In fact, Abramoff wrote about you in his book where he described your 1996 hire as the "perfect addition to the quickly emerging Team Abramoff team."

At the time you were a member of Abramoff's lobbying operation, the Northern Mariana Islands—which had become a U.S. territory in 1975—were not subject to the same minimum wage, and that was passed in 1978, and immigration laws as the rest of the United States, and there were widespread reports at the time that workers faced terrible conditions, including reports of—many of these employees were women brought from the Philippines and from China—who were told they were going to America, and they ended

up in these jobs in the Northern Mariana Islands, and there were forced abortions, prostitution, and routine beatings.

You've been nominated to a position where you'll be closely involved with enforcing minimum wage laws and other worker protections. Yet, as we discussed in my office, one of the key issues you lobbied on was to block bipartisan legislation for basic worker protections in the Northern Mariana Islands, where garment manufacturers could produce clothing labeled made in the U.S.A. without having to comply with U.S. minimum wage laws. In fact, the Mariana Islands were your firm's largest lobbying client.

Obviously, that is a concerning history for someone who will now be charged with enforcing worker protection laws. Were you aware of those horrible conditions even while you lobbied against minimum wage protection for workers?

Mr. PIZZELLA. First of all, Senator, thank you. You did say you intended to ask the question, and I appreciate that in our meeting yesterday, and I'm prepared to address the issue. I was not aware of any such thing. I did not know. I just learned that 21 of Mr. Abramoff's colleagues were also convicted of wrong—

Senator FRANKEN. Let me just—

Mr. PIZZELLA. I was not one of them. I just want to be clear about that. I was never—

Senator FRANKEN. I understand that. Congratulations on that.

[Laughter.]

Mr. PIZZELLA. Thank you.

Senator FRANKEN. The fact that you didn't know this while you were lobbying—in 1992, Representative George Miller held a hearing on the issue. The *New York Times* and other major publications ran a number of stories on the issues dating back to at least 1993.

In 1997, President Clinton wrote a letter to the Governor in the Northern Mariana Islands who had hired Team Abramoff to oppose raising minimum wage. In the letter, Clinton declared working conditions on the island to be inconsistent with our country's values.

In 1998, Senator Frank Murkowski, one of our member's father, visited the islands and found, "living conditions that simply should not exist in the United States of America," and he introduced legislation to stop the terrible abuses that were taking place. Did you and the so-called Team Abramoff lobbyists lobby against the Murkowski legislation?

Mr. PIZZELLA. We might have. I don't actually remember if we lobbied against that legislation, but I would assume we did.

Senator FRANKEN. Would it bother you to know that you were lobbying against protections for thousands of workers who were being abused? Would that bother you?

Mr. PIZZELLA. Of course, it would. What you've mentioned were allegations made. We were—

Senator FRANKEN. Allegations that were documented many times over and over again while you were lobbying against—

Mr. PIZZELLA. Increasing the minimum wage.

Senator FRANKEN [continuing]. Increasing the minimum wage.

Mr. PIZZELLA. Yes.

Senator FRANKEN. What I'm saying is these were documented. They aren't just accusations. I just think that these stories are really sordid, and I think that if someone who is going to be in your

position—I'm sorry. I'm over my time. I think this is a pretty shocking history to have been involved in, and I'll put into the record some of the reporting that was done over this period.

[The information referred to was not available at time of press.]

Senator FRANKEN. It was hard to miss, and it would be especially hard to miss if you were lobbying against Senator Murkowski's legislation, which was speaking directly to the horrible abuses that were happening in the Northern Mariana Islands at the time.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Franken.

There's an Appropriations markup that I need to go vote in, and Senator Isakson has agreed to chair the committee while I'm gone. We'll go next to Senator Murphy and then next to Senator Kaine, and then I'll be back to ask my own questions after that.

Senator Murphy.

STATEMENT OF SENATOR MURPHY

Senator MURPHY. Thank you very much, Mr. Chairman.

As the Chairman departs, I know I'm going to sound like a broken record on this issue, but this hearing is really important. It's part of our obligation as a committee to review the nominations of those that are appointed to boards under this committee's jurisdiction, departments under this committee's jurisdiction.

It's also the responsibility of this committee to oversee the healthcare policy of this country, and though there is a meeting that many people are leaving for in the Appropriations Committee, there's also an 11:30 meeting behind closed doors attended only by Republican Senators today in which they are going to talk about a healthcare bill that reorders one-fifth of the American economy that does not come before the Health Committee. That continues to be an outrage that is worth addressing every time that we meet.

I appreciate, Mr. Kaplan and Mr. Emanuel, your answers to Senator Paul and Senator Warren in which you stated that you were going to let the facts lead where they may, let the law dictate to these cases, not bring in to the consideration of these cases your employment history or your political views. You do understand that there are a lot of folks outside this place who follow employment law, who follow the NLRB, who do think the fix is in, who think that when the two of you are put on the Board, you are going to automatically begin the process of overturning some very important decisions that were made during the Obama administration because of your political views and because of your employment history.

I'll just remind you of something that a great Connecticutian once said, which is that when in doubt, tell the truth. It will confound your enemies and astound your friends. That is Mark Twain, and if you heed his advice, you will do just fine.

Along those lines, let me just ask you both two questions based upon a conversation we had in our office regarding a matter pending in Connecticut regarding the ability of graduate teachers to organize. I won't get into the details of the case, because I know it's not appropriate for you to opine on that.

Let me ask you two more general questions. First, on the subject of whether teachers who are also graduate students would have the

ability to organize, here's the general question. Would you agree that the ability to organize, the ability to be treated as an employee, is not dependent on your compensation coming in the form of a paycheck, that there are a whole host of factors that may include compensation coming in a form other than a paycheck that would allow you to be considered an employee with the right to bargain?

Mr. EMANUEL. Senator, I would say that the question about whether a certain individual is an employee under the statute would depend on various factors. That might be one of them. We would have to look at, again, all the facts involving those faculty members and the statute as it's written and the arguments of the parties and make a determination as best we can, as objectively as we can, as to whether those students are employees under the statute.

Senator MURPHY. Mr. Kaplan.

Mr. KAPLAN. I think the issue raises a relatively novel one, and we would—I agree with Bill on this, that we would—it would be very fact-intensive. We talked about this when we spoke in your office. Something like this that's so new and hasn't been adjudicated in a thorough fashion—it would probably be a good idea to reach out to the community and get *amicus briefs* and understand the positions of all the parties involved without—to help inform us as we make those determinations.

Senator MURPHY. Just to be clear, this has been adjudicated, so this is a decision by the NLRB that gives rights very clearly to students who are under these circumstances to organize. You would be overturning existing precedent should you decide that graduate students who get compensation in the form of tuition are not allowed to organize.

Mr. KAPLAN. I never meant to imply that I was going to overturn or anything like that. We would have to look at the facts, though, if a case like this came before us.

Senator MURPHY. Let me ask a second question, which is on the issue of units within an employer being able to organize distinct from the overall pool of employees. Again, I just want to make sure that this is a fact-intensive question when you are looking at what we might call micro-units, what we might call smaller units, department units, and their ability to organize. That is a fact-dependent question as to whether they have the legal ability to negotiate separate and aside from the entirety of the employees at the company.

Mr. EMANUEL. It's a fact-intensive issue, and we would have to consider the facts and also the existing Board law and make a determination. In that particular case that we discussed in your office yesterday, we're familiar with that case, and I went back and checked it, and there were nine separate departmental units that were approved in that case, which is quite extraordinary. In my experience of many years, I've never encountered a bargaining structure like that with nine separate departmental units. We would, in that case or any other case, look at the facts and decide how to apply the law and make a decision.

Senator MURPHY. I'll let it go there. I'm over my time. I would just say that, as you know, institutions of higher education are ex-

traordinary in that each one of them has a very different way of administering departments. At Yale, the regional board found very clearly that because each department is autonomous in terms of how they treat their employees that those department employees were allowed to organize by department, and I look forward to you reviewing the facts of that case and the precedent that has already been established by the regional board.

Thank you, Mr. Chairman.

Senator ISAKSON [presiding]. Senator Hassan.

STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you very much to the Chair and Ranking Member and to all of our nominees here this morning. Congratulations on your nominations.

Historically, working class families have been able to gain ground economically because of the advocacy of their unions. Many important rights and protections can be attributed to workers joining forces through unions, including, but not limited to, workplace safety and wage and hour regulations.

We know that working class families today are struggling. Wages are stagnant, and benefits many rely on continue to roll back. The nominations before us today, the three of you, will help determine whether workers will be able to continue to effectively join together to protect their interests, and that's what I really want to touch on this morning.

I want to start, Mr. Pizzella, with you. During our conversation—and thank you for making time to come see me—all of us—on short notice. Thank all three of you for spending time.

Mr. Pizzella, during our conversation, you expressed the importance of agencies being more efficient so they're able to cut costs. With the Department of Labor's proposed 21 percent budget reduction, important programs will be severely reduced and even eliminated well beyond implementing efficiencies. New Hampshire, for instance, receives \$6 million annually under the Workforce Innovation and Opportunity Act. That money funds meeting workforce demands of our State's employers, training dislocated workers, and ensuring that our youth are prepared to join the workforce.

Can you explain how the major cuts in this budget proposal supports the President's and the Department's mission to expand apprenticeship and other workforce development? In the past, have you supported the reduction of official time used by union representatives to reduce costs?

Mr. PIZZELLA. OK. Let me take that first question. As you well know, the President's budget is pending here before Congress, and over the course of the next several months, there'll be some final resolution of what that budget comes out as, and it will be the job of the Department of Labor, and if I should be confirmed, I'll be part of the team that will be implementing that budget. I do believe that there are always efficiencies that can be made and improved.

I would also point out that part of the budget that the President has proposed specifically places increases, slight increases, in the enforcement agencies, which is the core part of the mission, historically, of the Department of Labor. In the area of EBSA, there's an

uptick. In the Wage and Hour Division, there's an uptick. In OSHA, there's an uptick.

Senator HASSAN. I'm going to interrupt a little bit because I've got three of you here. Just in terms of the apprenticeship and training programs, how are we going to strengthen those programs with a 21 percent cut in the budget?

Mr. PIZZELLA. The apprenticeship program is a major priority of the Administration, and I believe it will get the appropriate amount of focus and resources that are needed to carry out what the President would like to see carried out. I can't tell you about that now, because I'm not there, and the Executive order was just signed last month. I know there's a lot of activity to implementing that, to getting cooperation from both the Secretaries of Commerce and Education, and I know this is a major priority for Secretary Acosta. The apprenticeship program—

Senator HASSAN. I'm sorry to cut you off, but I have two other witnesses in a hearing that we're trying to have on three different nominations. Thank you for that, and I'll ask you to respond to my question about the use of official time on the record, please.

Mr. Emanuel, you've had a long career as an employment lawyer and certainly have spent that time advocating for business interests in both the labor and employment side on the management's side of negotiating. As we discussed, I'm a former labor and business attorney myself, and I've represented large employers, too.

In my previous position, often on the management side of the bargaining table, I developed a great appreciation for the value that unions brought to workers from ensuring safe workplaces to good pay and benefits that help people live middle-class lives. Can you explain a case or reference a case you've worked on where you were able to recognize the positive impact unions have on a contract outcome?

Mr. EMANUEL. In the typical case in which I was involved at the bargaining table, the wages and benefits generally tended to increase, so I would have to say that that's an example. It's a recurring example. It didn't happen in every case. Sometimes there were reductions, but they were necessary, and sometimes the wage and benefits stayed the same. As a general rule, when a new contract was negotiated, the wages would go up, at least some, and benefits tended to go up, too, and that's a real generalization, but it's sort of typical.

Senator HASSAN. Thank you. I see my time is up. Mr. Emanuel, I'll submit a question or two for you, especially about joint employer rulings, to the record.

Thank you, Mr. Chair.

The CHAIRMAN [resuming the chair]. Thank you, Senator Hassan.

Senator Kaine.

STATEMENT OF SENATOR KAINE

Senator KAINE. Thank you, Mr. Chair, and thanks to the witnesses. Congratulations on your nominations.

To begin with the nominees for the NLRB, Mr. Emanuel, I understand that you authored a brief on behalf of Republican lawmakers, including Senator Enzi, who was then ranking member of

the committee, and others against the NLRB's 2011 decision in the Specialty Healthcare case. Is that correct?

Mr. EMANUEL. I assisted in that brief, yes.

Senator Kaine. If I understand correctly, Mr. Kaplan, after that decision was rendered, you, as a member of a congressional staff, helped draft legislation to try to overturn it. Is that correct?

Mr. KAPLAN. It would have been Chairman Kline's legislation. Yes, that's correct. I was his counsel.

Senator Kaine. Since you're here—and I'm going to put you under oath—you don't have to be modest. You can say you were involved. I recognize it was the chair's bill. Thank you for that.

The employer community and many Republicans in Congress after that ruling vehemently denounced it, and they said that the Board's decision would allow for micro-units that would make it impossible for employers to prevail in union elections and it would open up employers to these tiny gerry-mandered units. Do you know what the average bargaining unit size was in 2011 before the Board issued its decision in the Specialty Healthcare case?

Mr. KAPLAN. It's one of the reasons why, frankly, saying micro-units is probably a poor way to address this issue. In fact, some of the units that they talk about even now are smaller than the units that they've objected to with regard to—under the Specialty Healthcare—

Senator Kaine. The average size of the bargaining unit was 26. Do you know what the average bargaining unit size was last year?

Mr. KAPLAN. No, I don't.

Senator Kaine. Exactly the same, 26. It didn't have the effect that many were worried that it was going to have.

Do you know, either of you, Mr. Emanuel or Mr. Kaplan, how many Federal appeals courts have upheld the Board's decision in Specialty Healthcare since that decision was rendered in 2011?

Mr. EMANUEL. There have been several decisions by the appellate courts, and I would add that on the subject of appropriate bargaining units, the appellate courts give the NLRB extreme deference. So it's not surprising that that was the result by the appellate courts.

Senator Kaine. For the record, seven appellate courts have upheld decisions that apply to the Specialty Healthcare decision, and there have been none that have reversed decisions. The appellate courts have generally found that OK, and it didn't change the size of the bargaining units as many predicted that it would, and I think that's important.

Mr. Pizzella, I want to ask you a question. We talked about workforce issues. You indicated one of the Department's top priorities in your conversations with the Secretary has been on the apprenticeship side, and just to follow the line of questions you were having with Senator Hassan, the President's proposed budget to us has the apprenticeship funding level at pretty much exactly the same level as it was under the previous administration.

Mr. PIZZELLA. That's correct.

Senator Kaine. The President's proposal with respect to all other workforce programs is a 40 percent cut. I think the proposed DOL cut might be 21 percent, but the cut to all other workforce programs is about 40 percent. Tell me what you understand about why

workforce programs are suggested to be cut by such a dramatic amount.

Mr. PIZZELLA. I was obviously not involved in the formulation or development of it. From my past experience, there's, I'll say, often a healthy skepticism as to whether or not a lot of training programs deliver real outcomes that lead to successful careers and jobs for folks.

Senator Kaine. In your previous experience—what experience are you talking about?

Mr. PIZZELLA. When I was at the Department of Labor, and we were putting together budgets—

Senator Kaine. Just for the record, the years you were at the Department of Labor?

Mr. PIZZELLA. 2001 to 2009—January 2009.

Senator Kaine. You're aware that the Senate and the House together did significant reforms in 2014.

Mr. PIZZELLA. I am.

Senator Kaine. This committee worked in a bipartisan manner on those reforms. One of the hallmarks of the reform was some significant streamlining of the workforce programs, correct?

Mr. PIZZELLA. Yes, I'm aware of that.

Senator Kaine. Is it your opinion—skepticism about whether training dollars are being used at their maximum efficiency would seem normal. We always should want to use programs at their maximum efficiency. Is it your opinion that we spend too much on job training in this country?

Mr. PIZZELLA. No. My opinion would be more that we're not as focused as we should be on how we spend those dollars, and I think that's what's part of the—what has propelled this real interest in apprenticeship training right now, which has seemed to have taken off with a life of its own just in the last couple of years, and it wasn't mentioned as prominently 10 years ago as it is now. Meeting not only with you—you obviously have a lot of expertise in this—but meeting with just about every one of your colleagues, that was the first thing they brought up.

Senator Kaine. Can I just say—and I agree that apprenticeship is great. I like to see that that budget is not slashed by 40 percent. Spending money better on job training—what a great idea, but cutting job training by 40 percent—what a bad idea. I know you didn't prepare the budget. That is more a question for the OMB director.

At a time when the President is saying, skills are where it's at, and we need to give people more skills, taking 40 percent out of job training causes us some very significant concern about whether that's a hollow promise or a promise that is going to be met. I hope you'll be a strong advocate for job training programs.

Mr. PIZZELLA. I'm going to—

Senator Kaine. That are effective.

Mr. PIZZELLA. Yes, absolutely, that are effective, of course, yes.

Senator Kaine. No further questions, Mr. Chair.

The Chairman. Thank you, Senator Kaine.

I have not asked my questions yet, but I think Senator Franken wanted to ask a second round of questions. Does any other Senator wish to do that?

Senator Franken. I do, but, I mean—

The CHAIRMAN. No, no, I'm just checking to see. If no one else does, what we'll do is go to your questions, and then I'll ask mine, and then we'll conclude the hearing.

Senator FRANKEN. Thank you for that.

The CHAIRMAN. Senator Franken.

Senator FRANKEN. Thank you very much. I'd like to enter into the record the Preston Gates lobbying registration disclosure from September—I guess it was filed by the Secretary of the Senate—September 6, 2000, and includes that lobbying disclosure on the Commonwealth of the Northern Mariana Islands against the—on the Murkowski legislation, and it has Patrick Pizzella's name on it. I'd like to enter that into the record, please, because he wasn't clear whether he had lobbied on that.

[The information referred to may be found in Additional Material.]

In 2014, the NLRB modernized rules that apply when workers seek to form a union. Under the updated rules, workers who petition for union representation will be able to have a vote as soon as it is practical rather than potentially facing months or years of delays by companies seeking to avoid recognizing a union.

Mr. Kaplan, when you were a congressional staffer, you drafted the Workforce Democracy and Fairness Act. Is that right?

Mr. KAPLAN. As a staffer of Chairman Kline, yes.

Senator FRANKEN. One key provision of that bill would change the NLRB's election rules to say that workers can't vote on union representation for at least 35 calendar days, even if there's no other valid reason to delay the election. Is that right?

Mr. KAPLAN. I'm not sure about that second part. I'd have to go back and review the legislation itself. Chairman Kline, when he pushed that forward, he would regularly say,

“No one voted for me in less than 35 days, and I would afford employees the same opportunity to be able to make an informed decision with regard to choosing their union representation.”

Senator FRANKEN. Do you know how many days it's been since you were nominated to the NLRB?

Mr. KAPLAN. I believe someone said 23.

Senator FRANKEN. Yes, that's right. If the nomination markup takes place as scheduled on Wednesday, July 19, the markup will be 29 days after your nomination. Mr. Emanuel's hearing would be—today is 14 days after your nomination and 20 days—the markup would be 20 days after your nomination. I guess the same rules don't apply for this very important job as a member of the NLRB? I guess that same thinking that Chairman Kline had doesn't apply to you guys.

I just think that's interesting, and it seems likely that big business will probably push you to change the NLRB's modernized election rule if you're confirmed. I just wanted to point that out, that, evidently, members of the NLRB just—we don't need as much time for them as—what I'm saying is that unions should be able to vote sooner than 35 days.

I want to talk about forced arbitration. Mr. Emanuel, you devoted a considerable amount of time to defending employers' use of forced arbitration clauses and class action waivers which prevent

workers from banning together to seek justice in a public court of law when they've been cheated or mistreated by their employer. Given this experience, I'm concerned about your willingness to defend workers' rights under the NLRB Act and the Constitution.

Let's talk about forced arbitration for a moment here. Take the case of Gretchen Carlson. She's a former Fox News anchor. Last summer, Ms. Carlson sued Roger Ailes for sexual harassment. Mr. Ailes' lawyer has tried to force her in a private arbitration, arguing that Ms. Carlson had breached a forced arbitration clause in her employment contract. Even worse, the arbitration clause in Ms. Carlson's contract also prohibited her from speaking out about the claims.

Ultimately, because the contract was with Fox News and not Roger Ailes, it was determined that the arbitration clause did not cover her dispute. Had her case been forced into arbitration, her colleagues at Fox News, many of whom were also victims of sexual harassment, would have been left in the dark about her case and may never have come forward with their own claims, and the well-documented abuse of women at Fox News may well have continued.

Mr. Emanuel, would you agree that one benefit of our civil justice system is ensuring that other victims, including workers who have faced harassment, are made aware of widespread wrongdoing and that such awareness allows them to mitigate the harm to themselves?

Mr. EMANUEL. Senator, I am not aware of that case, except for reading the headlines in the news, so I can't—

Senator FRANKEN. What I said was accurate, so can you take it as accurate.

Mr. EMANUEL. I'm sorry. Would you repeat it, please?

Senator FRANKEN. What I said to you is accurate, and why don't you just assume it's accurate for the moment instead of saying you're not familiar with the case—my depiction of it.

Mr. EMANUEL. What is your question, please, Senator?

Senator FRANKEN. I'll repeat the question. Would you agree that one benefit of our civil justice system is ensuring that other victims, including workers who have faced harassment, are made aware of widespread wrongdoing, and that such awareness allows them to mitigate the harm to others?

Mr. EMANUEL. As a generalization, I would say that the civil justice system exists for plaintiffs to sue another party. In the employment context, that would be their employer. Whatever derivative effect of that might exist, I don't think is part of the civil justice system. So, I'm not sure I would agree with your statement.

Senator FRANKEN. May I just followup?

The CHAIRMAN. You are over your time, Senator.

Senator FRANKEN. OK. Thank you.

The CHAIRMAN. We can come back to it.

Senator FRANKEN. OK. I'll stay here.

The CHAIRMAN. Senator Hassan.

Senator HASSAN. Thank you.

Mr. Emanuel, I wanted to take this opportunity to talk about the issue of misclassification of employees as independent contractors, because it's an issue that comes up repeatedly. We have seen

misclassification lawsuits regarding, for example, drivers who were told that they were independent contractors and not employees. In many of these cases, the drivers were actually found to be employees.

More recently, the NLRB's general counsel made public that the agency had settled a case with a company which had continued to misclassify its employees even in the face of multiple administrative decisions finding that its drivers were actually employees.

First, let me ask you: Have you represented any employers facing allegations of misclassifications, either at the NLRB or elsewhere?

Mr. EMANUEL. Yes.

Senator HASSAN. And, second, I understand that you can't speak to the specifics of any case, but do you agree that when an employer misclassifies employees as independent contractors, not only does it undermine competitors who are following the rules, but do you agree that it illegally interferes with the workers' right to form unions or act collectively?

Mr. EMANUEL. If the individual is properly classified as an employee and not as an independent contractor—and that's a very fact-intensive question also involving legal principles, obviously—then I would agree.

Senator HASSAN. My question is if they're misclassified as independent contractors, and they are told they don't have the same rights to collectively bargain or organize as an employee would, is that correct?

Mr. EMANUEL. Yes.

Senator HASSAN. Thank you. If you're confirmed, what steps will you take as a Board member to curb this epidemic of misclassification?

Mr. EMANUEL. I'm not sure I would agree with the characterization that it's an epidemic. It does occur. I've known of cases where employees were misclassified. Like any other issue that comes before the NLRB, I would consider the facts of the case—and, again, this is a very fact-intensive issue—and consider the legal precedents and what the Supreme Court has held on the issue and the arguments of the parties and the views of all of my colleagues on the Board and make a decision as to whether that person was or was not misclassified as an independent contractor.

Senator HASSAN. Thank you. I'd suggest you might want to look at some of the literature, in particular, in certain industries like the construction industry, where the rate of misclassification is high.

Mr. Kaplan, I did want to take this opportunity with a second round to touch on the NLRB's joint employer ruling, and I want to do it by way of an example. Let's say if employees at a janitorial company organized to advocate for the use of safer cleaning supplies on the job. They go to negotiate with their employer about it, and the company says that they can't negotiate with the employees over the supplies because their contract with the building owner says that they have to use the supplies provided, for instance, by the building owner.

So now, the employees approach the building owner, but the building owner refuses to negotiate about safe cleaning supplies because she says she's not their employer. In a situation like that,

where are employees supposed to go? How do they get a chance to sit down with decisionmakers, which, in my example, includes the building owner, to address their health and safety concerns? Do you agree that there's an issue here?

Mr. KAPLAN. I think identifying the employer that can actually fix it, who has the authority to fix it, to actually bargain with them to some kind of settlement or some kind of agreement is a very important part of this. Not to get off topic, but we see that a lot in the OSHA world as well, identifying the person that can actually effectuate change.

It's interesting, but I'm not inclined to pontificate on the appropriateness, and it's very fact-intensive, trying to figure out who the right employer is; working out whether it is a joint employer relationship; looking at who controls what; what they can do; do they actually exert control; don't they exert control; are they controlling these employees; are they not controlling these employees. I think to an extent if you don't go through that entire process and that fact-intensive process, you rob those employees of the opportunity.

Senator HASSAN. I understand that point. Look, you've worked on legislation to overturn the NLRB's Browning-Ferris decision on the standard for finding two employers to be joint employers. I want you to answer this question within the following context. We are in an increasingly fissured workplace. If Browning-Ferris isn't the law, and you think it was wrongly decided, how can we protect the rights of workers now in this kind of fissured, fragmented workplace?

We have so-called perma-temps, people who are told they're temporary employees, but that's always going to be their status. We have contractors and other employees. Do you think Browning-Ferris was wrongly decided, and, if so, on what grounds, and how do we address this?

Mr. KAPLAN. I don't have—I think that the facts need to be looked at. I look forward to going to the Board, working with my staff, working with the other members to determine what the proper standard is for the units in a collective bargaining situation. That's a fundamental issue of the Act that the NLRB must determine, and it's written into the Act. It couldn't be clearer in the language.

Senator Kaine raised—there's seven cases out there. I think that's going to be part of the analysis, looking at what the court has done, recognizing where the court has been, looking at the facts. I do think when it comes to this multi-employer bargaining situation, again, I think it's important that the public participate, because I think there's a lot of cases that maybe have been the highlights, but maybe it would be better to understand how it's actually worked out in the workplace in maybe the less public situations.

Senator HASSAN. I thank you.

Thank you, Mr. Chair, for letting me go over time.

I will likely followup with you in writing about this as well. Thank you.

The CHAIRMAN. Thank you, Senator Hassan.

Mr. Emanuel, earlier questions brought up two cases of NLRB, one involving micro-unions, one involving graduate students as em-

ployees. The intersection of those two cases produces some interesting questions to me. I'm a former university president trying to understand the impact of those. For example, at Yale University, 9 of 56 academic departments of graduate students have organized into a micro-union as a result of the combination of those two decisions, the Northwestern and the Specialty decisions.

Could one of the elements of bargaining between those students and the university be whether it was appropriate to teach American Studies at Yale University?

Mr. EMANUEL. Senator, I'm not sure of that and—

The CHAIRMAN. Would it be appropriate for them to bargain about whether Yale should have classes before noon?

What if they wanted to bargain about whether they should either give grades—what if they found it too oppressive as graduate students to teaching or helping to teach a course to give grades to all those smart undergraduates, and they decided they just would give pass or fail instead of grades. Would that be an appropriate subject of bargaining?

Mr. EMANUEL. Sounds unlikely, but for all of these questions, we really can't prejudge them. We would have to wait until we get on the Board and look at all the facts and the legal precedent and make a decision at that time.

The CHAIRMAN. I know a common complaint that I had when I was president of the University of Tennessee was that many of the brightest graduate students who helped teach didn't speak English well enough for the undergraduate students to understand what they were talking about. Would that be an appropriate subject of bargaining, if Yale decided that it wanted to require its graduate students to be more proficient in, say, English if they were going to teach in the graduate program there?

Mr. EMANUEL. That's very difficult to say. That's a difficult issue, Senator. We would really have to study that.

The CHAIRMAN. Can you tell me whether the Northwestern decision applies to undergraduates as well as graduate students?

Mr. EMANUEL. The Northwestern decision was the football—

The CHAIRMAN. I believe the Northwestern also was the decision about private schools that said that graduate students were employees and could organize a micro-union. Am I correct? There was a decision. Maybe it wasn't the—there was a Northwestern football decision.

Mr. EMANUEL. Football, yes, right.

The CHAIRMAN. There was a decision that said that graduate students are employees—

Mr. EMANUEL. That's correct.

The CHAIRMAN [continuing]. And could form a micro-union.

Mr. EMANUEL. That's correct.

The CHAIRMAN. Would that also apply to undergraduate students?

Mr. EMANUEL. If that principle—it probably could be extended, but we would have to take a close look at that and decide whether other students in addition to teaching assistants—

The CHAIRMAN. I know that in asking this series of questions, I'm asking you to do something you probably shouldn't do at a hearing, which is prejudge a case.

Mr. EMANUEL. Yes, right.

The CHAIRMAN. These decisions lead me to some unreasonable results. For example, if undergraduate students could organize into a micro-union and negotiate whether they wanted to go to class before noon and whether they wanted to take American Studies or maybe they did not want to take geology, or if it were extended to say that—on many campuses, particularly for low-income students, they have work-study programs. They're employed by the university so they can afford to go to college, and if all of those students are suddenly employees who can organize a union, that would discourage universities from giving those students work-study help.

The suggestion, apparently, was even made while I was out of the room that tuition help might make a student eligible to organize a union. If that were the case, clearly, a majority of students who go to colleges and universities in the United States have tuition aid, and we would have micro-unions organized on most of the 6,000 campuses around the country. So, I would hope that this Board would be very skeptical about extending that line of thinking.

My time is up. I'll go back to Senator Franken.

Senator FRANKEN. I'll grant you more time.

[Laughter.]

Maybe I don't know my place here.

Mr. Emanuel, I'd like to followup on your last response to my last question, given that my understanding is that you do not agree that one benefit of our civil justice system is that it is public. Is that correct?

Mr. EMANUEL. No, I would agree that the civil justice system is public.

Senator FRANKEN. Is that a benefit? I mean, in other words, I was talking about being forced into arbitration. We were talking about this Gretchen Carlson case, where she would have had to go to arbitration under the contract with Fox about sexual harassment. She ended up suing Mr. Ailes, so she was able to have it be public. Part of the arbitration is that it's private, and nothing gets out. You said that you didn't think there was any benefit to there being awareness about the harms.

Carlson recently wrote that,

“The arbitration process, often argued to be a quicker and cheaper method of dispute resolution for employees, instead has silenced millions of women who otherwise may have come forward if they knew they were not alone.”

Is it your position that every woman who faces discrimination at the hands of their employer should go it alone and go at it without the knowledge that their co-workers have faced similarly horrendous behavior?

Mr. EMANUEL. Senator, I can't comment on the Gretchen Carlson case. I'm only vaguely aware of it.

Senator FRANKEN. I'm not asking you to.

Mr. EMANUEL. OK.

Senator FRANKEN. What I'm asking you—I don't understand why you seem so confused about this. Let me explain maybe.

Mr. EMANUEL. Thank you.

Senator FRANKEN. OK. In arbitration, you're forced into an arbitration situation. The information stays within—does not become public. If you're sexually harassed in an organization by—at a company, you can't sue them, because there's a mandatory arbitration clause in your contract, in your employment contract. Therefore, if you go through that system, it isn't public. It means that women who are at the same workplace don't hear from other women that they're being sexually harassed. I think that's a harm of the mandatory arbitration system.

If you're sexually harassed at a workplace, you should be able to go outside the arbitration system so that you're heard in court, so that your fellow employees can know what's going on. Very often, it gives the other women the courage—in this case, women at Fox—gives them the courage to come forward and the knowledge to come forward. That's what I'm asking you. Do you understand that?

Mr. EMANUEL. I do, Senator, and my reaction is that the Federal Arbitration Act allows arbitration agreements, and it provides expressly that the agreements must be enforced as written. I'm a traditional labor lawyer, and I'm not an expert on the Federal Arbitration Act. I would think that that would be a very important part of the answer to your question, that the agreement very well might be enforceable under that Federal statute, which has existed—

Senator FRANKEN. I think that's a problem. I want to ask both you and Mr. Kaplan a question—

The CHAIRMAN. He didn't have a chance to finish his sentence.

Senator FRANKEN. Oh, I'm sorry.

Mr. EMANUEL. That's fine. Thank you, Senator.

Senator FRANKEN. I thought he had. OK. This is for both Mr. Emanuel and Mr. Kaplan. If you take up changes to the NLRB election rule, do you think the rule should go through the traditional rulemaking process, requiring public comment in order to allow all stakeholders to give input?

Mr. EMANUEL. Senator, I'm not an expert on rulemaking under the Administrative Procedure Act, but it seems to me the answer is that it probably would be required, but I'm not sure.

Senator FRANKEN. Mr. Kaplan?

Mr. KAPLAN. I'm not entirely sure if it is required or is not required, but I do think that public input is an important part of—if that rule is brought up or if many of these things are before the Board, I think public comment is helpful.

Senator FRANKEN. My time is up. Thank you.

The CHAIRMAN. Thank you, Senator Franken.

Thanks to the three of you for being here. I have a final question I'd like to ask about the right-to-work laws. Twenty-eight States now have them, including my own State of Tennessee. Kentucky and Missouri enacted right-to-work legislation in 2017. In my experience, these have been enormously helpful laws to raising family incomes in our State.

We've attracted the American automobile industry to Tennessee, and nothing has come close to helping to create the kind of environment that made that a competitive set of businesses with more than a thousand suppliers providing good wages to families than our right-to-work law. In 2015, the NLRB took steps to question

whether employees in right-to-work States who are not union members should be forced to pay grievance processing fees to the union if they work in a unionized workplace.

In one example, a Florida union was asking a nonmember to pay the equivalent of union dues for the remainder of the term of the collective bargaining agreement in order to raise a grievance. In this case, it was 4 years' worth of union dues.

For both of the two nominees for the NLRB here, I have two questions. In Tennessee, it's unlawful to force any employee to join a union or pay union dues. Do you believe an NLRB decision or regulation could legally overturn that protection?

Mr. EMANUEL. Not in any way that I'm aware of.

The CHAIRMAN. Mr. Kaplan.

Mr. KAPLAN. Right-to-work rules built into the NLRA was passed by this body and signed by the President, and I'm not—I don't think we could—I do not believe that the NLRB could overturn it.

The CHAIRMAN. And, finally, in non-right-to-work States, employees in unionized workplaces who fail to pay union dues are sometimes fired under the terms of the collective bargaining contract. In Tennessee, it is unlawful to fire any employee for failure to pay union dues. Do you believe the NLRB has the power to overturn that protection?

Mr. EMANUEL. My answer would be the same as before. I'm not aware of any way that could happen.

Mr. KAPLAN. Yes, I would agree.

The CHAIRMAN. Thank you.

I ask consent to introduce nine letters of support for Mr. Kaplan and William Emanuel and a letter of support for Patrick Pizzella into the record.

[The information referred to may be found in Additional Material.]

I thank the three of you for your willingness to serve our country in positions that are important to millions of Americans. This will conclude our hearing. We would hope to bring your nominations before the committee shortly and approve them and send them to the Senate floor for its consideration and support and hopeful approval.

If Senators wish to ask additional questions of the nominees, questions for the record are due by 5 p.m. Friday, July 14. For all other matters, the hearing record will remain open for 10 days. Members may submit additional information for the record within that time.

As a matter just for the record, I referred to a case earlier as the Northwestern case. I should have said the Columbia case.

Mr. EMANUEL. Oh, yes.

The CHAIRMAN. The Northwestern case was a case about organizing football players—

Mr. EMANUEL. Right.

The CHAIRMAN [continuing]. Which also strikes me as misguided. I meant the Columbia case.

Our next meeting will be on Wednesday, July 19, at 10 a.m. to vote on nominations.

Thank you for being here today. The committee will stand adjourned.

[Additional Material follows.]

ADDITIONAL MATERIAL

[The New York Times,* July 18, 1993]

MADE IN THE U.S.A.?—HARD LABOR ON A PACIFIC ISLAND/A SPECIAL REPORT; SAIPAN SWEATSHOPS ARE NO AMERICAN DREAM

(By Philip Shenon)

SAIPAN—On this tiny, tropical outpost of the United States, many people describe what happens to foreign workers here as something close to servitude.

Every year, thousands of laborers from China, the Philippines and elsewhere in Asia are flown here. The workers are often bused straight from the airport to squalid barracks where they live—sometimes for years—as many as a dozen to a room.

They are put to work almost immediately in nearby factories within view of Saipan's pristine beaches, many of them laboring 6 days a week at about half the Federal minimum wage, stitching together American brand-name clothes. Familiar Labels.

The labels would be familiar to anyone who has strolled through an American shopping mall. Over the last year, Arrow, Liz Claiborne, The Gap, Montgomery Ward, Geoffrey Beene, Eddie Bauer and Levi's have all made clothes on this palm-fringed island that is part of the American commonwealth in the Western Pacific, 5,000 miles from the continental United States.

While many of these garments are manufactured in foreign-owned factories by foreign workers, the apparel made in the Northern Marianas often bears another familiar label: "Made in the U.S.A." The American flag flies over several of the factories.

An estimated \$279 million worth of wholesale clothing, virtually all of it made by foreign labor, was shipped from here last year to the United States.

PART OF AMERICA: AT \$2.15 AN HOUR

"We come here because we make more money here than in China, and because the recruiters in China tell us that Saipan is part of America,"

said a \$2.15-an-hour factory worker from a village near Shanghai.

The woman, who is in her early 20s, invited a visitor into the cramped barracks room that she shares with seven other women, their beds separated only by flimsy cloth sheets. The room also serves as a kitchen.

"They are not good conditions," she says, wrinkling her nose and pointing to a mildewy hallway strewn with litter. "If we complain, then our bosses would send us back to China and take away all of our money. Our families need the money."

THE SWEATSHOPS: NO COMMENT FROM THE MALL

The biggest industries here—garment manufacturing, tourism and construction—are all dependent on poorly paid foreign labor, which explains why—of the 42,000 people who live in the Northern Marianas, of which Saipan is the largest—more than half are foreign workers.

While clothing from the Northern Marianas made up only about 1 percent of the \$29 billion in clothing imported into the United States last year, it accounts for as much as 20 percent of the clothing sold by some large American companies.

Several big manufacturers doing business here are silent when asked about labor practices or about the volume of clothing they import. Spokesmen for Arrow, The Gap and Montgomery Ward either did not return phone calls or said they had no comment on labor conditions in the islands.

A Claiborne spokeswoman acknowledged that the company did make "a small percentage of its clothing in the Northern Marianas. A spokeswoman for Eddie Bauer said the factories here produced only "an insignificant percentage of the company's goods. Neither company would discuss import figures.

INDUSTRY BATTLES ABUSES

The industry's trade group, the American Apparel Manufacturers Association, said its members were doing their best to end labor abuses in the islands.

"We oppose sweatshops wherever they are," said Larry Martin, the association's spokesman. "We believe and hope that our members are abiding by all labor laws."

One clothing manufacturer, Levi Strauss & Co., has been notably aggressive in trying to end labor abuses in Saipan. While it continues to make shirts at five

*Visit www.nytprints.com for samples and additional information.

plants on the island, it ended its contracts last year with the island's largest clothes maker, Willie Tan, after an investigation by Levi's found evidence of "unsatisfactory treatment of workers and violation of the law" in his factories.

While insisting that his companies never abused or cheated workers, Mr. Tan, a Philippine-born American businessman, did agree last year to pay \$9 million in back wages and damages to laborers, most of them Chinese, under a settlement with the U.S. Labor Department.

LEGAL SERVITUDE

The plight of foreign workers in the Commonwealth of Northern Mariana Islands has outraged the few Federal investigators who have made the long journey across the Pacific—Saipan is far closer to China and the Philippines than it is to Hawaii—even as they acknowledge that most of what goes on here is within the law. Visitors to the islands are also startled by what they see.

"It certainly has its parallels to slavery or indentured servitude," said Neils Jensen, a Christian missionary from New Zealand who has lived intermittently on Saipan since 1983.

"Many of these workers go into debt for what they think will be the privilege of working on Saipan. Because they're so deeply in debt, they can't afford to retaliate or complain or leave. Their conditions are horrendous."

Over the years, Washington has granted a variety of concessions to businesses in Saipan to encourage economic growth and to end generations of subsistence living for the local islanders. For decades, the largest employer had been the U.S. Trust Territory government.

Under an agreement approved in 1976, the islands were exempted from the Federal minimum wage. The Commonwealth government now sets its own minimum wage, which has been \$2.15 an hour since 1984.

(Other American territories, including Guam, which is only 120 miles from Saipan, use the higher Federal guaranteed minimum of \$4.25 an hour.)

THE EXPLOITED: A LIFE OF MISERY UNDER OLD GLORY

Yet the Chinese garment workers almost certainly have it better than many of the other foreign laborers here.

Thousands of Filipinos are employed in the Northern Marianas as construction workers or maids, jobs that are currently exempted from the islands' \$2.15 minimum wage. Many young Filipino women are brought to Saipan to work in bars where, they say, they are forced by their employers to serve as prostitutes for the islands tourists, most of them Japanese visitors on package tours.

The plight of Asian immigrants who are willing to take great risks to live and to work in the United States drew international attention in May, when a rusty freighter carrying 300 undocumented Chinese immigrants ran aground in New York.

In Saipan, Asian laborers arrive legally, usually in the comfort of a commercial jet. There is plenty of evidence to suggest that many of the estimated 23,000 foreign laborers in these islands, like their undocumented counterparts in the continental United States, face a life of exploitation and misery under the American flag.

Saipan is the largest of the 14 volcanic islands that make up the Northern Marianas, scene of some of the bloodiest fighting of World War II.

MCDONALD'S AND TV RERUNS

After the war, the islands became a territory of the United States and eventually a commonwealth. The islanders are American citizens, and there are reminders everywhere of their ties to the United States, from the new McDonald's restaurant to a cable-television system that rebroadcasts "Murphy Brown" and the "Today Show."

The garment industry was established in the early 1980s as a result of Federal rules that allow manufacturers here to export clothing to the American mainland duty free and largely without quotas.

There are now more than 20 factories, most often owned by foreign investors who were also lured here by the islands' liberal investment and immigration laws.

Under commonwealth law, foreign investors are welcome, and they have brought with them a flood of foreign workers who are willing to accept minimum-wage jobs that local islanders routinely reject. Most of the islanders work for the local government and receive much more than the minimum wage.

The commonwealth's Governor, Lorenzo I. DeLeon Guerrero, said that he had heard the slave-labor comparisons in discussions of foreign workers. "It is an insult to us," he said. "There's no slavery here."

He also readily acknowledged that some employers take advantage of foreign workers. "It's very true that the conditions of these people should be far better," the Governor said. "We have to be honest about that."

THE REFORMERS: 30 CENTS AN HOUR RAISE AND BARBED WIRE

The local legislature approved a law this year to raise the minimum wage by 30 cents a year for each of the next 7 years and to apply the minimum to construction workers. The Governor has proposed the creation of a human rights commission to protect the rights of workers.

The reforms do not go far enough to satisfy many of the commonwealth's critics—under the new law, Saipan's minimum wage will not match the current Federal minimum of \$4.25 until 1999—and there are threats in Congress this year to cut off more than \$120 million in Federal subsidies.

"I'm afraid that an awful lot of time and motion is being wasted trying to give the appearance of reform instead of actually making real, structural changes," said Representative George Miller, a California Democrat who is chairman of the House Natural Resources Committee, which oversees American territories.

American labor unions charge that, because of the low wages paid to foreign workers, the Northern Marianas are stealing jobs from textile workers in the United States. The unions want the Government to crack down on the labor abuses here.

"We have rules for protecting products, such as copyright laws, but seemingly we have no rules to protect the workers who produce the product—if they happen to be in Saipan,"

said Arthur Gundersheim, director of international affairs for the Amalgamated Clothing & Textile Workers Union.

NO WATER OR ELECTRICITY

While commonwealth officials insist they are trying to improve the living conditions of foreign workers, the improvements are not evident in large Saipan neighborhoods like Susupe, where several oversize tin-roof plywood shacks serve as workers' barracks. Often they have no regular water or electricity.

In larger barracks, workers complain of living in virtual captivity, their housing ringed with barbed wire and patrolled by teams of uniformed guards.

"The girls have no freedom," said a 29-year-old Filipino who worked in a bar for 5 months before "escaping" last year and finding a different job. She asked that her name not be used for fear that her family in the Philippines would learn that she had worked as a prostitute.

While working at the bar, she lived with 20 other women in a three-bedroom house that they were rarely allowed to leave. "We were told that we could not go outside by ourselves, ever," she said. "The boss was afraid that we would have boyfriends and would sleep with them without getting money for him."

GOING TO AMERICA

The exploitation of workers often begins long before they arrive here. Many pay large recruitment fees to middlemen in their homelands who find them jobs in Saipan. No matter how terrible the working conditions, they say, they cannot think of going home until the money is earned back.

Masudur Rahman, 30, said his impoverished family in Bangladesh sold off much of its farmland outside Dhaka, the capital, to raise the \$4,000 fee demanded by the recruiters for a construction job "where the American flag is flying." Although the recruiter promised a job paying \$1,500 a month, Mr. Rahman said, he never received more than \$250 a month.

He said he was startled to discover once he arrived in Saipan that he, like virtually all other foreign laborers, had no right to travel to the United States.

The recruitment agent said we were going to America, Mr. Raliman recalled. "He never said Saipan."

THE EXPLOITERS: THE HARSH LESSONS OF FREE ENTERPRISE

Among the garment industry employers, no one here had been more successful than Mr. Tan, whose family controls clothing factories that employ hundreds of foreign workers and ship millions of dollars worth of clothing each year to the mainland United States.

Mr. Tan's luck appeared to run out last year, when he agreed to pay \$9 million in back wages and damages to more than 1,000 factory workers to settle the Labor Department charges. The department's investigators said that workers in Mr. Tan's

factories put in as many as 90 hours a week without overtime and were routinely paid as little as \$1.65 an hour.

Separately, the Occupational Safety and Health Administration announced last year that its investigation had found “appalling living and working conditions” in Saipan garment factories and barracks, including those controlled by Mr. Tan.

Although Federal regulations require that workers receive a minimum of 100 square feet of space per person to cook and sleep, six of Mr. Tan’s workers were found living in one room of 190 square feet. Toilet facilities were primitive.

CHARGES ARE DROPPED

The Occupational Safety and Health Administration dropped the charges after the Tan companies made \$1.3 million in repairs to the factories and barracks and agreed to pay \$76,000 in penalties.

His lawyer, Robert J. O’Connor, said that Mr. Tan agreed to pay the back wages only because the Labor Department was harassing some of the factories’ clients.

“The Labor Department was putting pressure on our buyers by putting out press releases implying that they were linked to slave labor,” he said. “We were coerced into the settlement.”

Mr. O’Connor said that the wages had been withheld not by Mr. Tan’s companies, but by Chinese Government supervisors under a longstanding agreement with the workers.

“We know that 97 percent of all the workers who work for Mr. Tan have asked to have their contracts extended,” Mr. O’Connor said.

“When they are here,” he said of the Chinese laborers, “they learn about free enterprise, democracy—they become good-will Ambassadors of our precepts of democracy.”

That is not borne out by the scores of affidavits gathered by the Labor Department from the Chinese workers. The company “makes use of all kinds of illegal methods to steal our blood money,” said Hu Li Yue, a factory mender in one of Mr. Tan’s factories.

THE FORGOTTEN: WORKERS STRANDED WITHOUT A JOB

Some workers arriving here on contracts receive nothing, not even jobs. Near the airport, a crumbling cinder block house without electricity or running water is home to 47 laborers from the province of Guangdong in southeastern China.

The workers arrived on Saipan in December 1991 on 2-year contracts as construction workers, but the jobs they had been promised disappeared. “Now they’re pretty much stranded,” said their lawyer, Brian McMahon.

The South Korean businessmen who brought them here, Kim Choon Suk, says that because of a downturn in the local construction industry, he had no work for the Chinese laborers and no money to send them home.

“I do not write home anymore because I do not want my wife and my two children to know the truth of our terrible conditions,” said Liu Lin Yong, a 30-year-old construction worker.

He leaned against one of the long sheets of plywood that Mr. Rim supplied to the workers to serve as beds. In one room, 22 of the men sleep side by side on the platforms. The toilets are flushed with rainwater, and the men bathe by swimming in the ocean.

“We have no money to pay for tickets to go home,” Mr. Liu said, opening his wallet to show that it was empty. All it contained were a few photographs of his family. “I would go home today if I had a ticket. I would run to the airport.”

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Item	Description	Data
10a	Lobbyist Name	DAVID FUNDERBORK
10b	Covered Official Position	CONGRESSMAN
10x	Lobbyist Name	BRUCE HEJMAN
10b	Covered Official Position	
10z	Lobbyist Name	WILLIAM JARRELL
10b	Covered Official Position	
10a	Lobbyist Name	LLOYD MEEDS
10b	Covered Official Position	
10a	Lobbyist Name	SOL MOSKOB
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10b	Covered Official Position	Leg. Dir. & Gen. Counsel Sen. Bob Smith
10a	Lobbyist Name	SHAWN VASELL
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IMM. LBB. TAX

12. Specific lobbying issues (current and anticipated)

AFFILIATED ORGANIZATIONS

13. Is there an entity other than the registrant that contributes more than \$50,000 to the lobbying activities of the registrant in a calendar period and in whole or major part plans, supervises, or controls the registrant's lobbying activities?

No. Go to line 14. Yes. Complete the rest of this section for each entity meeting the criteria above; then proceed to line 14.

Name	Address	Principal Place of Business (city and state or country)
Western Pacific Economic Council	P.O. Box 144 Saipan, MP 96950	

FOREIGN ENTITIES

14. Is there any foreign entity that:

- a) holds at least 20% equitable ownership in the client or any organization identified on line 13; or
- b) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, or subsidizes activities of the client or any organization identified on line 13; or
- c) is an affiliate of the client or any organization identified on line 13 and has a direct interest in the outcome of the lobbying activity?

No. Sign and date the registration. Yes. Complete the rest of this section for each entity meeting the criteria above; then sign and date the registration.

Name	Address	Principal Place of Business (city and state or country)	Amount of contribution for lobbying activities	Ownership percentage in client

Signature:  Date: **09/05/09**

Printed Name and Title: **MICHAEL ONNIE - ATTORNEY**

Registrant Name: PRESTON GATES ELLIS & ROUVELAS MEEDS LLP

Client Name: Commonwealth of the Northern Mariana Islands

Item	Description	Data
12	Specific Lobbying Issues	H.R.730; United States Commonwealth of the Northern Mariana Islands Human Dignity Act; S.1052; Northern Mariana Islands Covenant Implementation Act. H.R. 325; Fair Minimum Wage Act of 1999. S.192; Fair Minimum Wage Act of 1999. S.922; Made in the USA Label Defense Act of 1999; H.R.1671; Made in the USA Label Defense Act of 1999; Legislation affecting the tax status of goods produced in the Commonwealth of the Northern Mariana Islands. Legislation affecting the minimum wage in the Commonwealth of the Northern Mariana Islands.

LETTERS OF SUPPORT

AMERICAN HOTEL & LODGING ASSOCIATION (AHLA),
JULY 13, 2017.

Hon. LAMAR ALEXANDER, *Chairman*,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member*,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the American Hotel & Lodging Association (AHLA), I write in strong support of President Trump's nominations of Patrick Pizzella to be Deputy Labor Secretary; and Marvin Kaplan and William Emanuel to be Members of the National Labor Relations Board (NLRB). All three nominees are extremely qualified to serve in the roles to which they have been nominated and their swift confirmation is necessary to ensure that the Department of Labor (DOL) and the NLRB can fulfill their missions.

Founded in 1910, AHLA is the sole national association representing all sectors and stakeholders in the U.S. lodging industry, including owners, REITs, chains, franchisees, management companies, independent properties, suppliers, and State associations. The lodging industry is one of the Nation's largest employers. With nearly 8 million employees in cities and towns across the country, the hotel industry provides \$75 billion in wages and salaries to our associates and generates \$600 billion in economic activity from the 5 million guestrooms at the more than 52,000 lodging properties nationwide. It's particularly important to note that this industry is comprised largely of small businesses, with nearly 60 percent of all hotels falling under the Small Business Administration's definition of what constitutes a small business in the lodging sector.

Hotels are an integral part of the fabric of each community across the United States. From coast to coast, the industry proudly invests in the communities in which they call home by creating jobs, supporting long-term career opportunities, generating significant tax revenue, contributing to the local and State economies, and encouraging community development. Hoteliers strive each day to make sure those opportunities continue to grow.

Mr. Pizzella currently serves as Acting Chairman of the Federal Labor Relations Authority (FLRA) and has served as a member of the FLRA since November 2013 after being nominated by President Barack Obama. He has also served as Assistant Secretary of Labor for Administration and Management at the U.S. Department of Labor under President George W. Bush.

Appointed to serve under both Democratic and Republican administrations, Mr. Pizzella has nearly two decades of experience in the Federal Government, nearly half of those focusing on labor policy matters, to call upon when driving DOL's mission forward.

Mr. Kaplan, counsel to the commissioner of the Occupational Safety and Health Review Commission, and Mr. Emanuel, a shareholder at the law firm Littler Mendelson PC in Los Angeles, are experts in the field of labor relations. Together

they have decades of experience interpreting the NLRA in a manner that is balanced and without favor to political party. They have the expertise to ensure the Board remains true to its mission of enforcing the National Labor Relations Act (NLRA) and, by serving as a neutral arbiter of labor law, will create a climate for economic growth by freeing employers from the unnecessary red-tape and uncertainty associated with recent Board activities.

I urge the Committee on Health, Education, Labor, and Pensions to approve the nominees promptly following this hearing, so the Senate may confirm them and the DOL and NLRB can fulfill their missions.

Sincerely,

BRIAN CRAWFORD,
Vice President,
Government & Political Affairs.

COALITION FOR A DEMOCRATIC WORKPLACE,
JULY 6, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the Coalition for a Democratic Workplace (CDW), we urge the Senate to quickly confirm Marvin Kaplan and William Emanuel to serve on the National Labor Relations Board (NLRB). Kaplan and Emanuel both are extremely qualified to serve as members of the Board and have the expertise to ensure the Board remains true to its mission of enforcing the National Labor Relations Act (NLRA) and serving as a neutral arbiter of labor law.

CDW is a broad-based coalition of over 600 organizations representing hundreds of thousands of employers and millions of employees in various industries across the country concerned with the disruption caused by the NLRB's 8-year campaign to re-write labor law. CDW was originally formed in 2005 in opposition to the so-called Employee Free Choice Act (EFCA), which would have replaced secret ballots in unionization elections with "card check," a process that would have forced employees to choose whether or not to sign union authorization cards in front of coworkers and union organizers, exposing employees to potential intimidation and harassment by those in favor of unionization. When EFCA was defeated, CDW turned its focus to regulatory overreach by the NLRB, which has tried to enact the goals of EFCA through its decisions and regulations.

Mr. Kaplan, counsel to the commissioner of the Occupational Safety and Health Review Commission, and Mr. Emanuel, a shareholder at the law firm Littler Mendelson PC in Los Angeles, are experts in the field of labor relations. Together they have decades of experience interpreting the NLRA in a manner that is balanced and without favor to political party.

Over the last 8 years, the NLRB has overturned an astounding 4,559 years' worth of longstanding precedent, blurred numerous bright-line tests, and dramatically overhauled the union election process—all in an effort to tilt the scales in favor of organized labor.¹ The Board embarked upon this campaign with little regard as to the negative impact these policy decisions would have on workers, employers and the economy in general. Despite the employer community's efforts to demonstrate these negative effects and caution the Board of these consequences, the NLRB continued pursuing its radical agenda at the expense of worker and employer rights and our economy.

We therefore applaud President Trump for his choices to serve as the next members of the NLRB. Kaplan and Emanuel will interpret the NLRA in a manner that is fair to workers, unions and employers alike, restoring much-needed balance to the agency. They will help to return the Board to its traditional role as a neutral arbiter of labor disputes and will create a climate for economic growth by freeing employers from the unnecessary red-tape and uncertainty associated with recent Board activities.

¹<http://myprivateballot.com/wp-content/uploads/2016/12/CDW-NLRB-Precedents-.pdf>.

We urge the Committee on Health, Education, Labor, and Pensions to approve the nominees promptly following a hearing, so the Senate may confirm them and the NLRB can return to fulfilling its statutory mission.

Sincerely,

COALITION FOR A DEMOCRATIC WORKPLACE.

INDEPENDENT ELECTRICAL CONTRACTORS (IEC),
ALEXANDRIA, VA 22302.

July 11, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the Independent Electrical Contractors (IEC), I urge the Senate to quickly confirm Marvin Kaplan and William Emanuel to serve on the National Labor Relations Board (NLRB). Mr. Kaplan and Mr. Emanuel are both extremely qualified to serve as members of the Board and have the expertise to ensure the Board remains true to its mission of enforcing the National Labor Relations Act (NLRA) and serving as a neutral arbiter of labor law.

The Independent Electrical Contractors is an association of over 50 affiliates and training centers, representing over 2,100 electrical contractors nationwide. While IEC membership includes many of the top 20 largest firms in the country, most of our members are considered small businesses. Our purpose is to establish a competitive environment for the merit shop—a philosophy that promotes free enterprise, open competition and economic opportunity for all. In addition, IEC and its training centers conduct apprenticeship training programs under standards approved by the U.S. Department of Labor's (DOL) Office of Apprenticeship. Collectively, IEC trains more than 10,000 electrical apprentices annually.

Mr. Kaplan, counsel to the commissioner of the Occupational Safety and Health Review Commission, and Mr. Emanuel, a shareholder at the law firm Littler Mendelson PC in Los Angeles, are experts in the field of labor relations. Together they have decades of experience interpreting the NLRA in a manner that is balanced and without favor to political party.

Over the last 8 years, the NLRB has overturned an astounding 4,559 years' worth of longstanding precedent, blurred numerous bright-line tests, and dramatically overhauled the union election process—all in an effort to tilt the scales in favor of organized labor. The Board embarked upon this campaign with little regard as to the negative impact these policy decisions would have on workers, employers and the economy in general. Despite the employer community's efforts to demonstrate these negative effects and caution the Board of these consequences, the NLRB continued pursuing its radical agenda at the expense of worker and employer rights and our economy.

IEC applauds President Trump for his choices to serve as the next members of the NLRB. Mr. Kaplan and Mr. Emanuel will interpret the NLRA in a manner that is fair to workers, unions and employers alike, restoring much-needed balance to the agency. They will help to return the Board to its traditional role as a neutral arbiter of labor disputes and will create a climate for economic growth by freeing employers from the unnecessary red-tape and uncertainty associated with recent Board activities.

IEC urges the Committee on Health, Education, Labor, and Pensions to approve the nominees promptly following a hearing, so the Senate may confirm them and the NLRB can return to fulfilling its statutory mission.

Sincerely,

JASON E. TODD,
Vice President,
Independent Electrical Contractors.

INTERNATIONAL FOODSERVICE DISTRIBUTORS ASSOCIATION (IFDA),
 MCLEAN, VA 22102,
 July 10, 2017.

Hon. LAMAR ALEXANDER,
 U.S. Senate,
 455 Dirksen Senate Office Building,
 Washington, DC 20510-4206.

DEAR SENATOR ALEXANDER: On behalf of the Nation's foodservice distributors, I am writing to urge you to support the nominations of Marvin Kaplan and William Emanuel to serve on the National Labor Relations Board. Both of these nominees are well-qualified and the Senate should act quickly in order to bring the Board to its full membership.

The National Labor Relations Act is designed to create a level playing field, favoring neither employers nor unions. Unfortunately the last 8 years have seen a considerable move away from this policy as the Board has actively worked to overturn more than 4,500 years of labor law precedent to favor organized labor. As a result employers have faced a variety of initiatives such as the ambush election rule which limited the ability of employees to hear from their employer on the issues around unionization and the joint employer rule which threatens the franchise business model.

Mr. Kaplan and Mr. Emanuel have considerable experience with the National Labor Relations Act both in public service and private practice. Their confirmation will help return the Board to its traditional position of fairness to ensure that the rights of workers, employers and unions are protected. This is a critical feature of our Nation's labor laws and restoring this balance will help to grow our economy so that all parties can benefit from increased opportunity.

I hope you will support these nominations and work to ensure they come before the Senate in a timely fashion.

Sincerely,

MARK S. ALLEN,
 President and CEO.

INTERNATIONAL FRANCHISE ASSOCIATION (IFA),
 WASHINGTON, DC 20006,
 July 13, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
 U.S. Senate,
 428 Senate Dirksen Office Building,
 Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
 U.S. Senate,
 428 Senate Dirksen Office Building,
 Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the International Franchise Association (IFA), the world's oldest and largest organization representing franchising worldwide, I write to you in support of the nomination of Marvin Kaplan, and William Emanuel for the two vacant positions on the National Labor Relations Board (NLRB).

America's small businesses have created 74 percent of the jobs since the recession, according to the U.S. Small Business Administration. Local franchise business owners have led much of this growth, outpacing employment in all businesses for the last 6 years. However, small business owners everywhere have faced uncertainty in the wake of decisions from the National Labor Relations Board. In recent years, economic growth has been stifled by overregulation. Notably, in August 2015, the Board dramatically expanded the basis for forcing an employer to bargain alongside a subsidiary or contractor company in ruling for a Teamsters local in Browning-Feris Industries of California, Inc. The new standard included situations in which "indirect" and/or "potential" control can originate from the top curtailing job creation by franchise business owners and other small businesses. The traditional joint employer test had existed with bipartisan support for decades; yet the previous administration decided to reverse decades of precedent and settled law to change that standard.

By contrast, Marvin Kaplan and William Emanuel, seem highly capable of interpreting the law being well-qualified on labor policy. Each brings with them vast experience and qualifications in labor law providing proof of their dedication to service.

On behalf of the Nation's 733,000 franchised small businesses, I strongly urge you to push forward with the confirmation of the two nominees so the new National Relations Labor Board can address the regulatory issues facing the franchise business model.

Thank you for considering our views.
Best Regards,

ROBERT CRESANTI, CFE,
President and CEO.

INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION (IWLA),
DES PLAINES, IL 60018,
July 13, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the International Warehouse Logistics Association (IWLA), I write to urge the Senate HELP Committee to move quickly to hold hearings and subsequently advance the nominations of Marvin Kaplan and William Emanuel to the National Labor Relations Board (NLRB). Kaplan and Emanuel are well-equipped with the experience and qualifications necessary to enforce the National Labor Relations Act (NLRA) and to serve as neutral interpreters and enforcers of our Nation's labor laws.

Founded in 1891, IWLA is the trade association that represents the interests of warehouse-based third-party logistics (3PL) providers across North America. Headquartered in Des Plaines, IL, IWLA's 500+ 3PL member companies and partners are independent warehouses that store, distribute and add value to manufacturers' products as they move through the supply chain.

IWLA member companies provide a range of services including warehousing; fulfillment; reverse logistics; transportation; freight-forwarding and brokerage services; inventory and supply chain management; and a broad range of manufacturing and value-added services. In total, IWLA's member companies manage up to 70 million square feet of warehouse space and move more than three trillion pounds of goods each year.

Over the last 8 years, the NLRB has reversed decades of standing precedent regarding the union election process. This has been done with little regard for the negative impact these policy decisions would have on workers, employers, and the economy. The IWLA feels confident that Kaplan and Emanuel will interpret the NLRA in a manner that is fair to workers, unions and employers alike, restoring much-needed balance to the agency.

To that end, we again urge the Senate HELP Committee to expeditiously take up and approve these distinguished nominees so that the Senate can follow suit and return the NLRB to a body that fairly and objectively applies the law.

Sincerely,

STEVE DEHAAN,
President and CEO.

NATIONAL RESTAURANT ASSOCIATION,
 WASHINGTON, DC 20036
July 12, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: Thank you for holding a timely hearing on the nominations of Marvin Kaplan and William Emanuel to serve on the National Labor Relations Board (NLRB). They are outstanding nominees with exceptional legal expertise in complex labor and employment law matters. Each will help the President meet his goal of eliminating job-crushing rules and regulations, keeping government agencies accountable and restoring fairness and balance to Federal labor law.

The National Restaurant Association is the leading business organization representing the restaurant and food service industry. The industry is comprised of more than one million restaurant and foodservice outlets employing almost 14.5 million people. Despite being an industry of predominately small businesses, the restaurant industry is the Nation's second-largest private-sector employer, employing about 10 percent of the U.S. workforce.

Over the last 8 years, the previous administration's NLRB engaged in unbridled overreach in their decisions. Rather than acting in a transparent and impartial manner, the Board aggressively carried out a one-sided agenda aimed at growing unionization to the detriment of workers and their employers. We are encouraged by the President's nomination of these well-qualified nominees and support their confirmation.

We urge the committee to move quickly to approve these nominations to allow for Senate confirmation before the August recess period.

Sincerely,

SHANNON MEADE,
Director of Labor and Workforce Policy.
 NATIONAL RETAIL FEDERATION (NRF),
 WASHINGTON, DC 20005,
June 28, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the Nation's retail industry, I write to share the National Retail Federation's (NRF) strong support for the nominations of Marvin Kaplan and William Emanuel to serve on the National Labor Relations Board (NLRB). Both nominees are highly qualified and well-respected labor attorneys who should be confirmed without delay.

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the Nation's largest private sector employer, supporting one in four U.S. jobs—42 million working Americans. Contributing \$2.6 trillion to annual GDP, retail is a daily barometer for the Nation's economy.

Over the past 8 years, the retail industry and employers across the country have faced a crushing regulatory burden that has created immense uncertainty in labor relations and made it much harder to grow. Much of this uncertainty has stemmed from the NLRB's pursuit of an activist agenda that consistently put the interests of labor unions before the rights of employers and employees. The Board's unprecedented changes to the long-held joint employer standard, sanctioning of disruptive

micro-unions, and radical changes to union election procedures represent just a fraction of the detrimental NLRB policies impacting retailers in recent years.

Both job creators and employees will benefit from a more balanced approach in labor relations and a Board majority that puts the needs of American businesses and workers before union politics. The President's Board nominees have significant expertise and experience in labor policy matters, and NRF is confident that both will serve as neutral arbiters of the law. We urge Members of this committee and the Senate to support the nominations of Marvin Kaplan and William Emanuel and move toward confirmation without delay.

Sincerely,

DAVID FRENCH,
*Senior Vice President,
Government Relations.*

RETAIL INDUSTRY LEADERS ASSOCIATION (RILA),
ARLINGTON, VA 22209,
July 13, 2017.

Senator LAMAR ALEXANDER, *Chairman,*
U.S. Senate,
Committee on Health, Education, Labor, and Pensions,
428 Dirksen Office Building,
Washington, DC 20510.

Senator PATTY MURRAY, *Ranking Member,*
U.S. Senate,
Committee on Health, Education, Labor, and Pensions,
428 Dirksen Office Building,
Washington, DC 20510.

CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: Thank you for holding a hearing on the President's nominees for the National Labor Relations Board (NLRB). The Retail Industry Leaders Association (RILA) fully supports the nominations of Marvin Kaplan and Bill Emanuel as each of them has demonstrated throughout their careers to have a deep knowledge of the law and an ability to balance the interests of employees and employers.

By way of background, RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

As RILA members are leaders in the workforce arena, a full and complete NLRB has been one of our top priorities as retailers continue to grapple with the impacts of controversial Board decisions in *Specialty Healthcare*, *Browning-Ferris*, as well as several important handbook policy cases. Taken together, these decisions have not only threatened the flexibility and upward mobility that retail employees value but also the effective operation of retail establishments across the country.

It is critical that the Board is made whole so it can begin the important work to interpret the law in a way that supports innovation, growth, and opportunity rather than tying the hands of the largest private job creators in the country. We strongly encourage the Senate to move swiftly and look forward to a smooth and seamless confirmation process.

Sincerely,

EVAN ARMSTRONG
*Vice President,
Government Affairs.*

RESPONSE BY PATRICK PIZELLA TO QUESTION OF SENATOR MURKOWSKI, SENATOR MURRAY, SENATOR CASEY, SENATOR FRANKEN, SENATOR WHITEHOUSE, SENATOR WARREN AND SENATOR KAINE

SENATOR MURKOWSKI

Question. During the period in which you worked with Jack Abramoff at Preston Gates, the working conditions for immigrant labor in the Northern Marianas were horrible in the extreme. At that time, you worked on behalf of Preston Gates' client, the Commonwealth of the Northern Marianas Islands, to block legislation sponsored by then-Senator Frank Murkowski that was intended to improve those working conditions. During a recent hearing of the Senate Energy and Natural Resources Com-

mittee, the committee took testimony that some of these foreign labor issues exist now. If you are confirmed as Deputy Secretary for the Department of Labor, what will you do to ensure that Federal laws are being followed and that companies in the Commonwealth of the Northern Mariana Islands are following all Federal labor laws and regulations? Will you work with other Federal agencies to ensure that companies hiring workers in the Commonwealth of the Northern Mariana Islands are doing so legally?

Answer. If I am confirmed as Deputy Secretary of Labor it will be my statutory responsibility to ensure that Federal laws are being followed and that companies in the Commonwealth of the Northern Mariana Islands (CNMI) are following all Federal labor laws. I will also work with other Federal agencies as appropriate. Coordination with other Federal agencies—particularly the Department of Interior—is very important given the distance of CNMI from the U.S. mainland.

SENATOR MURRAY

Question 1. President Trump has proposed a 20 percent budget cut for the Department of Labor (DOL), including a 40 percent cut to our Nation's system of education, skills training, and employment services designed to support current and future workers, particularly low-income workers, dislocated workers, and at-risk and out-of-school youth. If you are confirmed as Deputy Secretary, you will be responsible for overseeing DOL operations, including budgetary issues. Please address the following questions related to the development of the President's budget:

With regard to the Education and Training Administration, do you commit to maintaining current funding levels for job training, worker dislocation and employment service programs?

Will you commit to preserving the International Labor Affairs Bureau?

Will you commit to keeping OFCCP at the Department of Labor?

Will you commit to preserving the Women's Bureau at the Department of Labor?

Will you commit to providing no less than level funding for the Office of Disability Employment Programs?

Will you commit to maintain current levels of inspection and enforcement by the Wage and Hour Division and the Occupational Safety and Health Administration?

Answer 1. As a nominee, I did not participate in the development of the President's budget proposal. The President's budget is pending before Congress and ultimately Congress will determine which programs are funded, at what level, and which authorizing proposals to adopt. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department. The agencies you mention are important to the mission of the Department of Labor and, if confirmed, I look forward to working with Congress regarding departmental priorities.

Question 2. If confirmed, what process will you use in implementing the President's budget cuts? If furloughs are necessary, what process will you employ?

Answer 2. As a nominee, I did not participate in the development of the President's budget proposal. The President's budget is pending before Congress and ultimately Congress will determine which programs are funded, at what level, and which authorizing proposals to adopt. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. Furloughs should always be a last-resort. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 3. As we discussed, the President has touted the importance of job training, and in particular apprenticeships. If you are confirmed, how will you seek to implement the President's agenda with the proposed \$2 billion-plus reduction from the Education and Training Administration budget that funds these same programs around the country?

Answer 3. As a nominee, I did not participate in the development of the President's budget proposal. The President's budget is pending before Congress and ultimately Congress will determine which job training programs are funded and at what level. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 4. The President's Executive order issued on June 15, 2017 appears to direct the Department of Labor to create a new apprenticeship program that would

exist outside of the Registered Apprenticeship program at the Department of Labor. Registered apprenticeships are known for having certain requirements in place for workers, including on-the-job training and rewards for skills gained. Registered apprenticeships also culminate in a portable credential. The President's Executive order permits qualified third-parties to recognize apprenticeship programs. If confirmed, how will you work with your colleagues to ensure that any apprenticeship programs that are recognized by these third-parties and that receive Federal funding meet the same quality standards as registered apprenticeship programs?

Answer 4. As with many Executive orders, the Department of Labor will likely need to write regulations or guidance to implement the Executive order. Secretary Acosta has been clear that he believes, and I agree, that these apprenticeship programs should be high-quality. As I understand the Executive order, the premise is to create industry standards for training—so that an employer in Louisiana knows a worker who was in an apprenticeship in Connecticut was provided the same quality training he or she is accustomed to in an employee. If there is not continuity and a high-standard, it will be difficult to achieve portability. As a nominee, I am not involved with the drafting of any regulations or guidance. If I am confirmed, I look forward to assisting in the implementation of the Executive order.

Question 5. Secretary Acosta and the Administration have talked extensively about job training. If confirmed as Deputy Secretary, how would you actually meet these goals while simultaneously reducing job training funding?

Answer 5. The President's budget is pending before Congress and ultimately Congress will determine which job training programs are funded and at what level. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 6. The Trump administration's budget proposes a drastic \$255 million cut to the Wagner-Peyser Employment Service program. This is a service that matches dislocated workers to jobs that match their skills and background. Do you support the Administration's cuts to this program?

Answer 6. Matching workers with the jobs that require their skill set and background is incredibly important and is the focus of the President's Executive order on apprenticeships. As a nominee, I did not participate in the development of the President's budget proposal. The President's budget is pending before Congress and ultimately Congress will determine which job training programs are funded and at what level. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 7. You stated in your confirmation hearing that the President's budget increased the budgets of DOL's enforcement agencies. In reality, the President's budget decreased the budget of the Occupational Safety and Health Administration (OSHA)—the agency responsible for enforcing workers' rights to safe and healthful workplaces—by \$8.479 million. In your view, is OSHA an enforcement agency? If the answer is yes, then please explain why you stated that the President's budget increased enforcement resources.

Answer 7. The President's budget leaves enforcement agencies largely untouched. Enforcement agencies are at the core of the Department of Labor's mission. The Occupational Safety and Health Administration (OSHA) is one of the Department's enforcement agencies. Generally, the President's fiscal year 2018 budget proposal provides increases to enforcement agencies. My understanding is that a majority of the decrease in OSHA was not for enforcement activities, but to eliminate training grants and shift some of those resources to other OSHA programs.

Question 8. Do you believe that existing regulations should only be changed where there is empirical evidence suggesting that they are flawed, or do you believe that rules should be revised, even if such revisions are not supported by concrete evidence?

Answer 8. As Secretary Acosta has stated, the law sets specific limits and establishes procedures to follow when regulating and deregulating, including the Administrative Procedure Act. Any changes to existing regulations generally must meet the requirements set forth in the Administrative Procedure Act including public notice and comment on any changes.

Question 9. The overtime and fiduciary rules were promulgated after lengthy rule-making processes that included extensive stakeholder outreach. In your view, what new information must be produced in order to support changes to these rules?

Answer 9. As Secretary Acosta has stated, the law sets specific limits and establishes procedures to follow when regulating and deregulating, including the Administrative Procedure Act. The overtime and fiduciary rules are at the Request for Information stage, where the Department of Labor will request the public provide comments on questions and then determine what to do, if anything, based on that information. As a nominee, I am not privy to the specific information that would, or would not, influence a decision to make changes.

Question 10. During the process of formulating rules and other policies, will you commit to advocating for and ensuring that senior Department leadership meet with all affected stakeholders, including groups that represent workers?

Answer 10. I support outreach and involvement of the regulated community in rulemaking. Under the Administrative Procedure Act, all stakeholders may comment and their views must be considered by the Department when the Department issues regulations. I believe it is important to hear from stakeholders in the rule-making process to ensure the most robust record is made and the best information is considered from which to make regulatory decisions.

Question 11. What is your view on when opinion letters are appropriate?

Answer 11. Opinion letters are an appropriate and useful tool to help employees and employers understand and comply with the law. These letters were a practice of the Wage and Hour Division (WHD) for more than 70 years. WHD exercises its discretion when determining which questions or issues should be addressed through an opinion letter. As Secretary Acosta said, and I agree, employers should focus on growing their businesses and creating jobs and the Department of Labor is committed to helping employers understand and comply with the law so they can do just that.

Question 12. How will you weigh advice from Department lawyers when they advise that a particular action is legally indefensible, or is effectively indefensible given the risk of an adverse decision in litigation?

Answer 12. If confirmed, I will listen to, and fully consider, all advice provided by attorneys at the Department of Labor.

Question 13. The President has signed two Congressional Review Act resolutions of disapproval for two DOL retirement rules thought sought to help workers save for retirement. With 10,000 workers from the “baby boom” generation retiring every single day and most of them woefully unprepared for retirement, do you support the elimination of the Senior Community Service Employment Program? Please explain why or why not. If you do support its elimination, please explain how the DOL should help seniors who need to work during their retirement years.

Answer 13. A very important part of the Department of Labor’s mission is to “foster, promote, and develop the welfare . . . of retirees in the United States” and I support that mission wholeheartedly. With regard to the Senior Community Service Employment Program, I would need to learn more about the program and examine its recent metrics before opining on it. However, as a nominee, I did not participate in the development of the President’s budget proposal. The President’s budget is pending before Congress and ultimately Congress will determine which programs are funded, at what level, and which authorizing proposals to adopt. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 14. Historically, compared to other agencies, DOL has spent one of the smallest percentages of its budget on information technology (IT). Given the Administration’s proposal to cut the Department’s budget, how will you ensure that necessary IT improvements, including enhancing cybersecurity protections, are adequately funded?

Answer 14. If I am confirmed, the Department will need to take a hard look at its funding and prioritize necessary IT improvements, especially cybersecurity protections.

Question 15. The Frances Perkins Building is in need of costly upgrades. The Obama administration attempted to secure a new building through an exchange process, but the process was canceled by the Trump administration. Given the budg-

et cuts proposed for the Department, if confirmed, what is your plan for upgrading the building?

Answer 15. If confirmed, and if Congress determines budget reductions are necessary, the Department will need to take a hard look at its funding and prioritize necessary building upgrades. If confirmed, I expect to be briefed on what upgrades may be necessary to the Frances Perkins Building.

Question 16. DOL has a long history of using data, evidence, and performance metrics to guide decisionmaking. How will you use data, evidence, and performance metrics to guide policymaking and budget decisions?

Answer 16. I will use data, evidence, performance metrics, and other measures to guide my decisionmaking.

Question 17. There is strong evidence that tougher enforcement—and publication of enforcement results—leads to safer working conditions. How do you reconcile this evidence with the Administration's stated desire to move away from enforcement to greater compliance assistance?

Answer 17. Compliance assistance helps employers understand how to comply with the law, particularly small businesses who may not have robust legal departments. I believe compliance assistance and enforcement go hand-in-hand.

Question 18. The Department has currently halted almost all communication with the public about enforcement activities. Do you believe that it is an efficient and effective use of resources to communicate about such enforcement activities to increase voluntary compliance?

Answer 18. I am not aware of the Department halting communication with the public about enforcement activities. Generally, I believe there is deterrent value to communicating with the public about enforcement actions.

Question 19. Please describe your views on when transparency is a useful deterrent to violations and when it is "shaming." Please be specific with your views on the posting of press releases and the OSHA Severe Violators program.

Answer 19. Generally, I believe there is deterrent value to communicating with the public about enforcement actions. Congress has determined that workers should be protected from hazards in the workplace and I believe it makes sense to focus resources on employers who ignore those responsibilities. If confirmed, I look forward to working with Occupational Safety and Health Administration staff and learning more about the Severe Violator Enforcement Program.

Question 20. Please State the steps that you will take to ensure that the work of the Department's Chief Evaluation Office is free of political interference.

Answer 20. As I stated at my confirmation hearing, the administration of law should have nothing to do with partisan politics. I agree with Secretary Acosta's position that respect for the individual and respect for the law will guide the Department. The policy of the Chief Evaluation Office states, "independence and objectivity are core principles of evaluation." If confirmed, I have no plans to change that.

Question 21. In recent years, the Department of Labor has made significant improvements in employee engagement. If confirmed, how will you ensure that these improvements continue?

Answer 21. If I am confirmed, after a careful review of the Department of Labor performance management system and meeting with agency administrative officers and human resources professionals, I will be in a position to properly assess employee engagement.

Question 22. Will you commit to protecting the rights of DOL employees to express their disagreement with Administration policies? If so, how?

Answer 22. There are many legal protections for civil servants. Political views should not be considered in the hiring of career civil servants and the government has a selection process that must be followed. If confirmed, I will follow the law and commit to protecting the rights of all civil servants at the Department of Labor. Inappropriate or unlawful conduct will be subject to appropriate disciplinary action, if I am confirmed.

Question 23. During your staff interview with the committee's minority staff, you mentioned how you were an integral part of the Department meeting all elements of then-OMB Director Mitch Daniels' Management Plan. As Deputy Secretary, what kind of management systems will you put in place to ensure that the Department continues to meet its statutory mandates? Do you commit to sharing established or new operating/management metrics with the committee?

Answer 23. If I am confirmed, and after a careful review of the Department of Labor (DOL) performance management system and budget formulation process, I will be in a position to determine what kind of management systems, if any, need to be in place to ensure DOL continues to meet its statutory mandates. Any new operating or management metrics will be part of DOL's annual report to Congress and the public.

Question 24. Do you think that the Department's resources are correctly allocated between training and enforcement, and, if not, why not?

Answer 24. If confirmed, I expect to be briefed about the operation and possible needs of all of the Department's agency components—including the enforcement agencies and Employment and Training Administration. These agency components have different missions and goals and if confirmed, I look forward to working with the agencies to improve efficiency and meet the agency needs.

Question 25. Do you think that the Department's resources are correctly allocated between compliance assistance and enforcement, and, if not, why not?

Answer 25. If confirmed, I look forward to learning more from each enforcement agency about its compliance and enforcement efforts. Compliance assistance helps employers understand how to comply with the law, particularly small businesses who may not have robust legal departments. I believe compliance assistance and enforcement go hand-in-hand.

Question 26. If you find that the Department's funding is not sufficient to meet operating goals and mandates, if confirmed, do you commit to sharing that information with the committee?

Answer 26. The Department's budget justification describes the needs and effects of changes being proposed to programs. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 27. Will you commit, if confirmed, to responding in a timely and complete manner to requests from all Members of Congress?

Answer 27. If confirmed, I will provide responses to all Members of Congress.

Question 28. Curtis Ellis, a current DOL political appointee, has written that former President Barack Obama and Secretary Hillary Clinton planned the "liquidation of white, blue-collar working families." Do you agree with that statement? Do you believe it is appropriate that Mr. Ellis hold a high-level government position?

Answer 28. As I am not confirmed, I am not involved in personnel decisions and am not privy to information regarding particular individuals.

Question 29. In most cases before the Federal Labor Relations Authority (FLRA), it is typical practice for the union to be listed as the filing party instead of the individual employee. However, as a Member and as Chairman of the FLRA, in the dissents and concurrences you authored, you routinely named the grievant in cases when the individual is not the filing party. Why did you employ this practice when it is not the FLRA's normal practice?

Answer 29. As the only non-lawyer Member of the Federal Labor Relations Authority (FLRA), I sometimes approach issues a little differently than my current colleagues and previous Members. I believe that transparency is important.

Question 30. Generally an arbitrator's findings of facts are entitled to deference unless there is an error in the arbitrator's legal analysis. It seems, however, that during your tenure as a Member and Chairman of the FLRA, you did not always give arbitrators that deference. Can you explain this deviation from typical practice as a Member of the FLRA?

Answer 30. As the only non-lawyer Member of the Federal Labor Relations Authority (FLRA), I sometimes approach issues a little differently than my current colleagues and previous Members. The FLRA has a statutory charge to review such decisions and I performed my responsibility as a Member of the FLRA.

Question 31. In your exchange with Senator Isakson during your confirmation hearing, you mentioned the Institute for Justice's "crusade" against licensing. Do you agree with the Institute's stance on licensing?

Answer 31. In my response to Senator Isakson, I was referring to the Institute for Justice's "Braiding Initiative" where the Institute for Justice filed suits challenging State hair braiding regulations. I am concerned that State occupational licensing laws may create artificial barriers to employment and I believe tackling

these artificial barriers requires a broad-based approach at the Federal, State, and local government levels.

Question 32. Democrats and Republicans have tended to agree that licensing is a State issue. I worked with Chairman Lamar Alexander to provide funding to DOL to support State and regional efforts in this area. Do you believe that the Department of Labor, and therefore the Federal Government, should take over control of licensing issues in this country? If so, what role do you think the Department of Labor and the Federal Government should play in deciding for States how licensing requirements should be designed and implemented? What criteria would you suggest using to evaluate licenses?

Answer 32. I share your concerns that the patchwork of State occupational licenses may create artificial barriers to employment. As I stated at my confirmation hearing, I believe the Federal Government has a role to bring together States to enter into reciprocal relationships to allow for the portability of occupational licenses across State lines, but that States also play a large role in working together. If confirmed, I look forward to learning more about the Department's efforts regarding occupational licensing, including the grant program established by Congress.

Question 33. In response to one of Senator Rand Paul's questions during your nomination hearing, you stated that there should not be partisanship at the agency. Despite your record of Federal service, you have also worked for incredibly partisan organizations, such as the Council for National Policy, which has been called "a little-known club of a few hundred of the most powerful conservatives in the country," and the Conservative Action Project, which describes itself as

"a united conservative movement to assure, by 2020, policy leadership and governance that restores religious and economic freedom, a strong national defense, and Judeo-Christian values under the Constitution."

Given your history with these partisan organizations, how will you leave partisanship behind while you are at DOL?

Answer 33. I have never engaged in partisanship in my nearly 25 years in Federal service in the executive branch and, if confirmed, will not engage in partisanship as Deputy Secretary of Labor.

Question 34. In your interview with committee minority staff, you stated that you stopped working for the Council for National Policy on December 31, 2012, because you knew that you were going to be nominated for the Federal Labor Relations Authority. The Council for National Policy filed a 2013 Form 990 showing that you were paid \$116,667 for the calendar year beginning January 1, 2013 and ending December 31, 2013. Can you please explain this discrepancy?

Answer 34. The Council for National Policy owed me that amount of money for services performed in 2012. My contract with them and all work for them ended on December 31, 2012.

Question 35. You were an original signer of the 2010 Mount Vernon statement, which has been described as an effort to bring together disparate conservative groups. How will the principles of the Mount Vernon statement inform your service as the Deputy Secretary of Labor if you are confirmed?

Answer 35. If confirmed as Deputy Secretary, I will follow the law and the oath I take as a Federal employee.

Question 36. President Trump has made comments about corruption in the Federal workforce, at times referring to many Federal workers as disloyal and "leakers." Do you agree with his assessment of Federal employees?

Answer 36. I believe Federal employees serve an important role and are vital to the operation of the government.

Question 37. You have expressed some troubling views in your opinions at the Federal Labor Relations Authority (FLRA). For example, in the case, 69 FLRA No. 75, you refer to the grievant by name and repeatedly refer to the individual in a demeaning manner. In the past, you have called employees "boorish and unprofessional," and called their grievances "frivolous." The mission of the Department of Labor is to promote and protect the rights and well-being of workers. Given your past statements, what assurances can you provide the committee that you will support and protect the Department's employees?

Answer 37. My record of over almost 25 years of experience in the executive branch is one of following the laws and regulations governing the Federal workforce. If I am confirmed as Deputy Secretary I will continue that approach.

Question 38. In some of your opinions at the FLRA—69 FLRA 75; 70 FLRA 63; 68 FLRA 846—you deride the use of official time, i.e., work Federal employees perform on agency-related work such as ensuring workplace safety, developing training materials for new employees, and resolving grievances. Do you support Federal employees' statutory protection of official time under the Federal Service Labor-Management Relations Statute? If yes, will you commit to protecting and in no way restricting or combating Department of Labor employees' statutory and contractual rights to utilize official time?

Answer 38. If confirmed, I will abide by all statutory protections under the Federal Service Labor-Management Relations Statute and any collective bargaining agreement in place between Department of Labor employees and its union.

Question 39. The labor conditions in the Northern Marianas are notoriously bad and have been since you were a registered lobbyist at Preston Gates lobbying on behalf of the Commonwealth of the Northern Mariana Islands (CNMI) to oppose extending Federal labor laws there. Recent reports have found outrageous violations at one of the largest employers on the island, Imperial Pacific Casino, which has faced at least five serious workplace safety issues, including an amputation and even a death. Do you still defend your position that Federal labor laws should not be extended to the CNMI? How can you be trusted to help oversee the Wage and Hour and OSHA divisions at the DOL, which are so important to workers across the country and in U.S. territories, given your prior work?

Answer 39. The Commonwealth of the Northern Mariana Islands (CNMI) is covered by Federal labor laws and if confirmed as Deputy Secretary of Labor, I will fully and fairly enforce those laws.

Question 40. In your confirmation hearing, you responded to a question asked by Senator Al Franken about the working conditions in the Northern Marianas by stating that you were unaware of the terrible working conditions there. It is estimated that you organized trips for more than 100 individuals, including Members of Congress. How many times did you visit the Northern Marianas? How many trips did you run there in your lobbyist position at Preston Gates?

Answer 40. The Commonwealth of the Northern Mariana Islands (CNMI) was a client of Preston Gates, the firm at which I was employed. Over a 5-year period from 1996 to 2000, I visited the CNMI—at the invitation of the CNMI—about 20 times. Those trips involved Members of Congress, congressional staff, and public policy advocates, all of whom were invited to visit CNMI by the CNMI government.

Question 41. Disgraced lobbyist Jack Abramoff called you “a very ethical person” and has endorsed you to be the Deputy Secretary. Despite the fact that Abramoff and 21 of his associates either pled guilty or were found guilty of various corruption charges, you were never charged with any crimes related to your work with Abramoff. The Senate Finance Committee investigated Mr. Abramoff’s practice of money laundering through tax-exempt organizations and issued a report that states,

“Patrick Pizzella, a colleague of Mr. Abramoff’s at Preston Gates, wrote to Mr. Abramoff on July 1, 1996, to explain how they planned to funnel money to NCPPR to pay expenses related to a trip to the CNMI.”

Specifically, you wrote to Mr. Abramoff:

Jack, the airplane tickets were paid by PG [Preston Gates]; the hotel bills were paid by CNMI (each traveler just signed bill—no credit requested); that leaves basically the fees for Bandow’s services and report; and the reimbursement for the bills he accumulated (mostly hotel and food) in Guam and Samoa. That should come to about \$10,000. That is the amount CNMI should provide as a grant to NCPPR. Then they can cut check to Bandow. I do not see need for us to send airplane bills to NCPPR and then CNMI sending money (\$30,000) to cover those—do you? Let me check further with Doug to nail down amount of bills he accumulated. I would like to finish up the \$\$ aspect of this as soon as possible—it will impress Doug and Amy—both of who we will want to call on again in the future. Thanks.

Please explain the context for this e-mail and the arrangement between Preston Gates, CNMI, and Mr. Bandow. Were “Bandow’s services and report” related to the articles for which Mr. Abramoff paid and resulted in the scandal forcing Mr. Bandow to resign from the Cato Institute?

Answer 41. I last worked with Jack Abramoff 17 years ago. To the best of my recollection the “Bandow’s services and report” had to do with Mr. Bandow’s visit to Guam and American Samoa (a place I have never visited) and an economic report/analysis he prepared about those two islands. I am not certain if they are related to the articles you reference because that event happened 18 or 19 years ago.

Question 42. Mr. Abramoff compared the Federal regulation of the Northern Marianas to the Nazis' Nuremberg laws, stating that "The[y] are immoral laws to destroy the economic lives of a people." Do you agree with Mr. Abramoff's statement?

Answer 42. No, I do not agree with Mr. Abramoff's statement.

Question 43. During your time with the Trump transition team, did you participate in vetting President Trump's first nominee for Secretary of Labor, Andrew Puzder? If so, please explain your role in the vetting process. Did you raise any concerns about Mr. Puzder's potential nomination during vetting?

Answer 43. I did not participate in the vetting of Mr. Puzder.

SENATOR CASEY

Question 1. Workers in Pennsylvania as well as my office have been waiting on responses from the Department of Labor on a Trade Adjustment Assistance appeal for Fuzion Technologies in Freeport, PA. Our workers can't get an answer out of DOL, and neither can my staff. When can we expect a response from you all to get a determination for our workers in Pennsylvania? Why has it taken so long and why has DOL not been responsive to requests from my staff? What will be done to improve the responsive of DOL to Congress? Is the Office of congressional and Intergovernmental Affairs fully staffed?

Answer 1. As I am not confirmed, I am not privy to your request of the Department or the specifics of the staffing of the Office of Congressional and Intergovernmental Affairs. I believe it is important to respond to requests of Members of Congress and, if confirmed, I will look into your concerns regarding the Office of Congressional and Intergovernmental Affairs.

Question 2. President Trump has made deregulation a priority. He also proposed massive cuts to the Department of Labor's budget. Will you pledge to continue tough enforcement of these laws and regulations to protect coal miners and commit to not gutting or undoing these regulations?

Answer 2. I'm unsure as to the particular laws and regulations to which you refer. I do believe mine safety is of the utmost importance and, if confirmed, will work to enforce the laws under the Department's jurisdiction fully and fairly.

Question 3. How do you propose to have robust enforcement given these proposed budget cuts? Please provide a yes or no response.

Answer 3. I am unable to provide a yes or no response to this question; however, if confirmed, using taxpayer resources and appropriated funds wisely will be one of my responsibilities and one I will take very seriously. Enforcement is a core responsibility of the Department of Labor and I will prioritize enforcement regardless of funding levels. As a nominee, I did not participate in the development of the President's budget proposal. The President's budget is pending before Congress and ultimately Congress will determine which programs are funded, at what level, and which authorizing proposals to adopt. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated.

Question 4. What specifically will you do at the Department of Labor to help workers who have lost their jobs to technology or trade?

Answer 4. Helping Americans who have lost their jobs due to technology or trade is very important. If confirmed, I look forward to being briefed on all of the available programs and learning more about what is working well and areas that may need improvement. I also believe it is important to work with the private sector, States and localities to further understand the successes and challenges of these programs and to ensure that the displaced workers are being trained or retrained in industries where there are available jobs and demand for workers.

Question 5. How specifically will you ensure thorough investigation and enforcement of violations of the Fair Labor Standards Act?

Answer 5. Investigation and enforcement of violations of the Fair Labor Standards Act should involve strategic enforcement and individual complaints. As Secretary Acosta has said as well, if confirmed, I will work to enforce the laws under the Department's jurisdiction fully and fairly.

Question 6. How can the Department of Labor help economically disadvantaged areas attract new business investment and new jobs?

Answer 6. As I stated at my confirmation hearing, I subscribe to President Kennedy's theory that a rising tide lifts all boats. Actions by the executive branch and Congress to create more economic growth and an environment for entrepreneurs and businesses to thrive will help everybody. Regulatory reform and tax reform are

both key to helping increase economic growth. The President's Executive order regarding apprenticeships will help make sure that those who are unemployed, or underemployed, have another pathway and opportunity to gain new skills for which there are job opportunities, and these portable skills will be useful wherever they live.

Question 7. Do you think that cutting Federal funding for job training will make workers better or worse prepared to find jobs to support their families?

Answer 7. The President's Executive order regarding apprenticeships will help make sure that those who are unemployed, or underemployed, have another pathway and opportunity to gain new skills for which there are job opportunities. Obtaining these portable skills will help workers find jobs and be able to support their families.

Question 8. Do you think that cutting Federal funding for job training will make it harder for employers to find workers with the skills they need?

Answer 8. The President's Executive order regarding apprenticeships will help those who are unemployed, or underemployed, gain portable skills for which there are job opportunities. It will lead to greater numbers of workers who possess the requisite skills for the jobs that are in demand, helping employers find workers with the skills they need.

Question 9. How do you propose to close the skills gap and help workers compete at home and abroad?

Answer 9. Reducing the skills gap is a priority for this Administration and a goal we can all agree upon. The President's Executive order regarding apprenticeships will ensure workers are trained for the jobs that are in demand. These portable skills will follow the worker wherever he or she moves, and will lead to greater numbers of workers who possess the requisite skills for the jobs that are in demand, helping employers find workers with the skills they need.

SENATOR FRANKEN

Question 1. Currently on the Department of Labor Web site, under the Wage and Hour section, it describes how the department has entered in partnerships with 37 States and is:

“working with the IRS and many States to combat employee misclassification and to ensure that workers get the wages, benefits, and protections to which they are entitled.”

What is your view on better coordination across enforcement agencies to improve their ability to identify companies who violate multiple Federal laws administered by the DOL?

Answer 1. If confirmed, I look forward to being briefed on the extent to which agencies already coordinate and the specific procedures the agencies follow. I certainly support using government resources in the most efficient manner possible but it would be premature for me to suggest changes before examining all of the relevant information.

Question 2. Should you be confirmed how do you plan to help the Department of Labor deal with Federal contractors who have a history of violations under the multiple laws administered by the Department?

Answer 2. Government agencies, including the Department of Labor, have certain suspension and debarment authorities granted to them in statute and through the Federal Acquisition Regulations. However, it's not one-size-fits-all—for example, a repeat or willful violator is not the same as a contractor who perhaps has an allegation that has not yet been adjudicated.

Question 3. Given your responsibility as Deputy Secretary, how do you intend to make sure that business owners that follow the law aren't at a competitive disadvantage to contractors with a history of violating our Federal workplace statutes now that the Obama administration's Executive order requiring the disclosure and consideration of illegal activity when awarding Federal contract has been reversed.

Answer 3 Government agencies, including the Department of Labor, have certain suspension and debarment authorities granted to them in statute and through the Federal Acquisition Regulations. However, it's not one-size-fits-all—for example, a repeat or willful violator is not the same as a contractor who perhaps has a minor infraction or an allegation that has not yet been adjudicated.

Question 4. Should the government, especially when spending taxpayer dollars, set an example by rewarding and working with businesses that obey the law and respect the rights of their workers? Please explain.

Answer 4. The Federal Government should strive to be a model employer and comply with the law when hiring a contractor.

Question 5. Do you believe that a contracting officer should consider a company's record of labor law violations (and remedial actions) when determining whether the bidder is a responsible party and whether a bid is the best value bid?

Answer 5. There are a number of requirements that contracting officers have to meet in awarding contracts, including evaluations of the contractor's compliance with the law historically. However, it's not one-size-fits-all—for example, a repeat or willful violator is not the same as a contractor who perhaps has an allegation that has not yet been adjudicated.

Question 6. Would consideration of a company's history of labor law compliance (and any remedial actions) contribute to economy and efficiency in contracting?

Answer 6. There are a number of requirements that contracting officers have to meet in awarding contracts, including evaluations of the contractor's compliance with the law historically. The contracting officer looks at those issues and others as part of a determination of the economy and efficiency of the contract.

Question 7. When asked about whether you had knowledge of abuses of workers in the Northern Mariana Islands when you were a lobbyist on behalf of the islands' government, you said "I was not aware of any such thing," and later described the abuses as "allegations," despite clear evidence of abuses offered at the time in press reports, government reports, and congressional hearings. Were you unaware of the reports or did you simply find them not to be credible?

Answer 7. I replied to the question asking if I had knowledge of abuses of workers—and I had no knowledge of abuses of workers. I was aware of news reports and comments by some Members of Congress.

Question 8. At the time, were you aware that the Senate Committee on Energy and Natural Resources held a hearing in March 1998 on abuses of workers in the Northern Mariana Islands?

Answer 8. I do recall that a hearing was held, but 18 years later I do not recall the details.

Question 9. According to Jack Abramoff's 2011 book, *Capitol Punishment: The Hard Truth About Washington Corruption From America's Most Notorious Lobbyist*, for a period in 1998, the government of the Commonwealth of the Northern Mariana Islands (CNMI) ended its contract with Preston Gates. In order to support your representation, Willie Tan, one of the largest sweatshop owners in the islands, organized private sector funding for your contract. Were you aware that only a few years before, Willie Tan had been assessed the then-largest fine in Department of Labor history for abuses of workers?

Answer 9. These events occurred nearly 20 years ago so I do not know precisely when I became aware that Mr. Tan had been assessed a fine by the Department of Labor (DOL). I became aware sometime while I was employed by Preston Gates.

Question 10. Did it concern you to be lobbying on behalf of an individual with such an egregious record of worker abuses?

Answer 10. It was a concern and caused me to insist that any visitors I accompanied to the Commonwealth of the Northern Mariana Islands (CNMI) be allowed to visit the manufacturing, hotels, and worker housing facilities and receive a briefing from CNMI officials on the status of any outstanding or pending issues or violations. Also, if Department of Labor or Department of Interior officials visited CNMI at the time we would arrange a meeting for the visitors with Department of Labor and/or Interior officials.

SENATOR WHITEHOUSE

Question 1. During your time at DOL, according to a GAO report, the Wage and Hour Division (WHD) systematically failed workers. The 2009 GAO report found that WHD's response to complaints was frequently inadequate, leaving low wage workers vulnerable to wage theft. Their investigation found, "sluggish response times, a poor complaint intake process, and failed conciliation attempts, among other problems." What role did you play overseeing WHD when you were at DOL? Do you agree with GAO's findings? If not, explain the basis for your disagreement.

Answer 1. While I was at the Department of Labor (DOL) as Assistant Secretary for Administration and Management (2001–9), the Wage and Hour Division staff reported to a presidentially appointed and Senate-confirmed Administrator and an Assistant Secretary for Employment Services Administration. The 2009 Government Accountability Office report you reference was published after I was no longer employed at DOL. However, it was recently brought to my attention in my meeting with Senator Warren (D-MA). I have since reviewed the report and its findings on the performance of certain wage and hour investigators seemed well-documented.

Question 2. Additionally, WHD employees often provided inaccurate responses and, in one investigative case, an investigator, “lied about investigative work performed and did not investigate GAO’s fictitious complaint.” Do you believe that WHD employees should have to answer complaints truthfully and should investigate claims in a timely manner? As Deputy, what steps would you take to ensure that all DOL employees follow high ethical and performance standards?

Answer 2. I believe all Federal employees should respond to complaints truthfully, should investigate claims in a timely manner, and follow high ethical and performance standards. If confirmed, I will work with agency ethics officers and the agencies to ensure they are following high ethical and performance standards.

Question 3. During your testimony before the HELP Committee, you describe the position of Deputy Secretary as that of a COO, tasked with running the department “efficiently and effectively”. What specific steps have you taken in your prior government roles that demonstrate your ability to do so?

Answer 3. The most specific steps I can cite involved my role as Assistant Secretary of Labor for Administration and Management (2001–9). In that role, I helped the Department of Labor (DOL) to be the first cabinet department to achieve all “green” ratings on President George W. Bush’s governmentwide management agenda in June 2005. I was also involved with: (1) helping DOL’s annual Performance and Accountability Report receive a first-place ranking 4 years in a row (fiscal year 2002–5) from George Mason University’s Mercatus Center; (2) helping DOL receive four President’s Quality Awards between 2004 and 2006; (3) helping DOL receive eight straight clean audits (2001–8); and (4) coordinating the consolidation of DOL office space.

Question 4. Will you personally cooperate fully with any inquiries from the GAO, the DOL IG?

Answer 4. Yes.

Question 5. The Office of Legal Counsel has issued an opinion stating:

“Members who are not committee or subcommittee chairmen sometimes seek information about executive branch programs or activities, whether for legislation, constituent service, or other legitimate purposes (such as Senators’ role in providing advice and consent for presidential appointments) in the absence of delegated oversight authority. In those non-oversight contexts, the executive branch has historically exercised its discretion in determining whether and how to respond, following a general policy of providing only documents and information that are already public or would be available to the public through the Freedom of Information Act, 5 U.S.C. § 552.”

Do you believe that Members of Congress in the minority are entitled to no more information than is required to be disclosed under FOIA? What is your position on responding to minority oversight requests?

Answer 5. If confirmed, I will provide responses to all Members of Congress.

Question 6. During your hearing before the HELP committee, you repeatedly cited your intention to advance President Trump and Secretary Acosta’s agenda at the DOL. The Trump Budget Proposed to cut the DOL budget by 19.8 percent. How will reducing the budget help DOL achieve its mission of helping wage earners, job seekers, retirees, and, “improve working conditions, advance opportunities for profitable employment and assure work-related benefits and rights”? As the Deputy Secretary at DOL, would you advocate against a proposed 20 percent budget cut? If such a cut were to come to DOL, what would your priorities be in responding to cuts of that size?

Answer 6. If confirmed, I will take the mission of the Department of Labor very seriously when executing my duties. As a nominee, I did not participate in the development of the President’s budget proposal. The President’s budget is pending before Congress and ultimately Congress will determine which programs are funded, at what level, and which authorizing proposals to adopt. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. I believe

there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 7. In your opinion from your prior experience at DOL, what are the three most important DOL offices or programs under the Deputy Secretary? The three least?

Answer 7. All Department of Labor offices make an important contribution to the overall mission of the Department.

Question 8. In your opinion what were the three most significant enforcement actions taken by Obama's DOL? What were the three most significant enforcement actions taken during your tenure at DOL?

Answer 8. I do not have a thorough knowledge of all of the Obama administration Department of Labor (DOL) enforcement actions to comment fairly. I did not oversee an enforcement agency during my previous tenure at DOL so I do not think it would be fair for me to offer such an opinion.

Question 9. You previously advocated to Member of Congress, congressional staff, and others on issues related to the Commonwealth of the Northern Mariana Islands, where documented labor abuses included workers who were essentially indentured servants, coerced abortions, guarded labor barracks, and systematic underpayment. These are longstanding issues and were reported on in a 1993 *New York Times* article, titled "Made in the U.S.A.—Hard Labor on a Pacific Island/A special report; Saipan Sweatshops Are No American Dream." How many trips did you personally make to CNMI? How many trips for others did you organize and for whom? What was the itinerary? Did any of these trips include visits to factories, labor barracks, or any workplaces with alleged labor violations? Did any of these itineraries address labor conditions?

Answer 9. The Commonwealth of the Northern Mariana Islands (CNMI) was a client of Preston Gates, the firm at which I was employed. Over a 5-year period from 1996 to 2000, I visited the CNMI—at the invitation of the CNMI—about 20 times. Those trips involved Members of Congress, congressional staff, and public policy advocates, all of whom were invited to visit CNMI by the CNMI government. To the best of my recollection every trip involved visits to factories, labor housing facilities, and some workplaces where labor violations had occurred. Visitors would also be briefed from local CNMI officials involved with workplace safety and U.S. Department of Labor representatives.

Question 10. Did you engage in advocacy to oppose Senator Frank Murkowski's Northern Mariana Islands Covenant Implementation Act, which passed the Senate unanimously in 2000? Who were your clients? How many meetings did you have with then-Republican House Whip Tom DeLay on CNMI issues?

Answer 10. While employed by Preston Gates and representing the Commonwealth of the Northern Mariana Islands (CNMI) I probably engaged in advocacy to oppose the Northern Mariana Islands Covenant Implementation Act, but most of my activity was focused on the House of Representatives. I was in very few meetings with House Whip Tom DeLay on CNMI issues—most contact with him was handled by Mr. Abramoff.

Question 11. During your interview with Senate staff, you indicated that you resigned from your consulting position with the Council of National Policy on December 31, 2012. However, CNP's tax form 990 for 2013 lists you as a contractor receiving \$116,667 in compensation. How do you reconcile that discrepancy? What work did you do for the Council of National Policy in 2013?

Answer 11. That was a payment for prior work and part of the terms of the employment agreement. I performed no work in 2013.

Question 12. The Council of National Policy worked to encourage and support the 2013 government shut down. In your position with CNP, did you do anything in conjunction with the government shutdown? If so, what, and when?

Answer 12. My contract with the Council of National Policy ended on December 31, 2012. The government shutdown occurred in October 2013. I did nothing in conjunction with the government shutdown. Ultimately, Congress determines whether and when to fund the government.

Question 13. NOAA, NASA, the U.S. National Academies of Sciences, and 31 leading, nonpartisan scientific societies all agree that climate change is real and humans are major contributors to it. Do you believe climate change is real? Do you personally believe that human activity contributes to climate change? If a matter involving

climate change were to come before you at the Department of Labor, on what sources of scientific information would you rely?

Answer 13. Like Secretary Acosta and President Trump, I am committed to helping stimulate the economy and help businesses increase the number of jobs. As with any issue that comes before me, I will use data, evidence, performance metrics, and other measures to guide my decisionmaking.

Question 14. Will you sign the Trump Ethics pledge? Do you expect to request any waivers to the Trump Ethics pledge? If so, what would they be for?

Answer 14. If confirmed, I will sign the ethics pledge and will not request any waivers.

Question 15. Have you ever solicited money for a 501(c)(4) groups, such as the Council for National Policy Action Inc.? If so, from whom? In what amounts? When were these donations solicited?

Answer 15. No.

Question 16. For anyone listed in 15, will you recuse yourself from any issues involving these individuals or organizations in your role as Deputy Secretary?

Answer 16. Not applicable.

SENATOR WARREN

BUDGET

Question 1. The President has proposed significant budget cuts to the Department of Labor. Have you assessed the potential impact of these changes?

If so, what have you concluded?

Answer 1. As a nominee, I did not participate in the development of the President's budget proposal. The President's budget is pending before Congress and ultimately Congress will determine which programs are funded, at what level, and which authorizing proposals to adopt. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 2. To the extent that you believe that budget cuts do not undermine the Department's mission, what changes would you recommend so that the Department is more efficient and can continue to meet its mission despite budget cuts?

Answer 2. As Congress will ultimately determine agency funding levels, it would be premature for me to recommend any specific changes based on funding levels. If I am confirmed I will work to maximize every dollar the Department of Labor is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 3. If you believe that the President proposes cuts that undermine the Department's ability to fulfill its mission, will you commit to advocating for a larger Department budget to the White House?

Answer 3. Yes.

Question 4. In the same circumstances, or if you believe that Congress proposes cuts that undermine the Department's ability to fulfill its mission, will you commit to advocating for a larger Department budget to Congress?

Answer 4. Yes.

Question 5. Will you commit to informing the HELP Committee if the budget is insufficient to fulfill the Department of Labor's mission?

Answer 5. Yes.

Question 6. The President's budget proposes cuts to some of the Department's enforcement agencies, including the Occupational Safety and Health Administration and the Office of Federal Contract Compliance Programs.¹ Do you believe these cuts will result in a reduction in the number or scope of enforcement actions taken by the Department?

Answer 6. As Congress will ultimately determine agency funding levels and make any authorizing legislative changes, and as I have not spoken with the agencies, it would be premature for me to opine on the extent to which reductions would affect

¹https://www.dol.gov/sites/default/files/FY2018BIB_0.pdf.

agency action. My understanding of the proposed reduction to the Occupational Safety and Health Administration (OSHA) is that a majority of the decrease was not for enforcement activities, but to eliminate training grants and shift some resources to other OSHA programs. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 7. The Government Accountability office released two reports in 2008 and 2009, respectively, detailing alarmingly inadequate intake and enforcement at the Department of Labor's Wage and Hour Division, based on complaints, case studies, case data analysis, and interviews with Division staff. According to the reports, these failures were due at least in part to flaws in the investigative process, data reliability issues, and resource limitations.² The Department's comments on those findings acknowledged "significant shortcomings in WHD's program."³ With the exception of the final 2 months of one of the GAO's investigations, you were serving as Assistant Secretary for Administration and Management and Chief Information Office at the Department during the period that the reports' findings cover.

To what extent were you involved in the budget, management of intake and investigative functions, and data management at the Wage and Hour Division between 2001 and 2009?

Please describe, to your knowledge, the causes of the problems that GAO discovered at the Wage and Hour Division during your time at the Department?

How do you believe that the management and budget of the Wage and Hour Division should have been handled differently in order to avoid the problems that GAO discovered?

If confirmed, what specific measures will you take to ensure that similar failures do not take place at the Wage and Hour Division or anywhere else at the Department of Labor?

Answer 7. While I was at the Department of Labor (DOL) as Assistant Secretary for Administration and Management (2001–9), the Wage and Hour Division staff reported to a presidentially appointed and Senate-confirmed Administrator and an Assistant Secretary for Employment Services Administration. The 2009 Government Accountability Office report you reference was published after I was no longer employed at DOL. However, you recently brought it to my attention in our meeting in your office. I have since reviewed the report and its findings on the performance of certain wage and hour investigators seemed well-documented.

Question 8. During your hearing, you expressed support for the Department's job training programs. Yet the President has proposed major cuts to those programs. Do you believe these cuts will harm or reduce the impact of these programs?

If so, in what ways? If not, why not?

How will you and other DOL officials improve these programs so they can accomplish their full mission with fewer resources?

Answer 8. The President's budget is pending before Congress and ultimately Congress will determine which job training programs are funded and at what level. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 9. President Trump's budget proposes completely eliminating the Senior Community Service Employment Program, which helps low-income seniors seeking employment.⁴

Do you believe that eliminating or significantly reducing funding to the Senior Community Service Employment Program would be a wise decision?

If so, why?

If not, will you commit to aggressively advocating for funding for the Senior Community Service Employment Program?

Answer 9. If confirmed, with regard to the Senior Community Service Employment Program, I would need to learn more information about the program and examine its recent metrics before opining on it. However, as a nominee, I did not participate in the development of the President's budget proposal. The President's budget is pending before Congress and ultimately Congress will determine which

² <http://www.gao.gov/products/GAO-08-973T>; <http://www.gao.gov/products/GAO-09-458t>.

³ <http://www.gao.gov/assets/300/291496.pdf>.

⁴ https://www.dol.gov/sites/default/files/FY2018BIB_0.pdf.

programs are funded, at what level, and which authorizing proposals to adopt. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 10. President Trump's budget proposes significant cuts to Job Corps, a DOL program that helps disadvantaged youth enter the workforce.⁵

Do you believe that making large cuts to Job Corps would be a wise decision?

If so, why?

If not, will you commit to aggressively advocating for Job Corps funding?

Answer 10. Job Corps is a longstanding program at the Department of Labor (DOL). It is also a program that has raised significant safety and security concerns. As a nominee, I did not participate in the development of the fiscal year 2018 budget proposal and it is ultimately Congress that determines which programs are funded and at what levels. If I am confirmed, I will work to maximize every dollar DOL is appropriated and take a close look at each Job Corps center and its metrics. Improvements in Job Corps are necessary and the safety and security of the students in these centers must remain a top priority.

Question 11. President Trump's budget proposes significant cuts to the Office of Disability Employment Policy, which helps people with disabilities succeed in the workplace.⁶

Do you believe that making large cuts to the Office of Disability Employment Policy would be a wise decision?

If so, why?

If not, will you commit to aggressively advocating for funding for the Office of Disability Employment Policy?

Answer 11. The Office of Disability Employment Policy (ODEP) serves an important mission at the Department of Labor, helping to increase workplace success for individuals with disabilities. Increasing the labor force participation rate of individuals with disabilities is a goal everyone can support. As a nominee, I did not participate in the development of the President's budget proposal. The President's budget is pending before Congress and ultimately Congress will determine which programs are funded and at what level. If I am confirmed, I will work to maximize every dollar ODEP is appropriated.

Question 12. President Trump's budget proposes eliminating the Susan Harwood Training Grant Program, which helps provide training for workers and employers on addressing dangers to workers' safety and health in the workplace.⁷

Do you believe that eliminating the program would be a wise decision?

If so, why?

If not, will you commit to aggressively advocating for funding for the Program?

Answer 12. If confirmed, I would need to review the Susan Harwood Training Grant Program and its recent metrics before opining on it. However, as a nominee, I did not participate in the development of the President's budget proposal. The President's budget is pending before Congress and ultimately Congress will determine which programs are funded, at what level, and which authorizing proposals to adopt. If I am confirmed, I will work to maximize every dollar the Department of Labor is appropriated. I believe there are always efficiencies that can improve programs and will commit to make the most of the dollars Congress appropriates to the Department.

Question 13. What process will you use to prioritize resources between compliance assistance and enforcement functions of the Department?

Answer 13 If confirmed, I look forward to learning more from each enforcement agency about its compliance and enforcement efforts, including reviewing metrics and outcomes. Compliance assistance helps employers understand how to comply with the law, particularly small businesses who may not have robust legal departments. I believe compliance assistance and enforcement go hand-in-hand.

Question 14. As part of this process, what metrics will you use to assess the success or failure of compliance assistance and enforcement efforts, respectively, within the Department's enforcement agencies?

⁵ Id.

⁶ Id.

⁷ <https://www.osa.gov/dte/sharwood/>.

Answer 14. If confirmed, I look forward to learning more from each enforcement agency about its compliance and enforcement efforts. Compliance assistance helps employers understand how to comply with the law, particularly small businesses who may not have robust legal departments. I believe compliance assistance and enforcement go hand-in-hand. Each agency has its own performance metrics and, if confirmed, those will guide any evaluation of an agency.

Question 15. Do you believe that the Department's resources are currently allocated between compliance assistance and enforcement functions in an appropriate manner? If not, what specific changes to those allocations will you support if you are confirmed?

Answer 15. If confirmed, I look forward to learning more from each enforcement agency about its compliance and enforcement efforts, including reviewing metrics and outcomes. Compliance assistance helps employers understand how to comply with the law, particularly small businesses who may not have robust legal departments. I believe compliance assistance and enforcement go hand-in-hand.

Question 16. If confirmed, will you ensure that compliance assistance does not become a substitute for aggressive enforcement at the Department's enforcement agencies?

If so, what metrics will you use to ensure that compliance assistance does not become a substitute for aggressive enforcement?

Will you commit to providing the HELP committee with updates of these metrics on a quarterly basis?

Answer 16. If confirmed, I look forward to learning more from each enforcement agency about its compliance and enforcement efforts, including reviewing metrics and outcomes. Compliance assistance helps employers understand how to comply with the law, particularly small businesses who may not have robust legal departments. I believe compliance assistance and enforcement go hand-in-hand.

WORKFORCE

Question 17. If confirmed, your duties will include overseeing the Department of Labor's workforce. When Secretary Acosta served as Assistant Attorney General for the Civil Rights Division of the Department of Justice (DOJ), the DOJ's Inspector General discovered that Secretary Acosta failed to adequately supervise a Deputy who engaged in politicized hiring and other seriously improper personnel actions.⁸

If confirmed, what safeguards will you use to ensure that similarly improper actions do not take place at the Department of Labor during your tenure?

If confirmed, what steps will you take to ensure that you and other members of the Department's leadership would be in a position to discover improper actions such as politicized hiring if they were to take place?

Will you commit to reporting such activity to the HELP Committee if you were to discover that it had taken place?

Will you commit to actively preventing politicization of the Department of Labor in general? If so, what specific steps will you take to do so?

Answer 17. There are many legal protections for civil servants. Political views should not be considered in the hiring of career civil servants and the government has a selection process that must be followed. If confirmed, I will follow the law and commit to protecting the rights of all civil servants at the Department of Labor. Inappropriate or unlawful conduct will be subject to appropriate disciplinary action and, if confirmed, I will work to make sure the Department keeps the committee informed generally on this issue and others that are important to the committee.

Question 18. What steps would you take to protect the professional staff of the Bureau of Labor Statistics (BLS) from political interference if the President, White House staff, or any other members of the executive branch were to attack the credibility or objectivity of the BLS?

Answer 18. The Bureau of Labor Statistics is an independent statistical agency within the Department of Labor. For more than 130 years, BLS has provided statistical economic information. If confirmed, I will commit to defending the independence of BLS.

Question 19. Will you commit to closing the revolving door and preventing Labor Department employees from personally profiting from their activities at the Department?

⁸<https://oig.justice.gov/special/s0901/final.pdf>.

Will you prevent Labor Department employees from working on issues that directly impact a previous employer?

What specific steps will you take to ensure that Department employees are complying the ethics pledge required by President Trump's "Ethics Commitments by executive branch appointees" Executive order?

Will you commit to informing the HELP Committee if you discover that a Department of Labor employee has violated that ethics pledge or related regulations or statutes?

Will you demand that, prior to appointment, political appointees pledge that they will not work in industries related to or significantly subject to Labor Department regulation for 3 or more years upon leaving Federal service?

Answer 19. Employees of the Department of Labor must fully comply with all ethics laws and regulations, including the restrictions contained in 18 U.S.C. 208 and 5 C.F.R. 2635.502. Non-career employees are also subject to additional restrictions contained in Executive Order 13770 ("Ethics Commitments by Executive Branch Appointees"), which includes a requirement that they sign an ethics pledge. By signing this pledge, the non-career employee commits to,

" . . . not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in any lobbying activities with respect to that agency."

All employees, including non-career appointees, are also subject to the applicable post-employment conflict-of-interest provisions in 18 U.S.C. 207.

Question 20. During President Trump's campaign, there were reports that even volunteers were required to sign non-disclosure agreements. Following his election, there were also reports that transition officials were requesting information about career employees who worked on issues such as climate change at the Energy Department or women's issues at the State Department.⁹ Any implication that career staff who worked on advancing policies that the new President disagrees with may be targeted or retaliated against could create a chilling effect on non-political Federal employees simply trying to do their jobs.

If you are confirmed, will you commit to protect the rights of all civil servants in the Department of Labor?

Those rights include the right for civil servants to communicate with Congress, and in fact it is against the law to deny or interfere with their right to do so.¹⁰ If you are confirmed, do you commit to protect this fundamental right as well?

Answer 20. There are many legal protections for civil servants. Political views should not be considered in the hiring of career civil servants and the government has a selection process that must be followed. If confirmed, I will follow the law and commit to protecting the rights of all civil servants at the Department of Labor. Inappropriate or unlawful conduct will be subject to appropriate disciplinary action.

PROCUREMENT

Question 21. In some of your prior positions within the Federal Government, you have overseen procurement for various agencies. Do you believe that the Federal Government should ever award contracts to companies that have been found to have committed serious or repeated violations of Federal labor law?

If so, in what circumstances would this be an appropriate use of Federal dollars?

If not, will you commit to advocating for aggressive oversight of the labor records of Federal contractors and prospective Federal contractors?

Answer 21. Government agencies, including the Department of Labor, have certain suspension and debarment authorities granted to them in statute and through the Federal Acquisition Regulations. I believe fully adjudicated labor law violations can and should be considered, especially with regard to repeat or willful violators. However, it's not one-size-fits-all—for example, a repeat or willful violator is not the same as a contractor who perhaps has an allegation that has not yet been adjudicated.

Question 22. Do you believe that there any circumstances in which it is not necessary for a Federal contracting officer to review the labor record of a contractor seeking a contract from the Federal Government?

⁹ https://www.washingtonpost.com/news/josh-rogin/wp/2016/12/22/trump-team-asked-state-department-for-info-on-womens-issues-programs-stoking-fears-of-another-witch-hunt/?utm_term=.50b42eb8cf86.

¹⁰ 5 U.S.C. § 7211.

Answer 22. There are a number of requirements that contracting officers must follow in the process of awarding a contract and I will make sure those requirements are followed if I am confirmed. For example, I understand that before awarding certain contracts, a contracting officer is required to see if the potential contractor was recently audited by the Office of Federal Contract Compliance Programs.

Question 23. Do you believe that sufficient procedures exist for coordination between agencies that award contracts and the Department of Labor's enforcement agencies, in order to ensure contracting officers are able to thoroughly review the accurate labor record of a company seeking a Federal contract? a. If not, what policies to implement sufficient procedures would you support?

Answer 23. If confirmed, I look forward to being briefed on the extent to which agencies currently coordinate and the specific procedures the agencies follow. It would be premature for me to suggest policies or changes before examining all of the relevant information.

SENATOR KAINE

Question 1. The projected insolvency of the Pension Benefit Guaranty Corporation's (PBGC) multi-employer pension program remains unaddressed.

In your view, what is the role of the Department of Labor in this debate?

Will you work proactively to address the PBGC's insolvency issues before a large multi-employer pension plan fails?

Answer 1. The Secretary of Labor is Chair of the Pension Benefit Guaranty Corporation's (PBGC) Board of Directors. The PBGC's multi-employer pension program is woefully underfunded and is facing the insolvency of several large multi-employer pension plans in the near future. This is a serious issue that requires thoughtful consideration. I believe most, if not all, potential solutions would require congressional action. If confirmed, and as Congress continues to have these discussions, I look forward to working with the President, Congress, and other stakeholders to find a solution to protect workers' pensions.

Question 2. In May, Department of Labor guidance for States that established payroll-deduction IRA plans for workers without access to a retirement savings plan through their employers was repealed by Congress and signed by the President.

Do you support the original guidance?

What steps should the Department of Labor take to increase access to retirement savings options for employees who do not have access to such plans through an employer?

Answer 2. I understand the rules you reference were nullified by a Congressional Review Act resolution of disapproval and, if confirmed, I look forward to being briefed by Employee Benefits Security Administration (EBSA) staff regarding options to encourage more Americans to save for retirement, including those who do not have access to a retirement plan through their employer.

Question 3. The Rehabilitation Act is a critical law that authorizes the formula grant programs for vocational rehabilitation, supported employment, independent living, and client assistance throughout the Nation. Sections 501 of the law directs the Federal Government to recruit and hire people with disabilities. Section 503 requires Federal contractors to recruit and hire people with disabilities. Section 508 describes accessibility requirements for federally funded programs. While the Rehabilitation Act has helped advance and expand the opportunities of people with disabilities in the workforce, people with disabilities still face many barriers when compared to people without disabilities. Because the Rehabilitation Act and State vocational rehabilitation agencies have been incorporated into the broader workforce development system under the Workforce Innovation and Opportunity Act, will your Department work closely with the Department of Education to ensure that people with disabilities seeking employment and training services are able to avail themselves of all necessary services under State workforce systems? How will your Department engage in this work?

Answer 3. If confirmed, I look forward to being briefed on the coordination that has occurred between the Department of Labor's Employment and Training Administration and Office of Disability Employment Policy and the Department of Education. I believe it is important to ensure that individuals with disabilities have access to services in the State workforce systems and, to the extent the programs may be duplicative, that they are streamlined so that funding is maximized to help as many individuals with disabilities access services as possible.

Question 4. As the agency responsible for enforcing many of the laws that ensure safe and fair employment practices, the Department of Labor has a heightened responsibility to ensure its own labor and employment practices are unimpeachable. Will you commit to ensuring that hiring, transfers, and workplace practices are not politicized at the Department of Labor, and that employees at the Department of Labor comply with all labor and employment laws, including the Civil Service Reform Act?

Answer 4. There are many legal protections for civil servants. Political views should not be considered in the hiring of career civil servants and the government has a selection process that must be followed. If confirmed, I will follow the law and commit to protecting the rights of all civil servants at the Department of Labor. Inappropriate or unlawful conduct will be subject to appropriate disciplinary action.

RESPONSE BY MARVIN KAPLAN TO QUESTIONS OF SENATOR ROBERTS, SENATOR MURRAY, SENATOR CASEY, SENATOR FRANKEN, SENATOR WHITEHOUSE, SENATOR WARREN, AND SENATOR KAINE

SENATOR ROBERTS

Question 1. Mr. Kaplan, as you know, in a 1979 case called *NLRB v. Catholic Bishop of Chicago*, the U.S. Supreme Court held that the NLRB had no jurisdiction over instructors at church-operated schools. In a 2014 case called *Pacific Lutheran University*, the NLRB chose in a divided 3-2 opinion to disregard that judicial precedent and instead adopted a test where the NLRB will assert jurisdiction unless a religious-affiliated institution in part proves to the NLRB's satisfaction that it holds out its faculty as performing a "specific religious function."

If confirmed, should a situation arise where a case is brought before the NLRB, will you give this issue the careful attention it deserves and be sure to give proper weight to precedent in similar cases?

Answer 1. If confirmed, all my decisions will be based on the facts before us, legislative text, legislative history, Board and court precedent, an analysis of the party's briefs, staff recommendations, and discussions with my fellow Board members.

Question 2. Mr. Kaplan, in the 2004 decision in *Lutheran Heritage Village-Livonia*, the Board has determined work rules and handbook provisions are unlawful if employees "would reasonably construe" them to prohibit protected activities under Section 7 of the NLRA. Under this standard, the Board has found dozens of facially neutral employment policies to be unlawful, raising real questions about how employers can draft, let alone implement, responsible employment policies.

If confirmed, should a situation arise where a case is brought before the NLRB, will you give this issue the careful attention it deserves?

Answer 2. If confirmed, I will give each case that comes before the Board the careful attention it deserves.

SENATOR MURRAY

Question 1. What, in your view, is the mission of the agency to which you have been nominated?

Answer 1. The National Labor Relations Board is responsible, as the National Labor Relations Act and its amendments provide, for ensuring employees have the

"right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in [the Act]."

Question 2. Do you believe that the purpose of the National Labor Relations Act (NLRA), enforced by the National Labor Relations Board (NLRB or Board), is to encourage and protect workers' rights to organize and engage in collective bargaining with their employers? If not, please describe in detail your views on the purpose of the NLRA and the Board.

Answer 2. Taken together, the NLRA and the Taft-Hartley amendments encourage and protect workers' rights to organize and collective bargain if they so choose. As a corollary, employees have the right to refrain from any of these activities, as well, if they so choose.

Question 3. Please describe your views on the role and importance of labor unions in today's workplaces and economy.

Answer 3. Labor unions are one important avenue through which employees can strive to achieve better working conditions, including higher wages and better benefits. Labor organizations can also provide a means through which employees can express their opinions in the workplace if they so choose.

Question 4. What, in your view, is a scenario in which it would be appropriate for the NLRB to take action against a company who is unfairly retaliating against workers based on antiunion hostility?

Answer 4. It would be appropriate for the NLRB to find a violation and provide relief when an employer discharges an employee for supporting a labor organization in violation of section 8(a)(3) of the National Labor Relations Act.

Question 5. Do you agree that the workplace and the employer-employee relationship has changed dramatically in recent years, and can you describe what you see as the key changes affecting workers' ability to join together and engage in collective bargaining? What are some of those challenges and how would you address them?

Answer 5. The overwhelming change that has occurred is globalized competition, but any changes that would fundamentally alter the application of the National Labor Relations Act should come from Congress, through the legislative process, not the Board.

Question 6. Do you believe the designation of workers as independent contractors rather than employees is a practice that is increasing?

Answer 6. There is evidence the designation of workers as independent contractors is increasing. According to a report published by the National Bureau of Economic Research, more than 16 percent of U.S. workers participate in flexible contract work as their primary job, a 56 percent increase over the past 10 years.

Question 7. Please provide your view on when the NLRB should overturn settled precedents, and what the standard should be in doing so.

Answer 7. The NLRB should endeavor to maintain stability in labor law. Among other things, deference to precedent should be based on the length of time it has been precedent and the number of times it has been upheld by subsequent Boards.

Question 8. What specific considerations will you rely upon when deciding whether to authorize petitions to have a recidivist violator of the NLRA held in contempt of court for violating a court order?

Answer 8. The Board has long had a unit responsible for considering whether recidivist violators of the NLRA who disobey court-enforced NLRB orders should be held in contempt of court. To the best of my knowledge that office operates well. If confirmed, I would be inclined to respect its recommendations.

Question 9. Do you believe there were instances where the Board exceeded its authority during the Obama administration? In what cases?

Answer 9. I have not prejudged any of the issues addressed by the Board during the previous administration. If confirmed, my decisions will be based on the facts before us, legislative text, legislative history, Board and court precedent, an analysis of the party's briefs, staff recommendations, and discussions with my fellow Board members.

Question 10. The Board has been the target of criticism for its use of adjudication rather than rulemaking to establish policy. Under President Obama, the Board conducted two major notice-and-comment rulemakings for the first time in decades. If confirmed, do you intend to continue this practice of making new rules or altering existing rules through notice-and-comment procedures?

Answer 10. The Board has the authority to establish policy through rulemaking. Whether rulemaking is an appropriate mechanism to establish specific policies must be evaluated on a case-by-case basis. Among other things, in the event that the Board does take part in rulemaking, I would strongly advocate for providing the public ample opportunity to review, analyze, and comment on the particular rule.

Question 11. The Administrative Conference of the United States has recommended that agencies "should develop processes for systematic review of existing regulations" and that they "should provide adequate opportunity for public involvement in both the priority-setting and review processes." If confirmed, will you conduct robust, transparent retrospective reviews prior to any revision or reversal of existing NLRB law?

Answer 11. Your premise deals with regulations. See my answer to question 10 above. Regarding revision or reversal of existing NLRB law, please see my answer on precedent above.

Question 12. Do you believe that existing doctrines and regulations should only be changed where there is empirical evidence suggesting that they are flawed, or is it appropriate for the Board to revise rules even if such revisions are not supported by concrete evidence?

Answer 12. As stated above, if confirmed, my decisions will be based on the facts before us, potentially including empirical evidence, legislative text, legislative history, Board and court precedent, an analysis of the party's briefs, staff recommendations, and discussions with my fellow Board members.

Question 13. Please describe in detail your experience working on issues involving the National Labor Relations Act.

Answer 13. At the direction of the Chairmen of both the House Committee on Oversight and Government Reform and the Committee on Education and the Workforce, I conducted oversight of the National Labor Relations Board. True oversight requires a thorough understanding of the authorizing statute, in this case the National Labor Relations Act, and Board and court cases interpreting the Act. This work also involved considering the interest of employees, unions, and employers covered by the Act. Additionally, at the Committee on Education and the Workforce, as Workforce Policy Counsel, I counseled the Chairman on labor policy, which required a thorough review of the National Labor Relations Act, the legislative history, and Board and court cases interpreting the Act.

Question 14a. Please describe your experience representing employers, workers, or unions in proceedings before the National Labor Relations Board. Specifically:

Have you ever filed a charge with the Board?

Answer 14a. No.

Question 14b. Have you ever handled an unfair labor practice case or representation case before the Board?

Answer 14b. No.

Question 14c. Have you ever represented a party in the court of appeals related to a petition for review of a Board order?

Answer 14c. No.

Question 15. Have you ever represented a worker in an employment matter?

Answer 15. No.

Question 16. During your confirmation hearing before the committee, I asked whether you have ever been involved in efforts to protect workers' right to organize. In response, you cited the oversight you conducted as a staff member in the House of Representatives, which you testified "made sure the agency operated within its statutory authority." Can you provide a specific example of oversight you conducted that was not critical of the NLRB's decisions or actions, and additionally how that oversight advanced workers' rights to organize?

Answer 16. In 2011, Inspector General David Berry issued a report entitled "Case Processing Costs" which indicated the NLRB regional offices could achieve greater efficiencies by consolidating offices and eliminating positions in overstaffed regions by attrition. In 2012, as Workforce Policy Counsel for the House Education and the Workforce Committee, I worked extensively with NLRB Inspector General and the National Labor Relations Board to institute reforms related to the IG's 2011 findings. Ultimately, the NLRB consolidated offices from 32 to 26. Greater efficiency is essential to the expeditious handling of both unfair labor practice charges and elections which, in turn, is essential to protecting the rights of workers to organize. See also my answer to #13 above.

Question 17. With regard to your positions with the U.S. House of Representatives' Committee on Oversight and Government Reform and the Committee on Education and Workforce, please provide a list of all hearings, oversight requests, and legislation (including appropriations riders) pertaining to the NLRB in which you participated during your tenure on Capitol Hill.

Answer 17. I do not have records of all hearings, oversight requests, and legislation pertaining to the NLRB in which I participated during my time on Capitol Hill.

While serving as counsel for the House Committee on Oversight and Government Reform, the committee did not hold hearings or advance legislation pertaining to the NLRB. Unfortunately, the House Committee on Oversight and Government Reform Activity Reports do not appear to include specific oversight activities of the minority. In an attempt to provide the information requested, I reached out to House Committee on Oversight and Government Reform, but they could not provide the information. As such, I cannot provide a list of oversight requests pertaining to the

NLRB in which I participated during my time at the House Committee on Oversight and Government Reform.

The following list includes the hearings, oversight requests, and legislation, based on the House Committee on Education and the Workforce Activity Reports available on the committees' Web sites, pertaining to the NLRB in which I participated during my time at the House Committee on Education and the Workforce.

Committee on Education and the Workforce Hearings

- February 11, 2011—"Emerging Trends at the National Labor Relations Board"
- March 31, 2011—"The Future of Union Transparency and Accountability"
- May 26, 2011—"Corporate Campaigns and the NLRB: The Impact of Union Pressure on Job Creation"
- July 7, 2011—"Rushing Union Elections: Protecting the Interests of Big Labor at the Expense of Workers' Free Choice"
- September 22, 2011—"Culture of Union Favoritism: Recent Actions of the National Labor Relations Board"
- October 12, 2011—H.R. 3094, "Workforce Democracy and Fairness Act"
- February 7, 2012—"The NLRB Recess Appointments: Implications for America's Workers and Employers"
- July 25, 2012—"Examining Proposals to Strengthen the National Labor Relations Act"
- September 12, 2012—"Expanding the Power of Big Labor: The NLRB's Growing Intrusion into Higher Education"
- February 13, 2013—"The Future of the NLRB: What Noel Canning vs. NLRB Means for Workers, Employers and Unions"
- June 26, 2013—H.R. 2346, "Secret Ballot Protection Act," and H.R. 2347, "Representation Fairness Restoration Act"
- September 19, 2013—"The Future of Union Organizing"
- March 5, 2014—"Culture of Union Favoritism: The Return of the NLRB's Ambush Election Rule"
- May 8, 2014—"Big Labor on College Campuses: Examining the Consequences of Unionizing Student Athletes"
- June 24, 2014—"What Should Workers and Employers Expect Next From the National Labor Relations Board?"
- September 9, 2014—"Expanding Joint Employer Status: What Does it Mean for Workers and Job Creators?"
- June 3, 2015—"Compulsory Unionization through Grievance Fees: The NLRB's Assault on Right-to-Work"
- June 16, 2015—H.R. 511, "Tribal Labor Sovereignty Act of 2015"
- September 29, 2015—H.R. 3459, "Protecting Local Business Opportunity Act"

Committee on Education and the Workforce Oversight

- March 3, 2011—Letter to Chairman Wilma Liebman, National Labor Relations Board (NLRB), regarding the NLRB budget.
- March 4, 2011—Letter to Chairman Wilma Liebman, National Labor Relations Board (NLRB), regarding NLRB advertisements.
- March 7, 2011—Letter to Chairman Wilma Liebman, National Labor Relations Board, regarding the *Specialty Healthcare* case.
- May 5, 2011—Letter to Acting General Counsel Lafe Solomon, National Labor Relations Board, regarding the *Boeing* case.
- May 11, 2011—Letter to Chairman Wilma Liebman, National Labor Relations Board, regarding the *Specialty Healthcare* case.
- October 14, 2011—Letter to Chairman Mark Pearce, National Labor Relations Board, regarding a request for information on pending union election challenges.
- October 27, 2011—Letter to Chairman Mark Pearce, National Labor Relations Board, regarding the June 22, 2011 proposed rule on union election procedures.
- November 18, 2011—Letter to Chairman Mark Pearce, National Labor Relations Board, regarding the June 22, 2011 proposed rule on union election procedures.
- December 16, 2011—Letter to Acting General Counsel Lafe Solomon, National Labor Relations Board, requesting documents and communications related to the Board's complaint against the Boeing Corporation.
- January 6, 2012—Letter to Chairman Mark Pearce, National Labor Relations Board, requesting documents drafted in whole or in part by the January 2012 recess appointees to the National Labor Relations Board during their time of employment by the Board.
- January 12, 2012—Letter to President Barack Obama opposing the January 2012 recess appointments to the National Labor Relations Board while the Senate was regularly meeting in *pro forma* session.

- March 28, 2012—Letter to Chairman Mark Pearce, National Labor Relations Board, regarding the Board’s information campaign focusing on workers’ rights to engage in protected concerted activity.
- April 13, 2012—Letter to Inspector General David Berry, National Labor Relations Board, regarding possible *ex parte* communications in the *Boeing* case by Acting General Counsel Solomon.
- May 9, 2012—Letter to Acting General Counsel Lafe Solomon, National Labor Relations Board, regarding a request for information relating to the Board’s policy changing the timing for representational pre-elections.
- May 17, 2012—Letter to Acting General Counsel Lafe Solomon, National Labor Relations Board, regarding the Board’s position on nationwide enforcement of a regulation in the event of a split in the Federal circuit courts.
- August 8, 2012—Letter to Chairman Mark G. Pearce, National Labor Relations Board, regarding a request for a briefing related to the Board’s newly established Office of the Chief Financial Officer.
- September 17, 2012—Letter to Attorney General Eric H. Holder, U.S. Department of Justice, regarding allegations by the National Labor Relations Board Office of Inspector General that the Acting General Counsel for the National Labor Relations Board, Lafe Solomon, engaged in ethical and criminal misconduct.
- November 29, 2012—Letter to Chairman Mark G. Pearce, National Labor Relations Board, and Acting General Counsel Lafe Solomon, National Labor Relations Board, regarding Office of Inspector General’s finding that personnel in the Division of Advice and Region 19 infringed upon statutory prohibitions regarding *ex parte* communications to Board Members.
- March 15, 2013—Letter to Chairman Mark G. Pearce, National Labor Relations Board and to Lafe E. Solomon, Acting General Counsel, National Labor Relations Board regarding the effect of sequestration under the Budget Control Act of 2011 on the National Labor Relations Board.
- May 14, 2013—Letter to Ms. Kathryn Ruemmler, Counsel to the President, The White House, requesting information related to the nomination of Richard Griffin to the National Labor Relations Board.
- March 25, 2014—Letter to Chairman Mark Pearce, National Labor Relations Board (NLRB), requesting a 30-day extension of the comment period for the NLRB’s February 6, 2014, representation-case procedures proposed rule.
- April 7, 2014—Letter to Chairman Mark Pearce, National Labor Relations Board (NLRB), stating opposition to the NLRB’s February 6, 2014, representation-case procedures proposed rule.
- July 8, 2014—Letter to Chairman Mark Pearce, National Labor Relations Board (NLRB), requesting a briefing regarding the NLRB’s planned response to the Supreme Court’s Noel Canning decision, holding that President Obama’s January 2012 recess appointments to the NLRB are unconstitutional.
- September 16, 2014—Letter to General Counsel Richard Griffin, National Labor Relations Board, requesting information regarding the joint-employer test under the National Labor Relations Act.
- November 14, 2014—Letter to General Counsel Richard Griffin, National Labor Relations Board, requesting a briefing regarding NLRB’s August 8, 2014 guidance to personnel concerning steps they should take to identify alleged wrongdoing under the Occupational Safety and Health Act and the Fair Labor Standards Act.
- February 2, 2015—Letter to Chairman Mark Pearce, National Labor Relations Board, requesting documents and communications related to the timing of the Board’s publication of the “ambush election” rulemaking when it failed to be reported as a short-term action in the 2014 Fall Unified Agenda.

Committee on Education and the Workforce Legislation

- H.R. 3094, Workforce Democracy and Fairness Act
 H.R. 2587, Protecting Jobs From Government Interference Act
 H.R. 2346, Secret Ballot Protection Act
 H.R. 2347, Representation Fairness Restoration Act
 H.R. 1120, The Preventing Greater Uncertainty in Labor-Management Relations Act
 H.R. 4321, Employee Privacy Protection Act
 H.R. 511, Tribal Labor Sovereignty Act of 2015
 H.R. 3459, Protection Local Business Opportunity Act
 H.J. Res. 29, “Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the National Labor Relations Board relating to representation case procedures”

Question 18. On March 8, 2011, Congressmen John Kline and Darrell Issa sent a letter to former NLRB Chairman Wilma Liebman requesting, in part, an exten-

sion of the comment period on the invitation to file briefs in *Specialty Healthcare*, and specific information including communications and financial analysis related to that case. Congressman Kline sent a followup letter about this issue to Chairman Liebman on May 11 repeating the request for documents. Did you participate in drafting these letters? Do you believe that the process in the *Specialty Healthcare* case, which has now been affirmed by seven courts of appeals, was insufficient?

Answer 18. As Workforce Policy Counsel of the House Committee on Education and the Workforce, I participated in the drafting of the letters for Chairmen Kline and Issa. The positions taken in this letter do not necessarily represent my views. The National Labor Relations Board did not provide sufficient information to judge the sufficiency of the process.

Question 19. Did you participate in drafting legislation to reverse and override the NLRB's decision in *Specialty Healthcare* (involving the standard for determining appropriate bargaining units)?

Answer 19. As Workforce Policy Counsel of the House Committee on Education and the Workforce, I participated in the drafting of legislation for the Chairman and Members of Congress, including the Workforce Democracy and Fairness Act and the Representation Fairness Restoration Act. The positions taken in these bills do not necessarily represent my views. They express the views of the Congressmen that introduced them. See also answer 20 below.

Question 20. Do you believe that the *Specialty Healthcare* decision should be overturned?

Answer 20. I have not prejudged the issues presented in *Specialty Healthcare*. If confirmed, my decision in a case that requires the Board to evaluate the appropriateness of a bargaining unit will be based on the facts before us, legislative text, legislative history, Board and court precedent, an analysis of the party's briefs, staff recommendations, and discussions with my fellow Board members.

Question 21. On October 27, 2011 Congressman John Kline sent a letter to Chairman Mark Pearce regarding the proposed NLRB rule to shorten the time between a petition for an election and the actual election. The letter expressed that he "reject[ed] both the need for this rule change and the appropriateness of the Board's proposal." The letter also requested information related to the rulemaking including a list of NLRB staff who were working on the rule and a timeline of planned Board actions regarding the rulemaking. Did you participate in drafting the letter? If so, will you recuse yourself from matters relating to the NLRB election rule?

Answer 21. As Workforce Policy Counsel of the House Committee on Education and the Workforce, I participated in the drafting of the letter for Chairman Kline. The positions taken in this letter do not necessarily represent my views. I have had general discussions regarding the standards for recusal with the NLRB ethics office. If I am confirmed, I will continue to seek their advice and act appropriately. See also my answer to #24 below.

Question 22. Did you participate in the preparation of hearings critical of the NLRB's election rules?

Answer 22. As Workforce Policy Counsel of the House Committee on Education and the Workforce, I assisted in the preparation of hearings related to the NLRB, including those analyzing NLRB election rules. See also my answer to #24 below.

Question 23. Did you participate in the drafting of legislation to overturn the election rules?

Answer 23. As Workforce Policy Counsel of the House Committee on Education and the Workforce, I participated in the drafting of amendments to the National Labor Relations Act as directed by the Chairman and Members of Congress, including the Workforce Democracy and Fairness Act which addressed union elections. The positions taken in the bill does not necessarily represent my views. It expresses the views of the Congressmen that introduced it. See also answer 24 below.

Question 24. Do you believe the election rules, which have been upheld in their entirety by the three courts and have had their desired effect of reducing delay from the time of an election petition to an election, should be revised?

Answer 24. If I am confirmed and the Board revisits the election rules through the adjudicatory process or formal rulemaking, any revisions to the election rules to which I agree will be based on the facts before us, legislative text, legislative history, Board and court precedent, an analysis of the party's briefs or public comments, staff recommendations, and discussions with my fellow Board members.

Question 25. Did you work on legislation to overturn the NLRB's *Browning-Ferris* decision on the standard for finding two employers to be joint employers?

Answer 25. As Workforce Policy Counsel of the House Committee on Education and the Workforce, I participated in the drafting of amendments to the National Labor Relations Act as directed by the Chairman and Members of Congress. This includes the Protecting Local Business Opportunity Act which set out a standard for determining whether two employers are joint employers. The positions taken in the bill does not necessarily represent my views. It expresses the views of the Congressmen that introduced it. See also answer 26 below.

Question 26. Do you believe that the NLRB's *Browning-Ferris* decision should be overturned?

Answer 26. I have not prejudged the issues presented in *Browning-Ferris*. If confirmed, my decision in a case that raises joint employer issues will be based on the facts before us, legislative text, legislative history, Board and court precedent, an analysis of the party's briefs, staff recommendations, and discussions with my fellow Board members.

Question 27. If you are confirmed, please explain the approach that you will take with regard to recusal on issues that come before the Board where you have directly engaged in efforts that suggest you may have prejudged the issues including the *Browning-Ferris* decision, the *Specialty Healthcare* decision, and the election rule.

Answer 27. I have had general discussions regarding the standards for recusal with the NLRB ethics office. If I am confirmed, I will continue to seek their advice and act appropriately. See also my answers to #20 and #26 above.

Question 28. On May 5, 2011, Congressmen John Kline and Phil Roe sent a letter to former Acting General Counsel Lafe Solomon regarding the NLRB's complaint that Boeing officials publicly acknowledged moving jobs for the Dreamliner production to South Carolina as a result of work stoppages in Washington State. The letter questioned the "appropriateness and evolution" of the complaint and requested information including all documents and communications between NLRB Region 19 office and the NLRB National office about Boeing complaint as well as an explanation of why NLRB made its decision. Did you participate in drafting that letter? Do you believe it is appropriate for Congress to seek these types of communications from the NLRB?

Answer 28. As Workforce Policy Counsel of the House Committee on Education and the Workforce, I participated in the drafting of the letter for Chairman Kline and Congressman Roe. The positions taken in this letter do not necessarily represent my views. Congressional oversight is implied by the Constitution since Congress possesses "all legislative powers." The Supreme Court has ruled congressional oversight must have a "legislative purpose." Chairman Kline and Congressman Roe requested the information to evaluate the issue and determine whether legislation was necessary. Ultimately, then-Congressman Tim Scott introduced the Protecting Jobs From Government Interference Act. If confirmed, I will confer with NLRB staff and the other members of the Board on all oversight requests and, as has been the tradition for previous Boards, endeavor to cooperate regarding oversight requests.

Question 29. On December 16, 2011, Congressmen John Kline and Phil Roe sent another letter to former Acting General Counsel Lafe Solomon regarding the NLRB complaint against Boeing related to transfer of work from Washington State, which had subsequently been withdrawn by the complainant. The letter accuses Mr. Solomon of intending to "apply government pressure on a private employer in the middle of a labor dispute," and calls the action "bureaucratic overreach." The letter also requests information including all communication between the NLRB and outside parties and all communication between the Acting General Counsel and NLRB Board members related to the case. Did you participate in drafting that letter? Do you believe it is appropriate for Congress to seek these types of communications from the NLRB?

Answer 29. As Workforce Policy Counsel of the House Committee on Education and the Workforce, I participated in the drafting of the letter for Chairman Kline and Congressman Roe. The positions taken in this letter do not necessarily represent my views. As stated previously, congressional oversight is implied by the Constitution since Congress possesses "all legislative powers." The Supreme Court has ruled congressional oversight must have a "legislative purpose." Chairman Kline and Congressman Roe requested the information to evaluate the issue and determine whether legislation was necessary. Ultimately, then-Congressman Tim Scott introduced the Protecting Jobs From Government Interference Act. If confirmed, I will confer with NLRB staff and the other members of the Board on all

oversight requests and, as has been the tradition for previous Boards, endeavor to cooperate regarding oversight requests.

Question 30. Do you believe it was appropriate for the House Oversight Committee to subpoena the NLRB Acting General Counsel to testify at a field hearing at the site of the Boeing facility that was the subject of the NLRB complaint?

Answer 30. I have no knowledge of the events surrounding the subpoena of Acting General Counsel Solomon. As such, I have no opinion as to the appropriateness of the subpoena.

Question 31. What is the appropriate role of an NLRB member in facilitating oversight by Members of Congress?

Answer 31. Members of Congress should confer with NLRB staff and the other members of the Board, and, as has been the tradition for previous Boards, endeavor to cooperate regarding oversight requests.

Question 32. Is it appropriate for a single NLRB member to respond to an oversight request without consulting counsel's office and working with the other NLRB members?

Answer 32. Board Members should generally attempt to work together, and with their professional staff, to appropriately respond to congressional oversight requests.

Question 33. Will you commit to working with other NLRB members to fully respond to congressional oversight requests made during your tenure at NLRB?

Answer 33. If confirmed, I will confer with NLRB staff and the other members of the Board on all oversight requests and, as has been the tradition for previous Boards, endeavor to cooperate regarding oversight requests.

SENATOR CASEY

Question 1. Do you support the Board's rulemaking authority?

Answer 1. Yes.

Question 2. Who did you speak with to prepare for your July 13, 2017 NLRB confirmation hearing?

Answer 2. NLRB staff; NLRB Chairman Philip Miscimarra; Senate Health, Education, Labor, and Pension Majority Staff; Former-NLRB member Charles Cohen; Former-NLRB member Brian Hayes; Former-NLRB General Counsel Ronald Meisburg; Loren Sweatt, Senior Policy Advisor, House Committee on Education and the Workforce; and John Martin, Professional Staff Member, House Committee on Education and the Workforce.

Question 3. What is your view on the authority of precedent: is the Board bound by its precedent?

Answer 3. The NLRB should endeavor to maintain stability in labor law. Among other things, deference to precedent should be based on the time it has been precedent and the number of times it has been upheld by subsequent Boards. If, after a thorough analysis of the facts, legislative text, and legislative history, evaluation of the briefs, meetings with staff, and discussions with fellow members, a change in longstanding settled precedent is appropriate, the Board should adhere to the tradition of requiring three votes in the affirmative.

Question 4. Will you recuse yourself from any cases before the NLRB that involve President Trump's business—especially the businesses he visits and promotes as President?

Answer 4. I will confer with the NLRB ethics office to determine whether recusal is necessary.

Question 5. List and discuss specific examples of how workers have benefited from the result of your professional actions.

Answer 5. At the direction of the Chairmen of both the House Committee on Oversight and Government Reform and the Committee on Education and the Workforce, I conducted oversight of the National Labor Relations Board. True oversight requires a thorough understanding of the authorizing statute, in this case the National Labor Relations Act, and Board and court cases interpreting the Act. This work also involved considering the interest of employees, unions, and employers covered by the Act.

In 2011, Inspector General David Berry issued a report entitled "Case Processing Costs" which indicated the NLRB regional offices could achieve greater efficiencies by consolidating offices and eliminating positions in overstuffed regions by attrition.

In 2012, as workforce policy counsel for the House Education and the Workforce Committee, I worked extensively with NLRB Inspector General and the National Labor Relations Board to institute reforms related to the IG's 2011 findings. Ultimately, the NLRB consolidated offices from 32 to 26. Greater efficiency is essential to the expeditious handling of both unfair labor practice charges and elections, which, in turn, is essential to protecting the rights of workers to organize.

SENATOR FRANKEN

Question. Would you agree that in general, a company is not allowed to avoid an existing union contract simply by reincorporating under a new name, with substantially the same ownership, management, and assets? Please explain.

Answer. Yes. However, determining whether a company is an alter ego, single employer, or successor is a very fact-intensive process. If confirmed, any decision I render will be based on the facts before us, legislative text, legislative history, Board and court precedent, an analysis of the party's briefs, staff recommendations, and discussions with my fellow Board members.

SENATOR WHITEHOUSE

Question 1. 1. At your nomination hearing, you committed to "respect longstanding precedent." What is your interpretation of "longstanding precedent?" Does the Board's decision in *Browning-Ferris* count as "longstanding precedent?"

Answer 1. I believe longstanding precedent is precedent that has stood for a substantial period and has been upheld by subsequent Boards. I would not characterize the Board's *Browning-Ferris* decision as longstanding precedent. However, as precedent, if confirmed, I would afford the *Browning-Ferris* decision the respect and deference it deserves.

I have not prejudged the issues presented in *Browning-Ferris*. If confirmed, my decision in a case that raises joint employer issues will be based on the facts before us, legislative text, legislative history, Board and court precedent, an analysis of the party's briefs, staff recommendations, and discussions with my fellow Board members.

Question 2. Can you pledge that there will be no preferential treatment for any businesses owned by President Trump that may have cases that come before the NLRB?

Answer 2. If confirmed, I pledge I will give no preferential treatment to any businesses owned by President Trump or any other individual.

Question 3. Will you fully cooperate with any inquiries from the GAO, or the NLRB IG?

Answer 3. Yes.

Question 4. The Trump Budget proposed to cut NLRB staff by 18 percent. How would such a funding cut affect the NLRB's work?

Answer 4. I am not familiar with the current disposition of NLRB funds. However, if confirmed, I look forward to working with the General Counsel and my fellow Board members to determine the best distribution of NLRB funds and identify areas where efficiency can be improved to maximize those funds.

Question 5. NOAA, NASA, the U.S. National Academies of Sciences, and 31 leading, nonpartisan scientific societies all agree that climate change is real and humans are major contributors to it. Do you believe climate change is real? Do you personally believe that human activity contributes to climate change?

Answer 5. Yes and yes.

Question 6. Will you sign the Trump Ethics pledge? Do you expect to request any waivers to the Trump Ethics pledge? If so, please explain.

Answer 6. Yes, I will sign the Trump Ethics pledge. I do not plan to seek a waiver.

Question 7. Have you ever solicited money for a 501(c)(4) political organizations? If so, for what organization? From whom? In what amounts? When were these donations solicited?

Answer 7. No, I have not solicited money for a 501(c)(4) political organization.

Question 8. For anyone listed above, will you recuse yourself from any issues involving these individuals or organizations in your role as Board Member?

Answer 8. N/A.

SENATOR WARREN

Question 1a. If confirmed, do you believe that it is appropriate for you to rule on a case to which a company owned by the President who nominated you is a party?
Answer 1a. Yes.

Question 1b. If so, do you believe that such circumstances create a perceived, if not real, conflict of interest?

Answer 1b. If confirmed, I will rely on the NLRB ethics staff to ensure there are no conflicts of interest and I will abide by their determinations.

Question 1c. If not, will you commit to recusing yourself from any such case?

Answer 1c. N/A.

Question 2. Please describe your view on the weight of NLRB precedent as the Board considers a case with relevant precedent.

Answer 2. Among other things, deference to precedent should be based on the length of time a decision has stood as precedent and the number of times it has been upheld by subsequent Boards.

Question 3a. Please describe what you believe to be the role of a member of the Board in accommodating oversight requests by Members of Congress.

Answer 3a. As has been the tradition for previous Boards, the NLRB should endeavor to cooperate regarding oversight requests.

Question 3b. Will you commit to responding in full to any requests from chairs or ranking members of relevant committees, or requests from Members of Congress on NLRB matters?

Answer 3b. If confirmed, I will confer with NLRB staff and the other members of the Board on all oversight requests and, as has been the tradition for previous Boards, endeavor to cooperate regarding oversight requests.

SENATOR KAINE

Question 1a. In hearing cases on unfair labor practices and union representation, the National Labor Relations Board (NLRB) must enforce the National Labor Relations Act in light of the prior decisions of the board and the present-day circumstances of the case at issue. While precedent is often a guiding force in such determinations, the board does occasionally overturn or clarify aspects of prior decisions. For example, in *Browning-Ferris*, the NLRB reversed a decades-old standard regarding when two or more businesses should be considered “joint employers” for the same set of employees, modifying the standard to include “indirect control” over the terms and conditions of employment or the capability for exerting such control. In discussing the rationale for this decision, the NLRB noted that the previous joint employer standard was anachronistic and needed to be updated to reflect new economic conditions and the increased prevalence of contingent employment relationships.

In your opinion, what factors should be taken into consideration when deciding whether to uphold, modify, or reverse existing legal standards?

Answer 1a. The NLRB should endeavor to maintain stability in labor law. Among other things, deference to precedent should be based on the length of time a decision has stood as precedent and the number of times it has been upheld by subsequent Boards. If, after a thorough analysis of the facts, legislative text, and legislative history, evaluation of the briefs, meetings with staff, and discussions with fellow members, a change in long standing settled precedent is appropriate, the Board should adhere to the tradition of requiring three votes in the affirmative.

Question 1b. How reactive should the interpretation of existing law be to emerging trends and changes in the workforce and the employer-employee relationship?

Answer 1b. If confirmed, I will apply the language of the National Labor Relations Act and its amendments to matters that come before the Board. Emerging trends and changes in the workforce and the employer-employee relationship should be dealt with by Congress through the legislative process.

Question 2a. Do you feel that interpretations of the NLRA that could potentially increase the amount of collective bargaining in a business or industry through allowing for the unionization of subsets of employees (i.e., “micro units”) within the larger employee pool or expanding the scope of the definition of an employer would make collective bargaining more or less effective for employers and employees?

Answer 2a. The *Specialty Healthcare* and *Browning-Ferris* decisions are relatively new. It is unclear whether or not they have made collective bargaining more or less effective for employers and employees.

I have not prejudged the issues presented in *Specialty Healthcare* or *Browning-Ferris*. If confirmed, my decision in a case that requires the Board to evaluate the appropriateness of a bargaining unit or raises joint employer issues will be based on the facts before us, legislative text, legislative history, Board and court precedent, an analysis of the party's briefs, staff recommendations, and discussions with my fellow Board members.

Question 2b. What challenges could arise from more liberal interpretations of what constitutes an appropriate bargaining unit or an employer?

Answer 2b. Different interpretations could create confusion or uncertainty. Segmented workplaces may raise issues for employees, potentially limiting their opportunities for cross training, advancement, and additional work hours. Increasing the number of employers at the bargaining table could complicate the bargaining process, delaying collective bargaining agreements and increasing the likelihood of impasse.

Question 2c. In your opinion, would such interpretations of the NLRA ultimately put employees in stronger or weaker bargaining positions?

Answer 2c. It would depend on the facts of a particular case.

Question 2d. In your opinion, what effect, if any, would such interpretations of the NLRA have on franchises, staffing agencies, and the way that such entities approach business operations?

Answer 2d. I have no personal experience with franchising or staffing agencies and thus, I am not in a position to comment as to what effect these decisions would have on business operations.

Again, I have not prejudged the issues presented in *Specialty Healthcare* or *Browning-Ferris*. If confirmed, my decision in a case that requires the Board to evaluate the appropriateness of a bargaining unit or raises joint employer issues will be based on the facts before us, legislative text, legislative history, Board and court precedent, an analysis of the party's briefs, staff recommendations, and discussions with my fellow Board members.

Question 3a. In *Murphy Oil*, the Fifth Circuit ruled that arbitration agreements containing class waivers are enforceable, directly contradicting the NLRB's prior decision to invalidate such agreements in *D.R. Horton*. In *Epic Systems* and *Ernst & Young*, the Seventh and Ninth Circuits interpreted this question differently and upheld the NLRB's position in *D.R. Horton*. The Supreme Court has agreed to hear all three of these cases and will review this issue in its 2017–18 term.

In your opinion, how far does the NLRA's protection of the right of employees to engage in "concerted activity" extend?

Answer 3a. With few exceptions, the National Labor Relations Act protects union and non-union employees who engage in concerted activity for mutual aid or protection.

Question 3b. Could the right to engage in concerted activities be interpreted to create a substantive right to bring class or collective actions that trumps the terms of arbitration agreements?

Answer 3b. The courts have split on this question and the Supreme Court is likely to rule soon. The objectives of the Federal Arbitration Act must be balanced against those of the National Labor Relations Act. I have not prejudged the issues presented in *Murphy Oil* and similar cases. If confirmed, my decision in such cases will be based on the facts before us, legislative text, legislative history, Board and court precedent, an analysis of the party's briefs, staff recommendations, and discussions with my fellow Board members.

RESPONSE BY WILLIAM EMMANUEL TO QUESTIONS OF SENATOR ROBERTS, SENATOR MURRAY, SENATOR CASEY, SENATOR FRANKEN, SENATOR WHITEHOUSE, SENATOR WARREN, AND SENATOR KAINE

SENATOR ROBERTS

Question 1. Mr. Emanuel, as you know, in a 1979 case called *NLRB v. Catholic Bishop of Chicago*, the U.S. Supreme Court held that the NLRB had no jurisdiction over instructors at church-operated schools. In a 2014 case called *Pacific Lutheran University*, the NLRB chose in a divided 3–2 opinion to disregard that judicial precedent and instead adopted a test where the NLRB will assert jurisdiction unless a

religious-affiliated institution in part proves to the NLRB's satisfaction that it holds out its faculty as performing a "specific religious function."

If confirmed, should a situation arise where a case is brought before the NLRB, will you give this issue the careful attention it deserves and be sure to give proper weight to precedent in similar cases?

Answer 1. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 2. Mr. Emanuel, in the 2004 decision in *Lutheran Heritage Village-Livonia*, the Board has determined work rules and handbook provisions are unlawful if employees "would reasonably construe" them to prohibit protected activities under Section 7 of the NLRA. Under this standard, the Board has found dozens of facially neutral employment policies to be unlawful, raising real questions about how employers can draft, let alone implement, responsible employment policies.

If confirmed, should a situation arise where a case is brought before the NLRB, will you give this issue the careful attention it deserves?

Answer 2. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

SENATOR MURRAY

Question 1. What, in your view, is the mission of the agency to which you have been nominated?

Answer 1. To enforce the National Labor Relations Act as enacted by Congress.

Question 2. Do you believe that the purpose of the National Labor Relations Act (NLRA), enforced by the National Labor Relations Board (NLRB or Board), is to encourage and protect workers' rights to organize and engage in collective bargaining with their employers? If not, please describe in detail your views on the purpose of the NLRA and the Board.

Answer 2. As stated in Section 1 of the NLRA, one purpose is

"to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by promoting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

In 1947, the NLRA was amended to add several additional purposes:

(1) "to prescribe the legitimate rights of both employees and employers in their relations affecting commerce,"

(2) "to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other,"

(3) "to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce,"

(4) "to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare," and

(5) "to protect the rights of the public in connection with labor disputes affecting commerce."

Question 3. During your confirmation hearing before the committee, I asked you whether protecting and promoting workers' right to organize was the mission of the NLRB. You responded that this was one of the Board's missions, along with protecting employers, individual employees and the public. Are all of these interests of equal weight, or are some of them more important than others?

Answer 3. It is up to Congress to decide the relative importance of these statutory goals. The Board's responsibility is to enforce the NLRA as enacted by Congress.

Question 4. During your confirmation hearing before the committee, you were asked whether your work ever benefited workers or unions. In response, you stated that you have engaged in collective bargaining and that workers benefited from this process through higher wages and benefits. Has an employer you have represented in collective bargaining ever been charged with a failure to bargain in good faith

in violation of section 8(a)(5) of the National Labor Relations Act? If yes, please provide additional details.

Answer 4. I have represented employers for many years. It is possible that such a charge has been filed although I do not recall a specific case where that has occurred. Of course, a charge is only an allegation, and not a decision by the Board that a violation of the Act has occurred.

Question 5. Arthur Mendelson, the founder of your firm Littler Mendelson once said of your firm's specialization in union avoidance tactics: "our clients pay a lot of money . . . if they want aggressiveness, they are entitled to it." If you are confirmed, please describe the steps that you will take to transition from a practitioner and senior partner at a firm with this philosophy to a neutral arbiter as a Member on the NLRB?

Answer 5. Attorneys have a responsibility to zealously represent their clients' interests. I understand that, if confirmed, my role and responsibilities as a member of the NLRB will be different than my role and responsibilities as an advocate in private practice. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 6. In a 2012 pod cast, you indicated that you "come from" a perspective of valuing worker protection laws far less than creating an employer-friendly legal climate. You said,

"My topic is California employment laws from a broad brush prospective and how the employment laws in California create a horrible anti-employer climate. It's a terrible climate for job creation and job retention. Now you know at the outset where I come from."

Is this the perspective you will bring to the Board?

Answer 6. Based on my experience, there is a consensus among employers that many of the State employment laws in California are as I described them. However, this is not relevant to how I would decide cases under the NLRA, which is a separate Federal statute that is unrelated to State employment laws.

If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 7. Please describe your views on the role and importance of labor unions in today's workplaces and economy.

Answer 7. Unions have certain rights under the NLRA, and I will enforce that statute faithfully and impartially.

Question 8. What, in your view, would be a scenario in which it would be appropriate for the NLRB to take action against a company who is unfairly retaliating against workers based on antiunion hostility?

Answer 8. If a violation of the NLRA by an employer is proven, an appropriate remedy should be ordered.

Question 9. Do you agree that the workplace and the employer-employee relationship has changed dramatically in recent years? If so, can you describe what you see as the key changes affecting workers' ability to join together and engage in collective bargaining? What are some of those challenges and how would you go about addressing them?

Answer 9. These questions would be beyond the scope of my responsibilities as a Board member, if I am confirmed. The responsibility of Board members is to enforce the NLRA.

Question 10. Do you believe that the designation of workers as independent contractors rather than employees is a practice that is increasing?

Answer 10. This would be beyond the scope of my responsibilities as a Board member if I am confirmed. The responsibility of Board members is to enforce the NLRA.

Question 11. Please provide your view on when the NLRB should overturn settled precedents, and what the standard should be in doing so.

Answer 11. By tradition, the Board does not change precedent without the votes of three Board members. Otherwise, precedent has not been treated as binding. My

view is that precedent should not be followed if it is in conflict with the NLRA as enacted by Congress. The Board's responsibility is to enforce that statute.

Question 12. What specific considerations do you intend to rely upon in deciding whether to authorize petitions to have a recidivist violator of the NLRA held in contempt of court for violating a court order?

Answer 12. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 13. Do you believe that there were instances where the Board has exceeded its authority during the Obama administration? If so, when?

Answer 13. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 14. The Board has been the target of criticism for its use of adjudication rather than rulemaking to establish policy. Under President Obama, the Board conducted two major notice-and-comment rulemakings for the first time in decades. If confirmed, do you intend to continue this practice of making new rules or altering existing rules through notice-and-comment procedures?

Answer 14. It would be inappropriate for me to comment on this question. If rule-making proposals are submitted, I will consider them at that time.

Question 15. The Administrative Conference of the United States has recommended that agencies "should develop processes for systematic review of existing regulations" and that they "should provide adequate opportunity for public involvement in both the priority-setting and review processes." If confirmed, will you conduct robust, transparent retrospective reviews prior to any revision or reversal of existing NLRB law?

Answer 15. I am not familiar with this recommendation, but I will study the issue, if confirmed.

Question 16. Do you believe that existing doctrines and regulations should only be changed when there is empirical evidence suggesting that they are flawed, or is it appropriate to revise rules even if such revisions are not supported by concrete evidence?

Answer 16. They should be changed if they are contrary to the NLRA. The Board's responsibility is to enforce that statute.

Question 17. Please provide a list of all cases currently pending before the NLRB in which Littler Mendelson represents a party. For each of these cases, please indicate whether you authored, edited, revised, or reviewed materials related to the case. If yes, please describe the services you performed and indicate at what stage of the process you participated.

Answer 17. A list of these cases is attached¹ to this document. I did not author, edit, revise or review materials related to any of the cases.

Question 18. Please provide a list of all cases decided by the NLRB and that are currently on appeal in which Littler Mendelson represents a party. For each of these cases, please indicate if you authored, edited, revised, or reviewed materials related to the case. If yes, please describe the services you performed and indicate at what stage of the process you participated.

Answer 18. A list of these cases is attached to this document. I did not author, edit, revise or review materials related to any of the cases.

Question 19. Please provide a list of cases pending before the NLRB, or on appeal, in which you provided *pro bono* services including any case or matter in which you authored, edited, revised, or reviewed materials related to the case without receiving compensation.

Answer 19. I do not recall providing *pro bono* services in such a case.

Question 20. Please confirm that you intend to recuse yourself for 2 years from all cases that come before the NLRB in which Littler Mendelson represents a party.

¹All attachments are being retained in committee files.

Answer 20. That is my understanding of the requirement. I will do whatever is required by law.

Question 21. Leadpoint Services, a party in the Board's *Browning-Ferris* case, is represented by Littler Mendelson. Will you recuse yourself for the required period from any action by the Board that involves Leadpoint Services?

Answer 21. If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

Question 22. Please provide a list of all writings and all matters during the past 10 years that involve arbitration agreements or class action litigation. Please include matters that were not litigated but on which you advised or otherwise engaged with a client on these subjects. Do not include client names but provide a number of matters and a general description of the issue.

Answer 22. The requested articles are attached to this document. I have represented several employers in cases involving class and collective action waivers in employment arbitration agreements.

Question 23. In your view are there limits to an employer's ability to require employees to waive their rights to class actions/group actions as a condition of employment?

Answer 23. It would be inappropriate for me to comment on this subject. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 24. Your writings include at least six articles critical of the NLRB's decision in *D.R. Horton*, including one article entitled "*NLRA v. FAA: Why the NLRB Got It Wrong in D.R. Horton.*" Do you believe that you can be a neutral arbiter on the issue of arbitration clauses limiting employees' rights in class action cases?

Answer 24. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 25. Given the extent of your personal views, and your involvement in the issue of arbitration agreements and class action litigation, do you believe you will be free of an appearance of a conflict should these issues come before you as a Member of the NLRB?

Answer 25. If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

Question 26. As a specific example to the preceding question, you have expressed views that *D.R. Horton* and *Murphy Oil*, currently pending before the Supreme Court, was wrongly decided. You also filed an *amicus brief* in the case on behalf of the National Retail Federation. Will you recuse yourself from involvement with these cases with regard to action by the Board?

Answer 26. If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

Question 27. Please provide a list of all writings and all matters during the past 10 years that involve union activity and private property and/or trespass. Please include matters that were not litigated but on which you advised or otherwise engaged with a client on these subjects. Do not include client names but provide a number of matters and a general description of the issue.

Answer 27. Copies of the articles are attached to this document. This question involves State trespass laws and it does not involve the NLRB. I have advised various employers on the absence of private property rights for employers in California. This is distinct from the right of unions and employees to engage in union activity on private property under the NLRA, which has not been involved in the articles referred to above.

Question 28. Your writings include at least seven articles that discuss your views that employers should have broad rights to limit access for union supporters to the employer's private property. In a 2009 article titled "Union Trespassers Roam Corridors of California Hospitals—Is a Return to the Rule of Law Possible?" you wrote,

“The trespass laws are not adequately enforced against labor unions. Many employers suffer from this unequal protection of the laws. [. . .] This situation is unfair.”

Given the extent of your personal views, and your involvement as a client advocate in this issue, do you believe that you will be free of an appearance of a conflict should these issues come before you as a member of the NLRB?

Answer 28. If recusal questions arise with regard to any particular matter, I will request the advice of the Board’s ethics office.

Question 29. With regard to the *Specialty Healthcare* case, involving rules for determining the make-up of bargaining units, when the case was pending in the U.S. Court of Appeals for the Sixth Circuit, you authored a brief on behalf of a group of House and Senate Republicans. Please provide additional details regarding the brief including whether you were compensated for the work, and if so by whom.

Answer 29. I assisted in writing the brief, but I was not involved in the client relationship, and I am not aware of the extent of compensation.

Question 30. What is the appropriate role of an NLRB Member in facilitating oversight by Members of Congress?

Answer 30. Because I do not have prior experience with responding to congressional oversight requests, I plan to work with other members of the Board, as well as the Board’s professional staff, to ensure that the Board responds to oversight requests received from Congress in an appropriate manner.

Question 31. Is it appropriate for a single NLRB member to respond to an oversight request without working with counsel’s office and working with the other NLRB Members?

Answer 31. Board members should attempt to work together, and with the guidance and input of the Board’s professional staff, to the fullest extent possible to respond to oversight requests received from Congress in an appropriate manner.

Question 32. If confirmed, will you commit to working with other NLRB Members to fully respond to congressional oversight requests made during your tenure at NLRB?

Answer 32. If confirmed, I will attempt to work together with other Board members and the Board’s professional staff to the fullest extent possible to respond to oversight requests received from Congress in an appropriate manner.

Question 33. Please provide copies of your contribution to the following publications:

- California Employment Law, a Guide to California Laws Regulating Employment in the Private Sector, Merchants and Manufacturers Association, 1990.
- California Employment Law, a Guide to California Laws Regulating Employment in the Private Sector, 2d edition, Merchants and Manufacturers Association, 1992.
- California Employment Law, a Guide to California Laws Regulating Employment in the Private Sector, 3d edition, The Employers Group, 1997.
- Model Affirmative Action Program for Hospitals, California Hospital Association, 1973, Supreme Court Bans the Use of Sex-Based Mortality Tables in Employee Fringe Benefit Plans, Corporate Law Departments Section Newsletter, Los Angeles County Bar Association, December 1983.

The first three items above are three editions of a book written several decades ago, which consist of five volumes and would be very difficult to copy. The last edition of the book was published in 1997. Copies of the other items requested above are attached to this document.

SENATOR CASEY

Question 1. Do you support the Board’s rulemaking authority?

Answer 1. It is my understanding that the Board has the authority to adopt rules under the NLRA.

Question 2. Who did you speak with to prepare for your July 13, 2017 NLRB confirmation hearing?

Answer 2. The NLRB’s ethics office and congressional office staff, the HELP committee’s majority staff, and attorneys.

Question 3. What is your view on the authority of precedent: is the Board bound by its precedent?

Answer 3. By tradition, the Board does not change precedent without the votes of at least three members. Otherwise, precedent has not been viewed as binding.

Question 4. Will you recuse yourself from any cases before the NLRB that involve President Trump's business—especially the businesses he visits and promotes as President?

Answer 4. If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

Question 5. List and discuss specific examples of how workers have benefited from the result of your professional actions.

Answer 5. My law firm and I advise employers on how to comply with the NLRA and numerous other complex employment laws. We also train managers on the importance of respecting employees and avoiding harassment. We conduct audits of employment practices to ensure compliance. We provide advice on frequent changes in the various employment laws to ensure compliance. We advise on internal complaint systems so employees will have a voice in the workplace. Employees benefit from all of these actions and others.

SENATOR FRANKEN

Question 1. Please list all cases you personally handled, your firm handled or are currently handling involving the *D.R. Horton* issue. Please include the name of each case, forum, parties involved, and disposition.

Answer 1. My firm represents *amicus* parties in the *Murphy Oil* and related cases on this issue now pending before the U.S. Supreme Court, and I have had a minor role in that representation. I have also handled cases involving this issue for CBRE, Inc., Genesis Healthcare LLC, SolarCity, MasTec, Inc., and Handy Technologies, Inc.. All of these cases are still pending before the Board at various levels. I also represented Securitas Security Services USA, Inc., in a case on appeal at the Fifth Circuit in which the employer prevailed. In addition, I worked on an *amicus brief* filed with the Fifth Circuit in the *D.R. Horton* case, in which the employer prevailed. I am not aware of any other cases currently being handled by my law firm.

Question 2. Please provide any public comments you have made, and copies of all articles or publications you or your firm were involved with on the *D.R. Horton/Murphy Oil* issue.

Answer 2. Copies of the articles are attached to this document.

Question 3. Based on some of your writings on the *D.R. Horton* and *Murphy Oil* case it appears like you believe the case have been wrongly decided. Will you recuse yourself from consideration of any case raising the *D.R. Horton/Murphy Oil* issue? Please explain.

Answer 3. If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

Question 4. Are there limits to an employer's ability to require employees to waive their rights to class actions/group actions as a condition of employment? Please elaborate.

Answer 4. It would be inappropriate for me to comment on this subject. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 5. Since you have not already agreed to recuse yourself from any *D.R. Horton/Murphy Oil* issue-related cases, please identify any case in which you think you should need to recuse yourself and explain in detail the basis for your decision.

Answer 5. If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

Question 6. Would you agree that in general, a company is not allowed to avoid an existing union contract simply by reincorporating under a new name, with substantially the same ownership, management, and assets? Please explain.

Answer 6. It would be inappropriate for me to comment on this question. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

SENATOR WHITEHOUSE

Question 1. During your nomination hearing, you agreed that you would recuse yourself from any cases involving law firm, but that you “do not believe that recusal would apply to issues.” This is concerning as you have previously stated your opinions on several issues that are directly related to this position. In particular, you submitted an *amicus briefs* in the pending Supreme Court case, *Murphy Oil*, related to binding arbitration clauses that prohibit class action by employees and whether they are a violation of the NLRA. Will you recuse yourself on issues on which have already publicly taken a side?

Answer 1. If recusal questions arise with regard to any particular matter, I will request the advice of the Board’s ethics office.

Question 2. You have been a management-side attorney for your entire legal career. What specific actions will you take to ensure that you do not bring a bias toward employers to your role at the NLRB?

Answer 2. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court’s precedent, the Board’s precedent, the arguments of the parties, and the views of the other members of the Board.

Question 3. Your nomination was met with support by the National Right to Work Committee and its President, Mark Mix, said in a June 28 fundraising e-mail that your nomination would, “effectively end Big Labor’s stranglehold over the NLRB.” The NRLA’s preamble states the intent is to, “encourage collective bargaining” and, as a member of the NLRB, your responsibility is to protect workers. Will you commit to promoting the interests of workers and encouraging the right to collective bargaining as outlined in statute?

Answer 3. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court’s precedent, the Board’s precedent, the arguments of the parties, and the views of the other members of the Board.

Question 4. Can you pledge that there will be no preferential treatment for any businesses owned by President Trump that may have cases that come before the NLRB?

Answer 4. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court’s precedent, the Board’s precedent, the arguments of the parties, and the views of the other members of the Board.

Question 5. Will you fully cooperate with any inquiries from the GAO, or the NLRB IG?

Answer 5. Although I have no experience responding to inquiries received from the GAO or the Board’s Inspector General, I will work with other Board members, as well as the Board’s professional staff, to ensure that any such inquiries are responded to in an appropriate manner.

Question 6. The Trump Budget proposed to cut NLRB staff by 18 percent. How would such a funding cut affect the NLRB’s work?

Answer 6. As I am not currently a member of the Board, I do not have a sufficient basis to provide an answer to this question.

Question 7. NOAA, NASA, the U.S. National Academies of Sciences, and 31 leading, nonpartisan scientific societies all agree that climate change is real and humans are major contributors to it. Do you believe climate change is real? Do you personally believe that human activity contributes to climate change?

Answer 7. Climate Change is beyond the scope of the responsibilities that I would assume, if I were confirmed to be a member of the Board.

Question 8. Will you sign the Trump Ethics pledge? Do you expect to request any waivers to the Trump Ethics pledge? If so, what would they be for?

Answer 8. I will sign the Ethics pledge, and follow all appropriate procedures.

Question 9. Have you ever solicited money for a 501(c)(4) political organizations? If so, for what organization? From whom? In what amounts? When were these donations solicited?

Answer 9. Not to my knowledge.

Question 10. For anyone listed above, will you recuse yourself from any issues involving these individuals or organizations in your role as Board Member?

Answer 10. I do not understand this question, but if questions arise regarding recusal, I will request the advice of the Board's ethics office.

SENATOR WARREN

Question 1a. As you know, ethics regulations require that you recuse yourself from cases that involve a former client. Your law firm's biography notes that your former clients include trade associations, and you have written briefs on behalf of trade associations including the National Association of Manufacturers and the National Retail Federation.

Have you received compensation from any trade associations over the past 10 years?

Answer 1a. I have not received any compensation directly. In some cases, fees were paid to my law firm.

Question 1b. If so, please list them and the total amount of compensation you received from each of them, and describe the terms of your agreements with them.

Answer 1b. I have not received any compensation directly. In some cases, fees were paid to my law firm. I am not aware of the terms of the firm's agreements with any of the current clients in this category.

Question 1c. Regardless of its legality, do you believe that it would be appropriate for you to hear and rule on a case in which a member of a trade association that you have represented is a party?

Answer 1c. If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

Question 1d. If so, why do you believe that it is inappropriate for you to rule on a case in which a former client is a party, but appropriate for you to rule on a case in which a member of a former client is a party?

Answer 1d. If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

Question 1e. If not, will you commit to recusing yourself from cases in which a party is a member of an association that you have represented?

Answer 1e. If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

Question 2a. The financial disclosure report that you submitted to the Office of Government Ethics lists 49 companies that qualify as "sources of compensation exceeding \$5,000 in a year."

Answer 2a. I did not receive any compensation directly from a client. The information in the OGE report was provided by my law firm at the request of the NLRB ethics office, which prepared the report. I understand the information in the report includes fees paid by clients to the law firm that were attributable to work performed by me. I further understand that this was consistent with the interpretation of the question on the OGE form by the NLRB's ethics office.

Question 2b. Are there additional clients for whom you worked for which you received compensation of less than \$5,000 annually?

Answer 2b. I have provided the financial information required by law. Please see my 278 filing.

Question 2c. If so, please list these clients, and the total amount of compensation you have received from each of them.

Answer 2c. I have provided the financial information required by law. Please see my 278 filing.

Question 2d. According to OGE, Part 4 of your financial disclosure covers only "the preceding 2 calendar years and the current calendar year up to the date of filing." Please provide a list of all sources of compensation for the past 5 years that are not listed in Part 4 of your financial disclosure.

Answer 2d. I have provided the financial information required by law. Please see my 278 filing.

Question 3a. If confirmed, do you believe that it is appropriate for you to rule on a case to which a company owned by the President who nominated you is a party?

Answer 3a. If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

Question 3b. If so, do you believe that such circumstances create a perceived, if not real, conflict of interest?

Answer 3b. If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

Question 3c. If not, will you commit to recusing yourself from any such case?

Answer 3c. If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

Question 4. Please describe your view on the weight of NLRB precedent as the Board considers a case with relevant precedent.

Answer 4. By tradition, the Board does not change precedent without the votes of three Board members. Otherwise, precedent has not been treated as binding. My view is that precedent should not be followed if it is in conflict with the NLRA as enacted by Congress. The Board's responsibility is to enforce that statute.

Question 5a. Please describe what you believe to be the role of a member of the Board in accommodating oversight requests by Members of Congress.

Answer 5a. As noted above, Board members should attempt to work together, and with the guidance and input of the Board's professional staff, to the fullest extent possible to respond to oversight requests received from Congress in an appropriate manner.

Question 5b. Will you commit to responding in full to any requests from chairs or ranking members of relevant committees, or requests from Members of Congress on NLRB matters?

Answer 5b. If confirmed, I will attempt to work together with other Board members and the Board's professional staff to the fullest extent possible to respond to oversight requests received from Congress in an appropriate manner.

SENATOR KAINE

Question 1a. In hearing cases on unfair labor practices and union representation, the National Labor Relations Board (NLRB) must enforce the National Labor Relations Act in light of the prior decisions of the board and the present-day circumstances of the case at issue. While precedent is often a guiding force in such determinations, the board does occasionally overturn or clarify aspects of prior decisions. For example, in *Browning-Ferris*, the NLRB reversed a decades-old standard regarding when two or more businesses should be considered "joint employers" for the same set of employees, modifying the standard to include "indirect control" over the terms and conditions of employment or the capability for exerting such control. In discussing the rationale for this decision, the NLRB noted that the previous joint employer standard was anachronistic and needed to be updated to reflect new economic conditions and the increased prevalence of contingent employment relationships.

In your opinion, what factors should be taken into consideration when deciding whether to uphold, modify, or reverse existing legal standards?

Answer 1a. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 1b. How reactive should the interpretation of existing law be to emerging trends and changes in the workforce and the employer-employee relationship?

Answer 1b. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 2a. Do you feel that interpretations of the NLRA that could potentially increase the amount of collective bargaining in a business or industry through allowing for the unionization of subsets of employees (i.e., "micro units") within the larger employee pool or expanding the scope of the definition of an employer would make collective bargaining more or less effective for employers and employees?

Answer 2a. It would be inappropriate for me to comment on this question. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the statute as written, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 2b. What challenges could arise from more liberal interpretations of what constitutes an appropriate bargaining unit or an employer?

Answer 2b. It would be inappropriate for me to comment on this question. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the statute as written, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 2c. In your opinion, would such interpretations of the NLRA ultimately put employees in stronger or weaker bargaining positions?

Answer 2c. It would be inappropriate for me to comment on this question. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the statute as written, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 2d. In your opinion, what effect, if any, would such interpretations of the NLRA have on franchises, staffing agencies, and the way that such entities approach business operations?

Answer 2d. It would be inappropriate for me to comment on this question. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the statute as written, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 3a. In *Murphy Oil*, the Fifth Circuit ruled that arbitration agreements containing class waivers are enforceable, directly contradicting the NLRB's prior decision to invalidate such agreements in *D.R. Horton*. In *Epic Systems* and *Ernst & Young*, the Seventh and Ninth Circuits interpreted this question differently and upheld the NLRB's position in *D.R. Horton*. The Supreme Court has agreed to hear all three of these cases and will review this issue in its 2017–18 term.

In your opinion, how far does the NLRA's protection of the right of employees to engage in "concerted activity" extend?

Answer 3a. It would be inappropriate for me to comment on this question. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the statute as written, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

Question 3b. Could the right to engage in concerted activities be interpreted to create a substantive right to bring class or collective actions that trumps the terms of arbitration agreements?

Answer 3b. It would be inappropriate for me to comment on this question. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the statute as written, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

[Whereupon, at 11:32 a.m., the hearing was adjourned.]