

**NOMINATIONS OF DAVID WEIL,
GWYNNE WILCOX, AND
DAVID PROUTY**

HEARING
OF THE
**COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS**
UNITED STATES SENATE
ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING THE NOMINATIONS OF DAVID WEIL, OF MASSACHUSETTS,
TO BE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, DEPART-
MENT OF LABOR, WHO WAS INTRODUCED BY SENATOR WARREN,
AND GWYNNE A. WILCOX, OF NEW YORK, WHO WAS INTRODUCED BY
SENATOR MURRAY, AND DAVID M. PROUTY, OF MARYLAND, WHO WAS
INTRODUCED BY SENATOR VAN HOLLEN, BOTH TO BE A MEMBER OF
THE NATIONAL LABOR RELATIONS BOARD

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JULY 15, 2021
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**NOMINATIONS OF DAVID WEIL,
GWYNNE WILCOX, AND
DAVID PROUTY**

Thursday, July 15, 2021

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

The Committee met, pursuant to notice, at 10 a.m., in room 430, Dirksen Senate Office Building, Hon. Patty Murray, Chair of the Committee, presiding.

Present: Senators Murray [presiding], Casey, Hassan, Lujan, Burr, Murkowski, Braun, Marshall, and Tuberville.

OPENING STATEMENT OF SENATOR MURRAY

The CHAIR. Good morning. Senate Health, Education, Labor, and Pensions Committee will please come to order. Today we are holding a hearing on the nominations of David Weil to serve as Administrator of the Wage Hour Division at the Department of Labor, and Gwynne Wilcox and David Prouty to serve as members of the National Labor Relations Board. Ranking Member Burr and I will each have an opening statement and then we will introduce our witnesses. They will give their testimony and then Senators will each have 5 minutes for a round of questions.

While we were unable to have this hearing fully open to the public or media for in-person attendance, live video is available on our Committee website at help.senate.gov. And if anyone is in need of accommodations, including closed captioning, you can reach out to the Committee or the Office of Congressional Accessibility Services. We received Dr. Weil's formal nomination on June 8th, his office of Government Ethics paperwork including his public financial disclosures and ethics agreement on June 14th, and his Committee paperwork on June 21st.

We received Ms. Wilcox formal nomination on May 27th, her Office of Government Ethics paperwork on June 9th, and her Committee paperwork on June 10th. And we received Mr. Prouty's formal nomination on June 23rd, his Office of Government Ethics paperwork on June 25th, and his Committee paperwork on June 25th. I would like to thank all of our witnesses for joining us today and to welcome their families, Dr. Weil's wife Miriam, Ms. Wilcox's brother David and sister Susan, and Mr. Prouty's wife Olive and brother Douglas, who are with us today. Thank you for coming. I am pleased to have before us three nominees with long records of fighting for workers. After 4 years of anti-worker tax from the last

Administration, you all represent a much welcomed and much needed change of direction.

During his past tenure as Administrator of the Wage and Hour Division, Dr. Weil proved himself a capable leader, committed to ensuring workers across the country were paid the wages they had earned. Under his leadership, the Division significantly increased its efforts to enforce Wage and Hour laws. The Division's work uncovered labor violations, including one investigation of garment factories that supplied major clothes retailers, which secured \$1.3 million in back pay for cheated workers.

While leading the agency, he also worked to expand access to overtime pay by issuing a rule to dramatically increase overtime eligibility to 12 million workers, to close loopholes by issuing guidance aimed at stopping employers from misclassifying workers in order to pay them less, and crack down on bad actors, including Federal contractors who were not paying prevailing wages under our labor laws.

While it has been frustrating to see the previous administration undermine those efforts and reverse this progress over the last 4 years, confirming a proven champion for workers to return to the Wage and Hour Division is an important step to putting us back on the right track. Unfortunately, the National Labor Relations Board saw a similar alarming trend under President Trump as Democratic nominees were blocked and anti-worker nominees were jammed through. We saw the NLRB, which was founded to protect workers and their rights, take an alarming turn. Over the past few years under Republican appointees, the NLRB has reversed decades of worker protections.

Fortunately, Ms. Wilcox and Mr. Prouty are exactly the kind of people we need to begin healing this damage and bringing the NLRB back to its roots. They would both bring to the Board a career of experience fighting to uphold the promise of the National Labor Relations Act. Ms. Wilcox has represented workers fighting against an employer who tried to require them to waive their rights to act collectively, workers who organized a walkout calling for a public report on sexual harassment in the workplace and an end to forced arbitration, and workers who were retaliated against by their employer for advocating for higher wages.

Mr. Prouty's record fighting for workers is equally compelling. He has worked for several unions, including his General Counsel, to Unite Here, which represents textile workers, hotel workers, restaurant workers, and more, the Major League Baseball Players Association, and currently the Service Employees International Union Local 32 BJ, a union which represents approximately 175,000 property service workers. Confirming these highly qualified nominees is an important step to reversing the damage of the last 4 years and rebuilding our country stronger and fairer and making our economy truly work for workers and their families. But it is ultimately only a start.

There is more we need to do in Congress to address the inequities in our economy that make things so much harder for women, workers of color, workers with disabilities, and others to make sure every worker has paid family, sick, and medical leave, quality, affordable childcare, a livable minimum wage of \$15.00 an hour with-

out exceptions, and a secure retirement to ensure that no worker is cheated out of overtime or tips or equal pay, and to defend and strengthen the right to form and join a union, a right which allows workers to secure better pay and benefits and safer working conditions.

I look forward to not only confirming these nominees, but working with them, the rest of the Biden administration, and my colleagues here in Congress to tackle these challenges. Before I turn it over to Ranking Member Burr for his opening remarks, I seek unanimous consent to put in the record letters from 28 organizations in support of Ms. Wilcox's nomination, and letters from 18 organizations in support of Mr. Prouty's nomination. So ordered.

[The information referred to was not submitted for the Record.]
The CHAIR. Senator Burr.

OPENING STATEMENT OF SENATOR BURR

Senator BURR. Thank you, Madam Chair, for holding this hearing. And this is proof that there is bipartisanship in Washington, because Senator Murray and I both agree that workers should not be cheated. Where we disagree is on how we look at the workforce and employers, and whether nominees should be held accountable for what they say and what they have done.

See, I—before Congress, I worked for a living. I was a salesman early on and I managed a sales group, which is a good business. We had a lot of employees, we served a lot of customers. There were a lot of people who were employed because of what we did. We made their lives better by selling them products that their customers could use, and everybody made money. When things went well, our employees got promotions and they got raises. When things weren't that good, we tightened our belt, and everybody made adjustments.

We responded to customers, and we worked hard. Not once did any of us ask the question, how would someone in Washington run this business? For nearly 800,000 franchise establishments in the United States, the 30 million small businesses, and even the over 1,600—16,000 big businesses in the country, I think they operate the same way. They run their businesses. Most employers, most play by the rules. They try to treat their employees well and pay them fairly. They want to provide a safe working environment and keep employees happy so they will come back every day. Employers accept that there needs to be rules to protect workers and to protect customers.

But those rules need to be based on reality and not on what academics, who have never held a real job, think. Unfortunately, our nominees here today failed to pass that test. Instead of nominating individuals who could gain broad bipartisan support, nominees who would seek balance and fairness in their roles, the president has nominated extreme ideologues who will be reliable partisan advocates of an extreme agenda. It is not an agenda that will grow our economy or, quite frankly, help create jobs. It is an anti-employer agenda aimed at bringing more businesses under the thumb of bureaucrats in Washington. David Weil is being recycled from the Obama administration back in his job in Wage and Hour Division.

Chair and I have a different view of your time there. You received no Republican support the last time you were nominated, and I think it was for good reason. You engaged in such partisan overreach that the courts stepped in to stop your badly constructed over time rule. When the vision you adopted for your writings, such as the hostility of the gig economy, wasn't rejected by the courts, even voters in liberal states such as California overturned them with voter referendums. There is no greater opportunity—opponent of the gig economy than Mr. Weil. The gig economy was a lifeline and source of income for so many communities during the recent pandemic and helped so many even outside of the pandemic for individuals to choose the job they want, the hours they want, and the life they want. Democrats used to be supportive of this concept of letting people work where and when they want.

Nancy Pelosi even used it as an excuse for the passing of the Affordable Care Act. But now, David Weil wants to shut down innovative job opportunities. He wants to march workers back into the factory doors and punch a time clock. If you want a side hustle, if you want to be free to choose your hours, if you don't want the hassle of a 40 hour work week, and want to be an independent contractor, this is not the person at Wage and Hour. And God forbid you want to own a franchise. Franchise businesses have been a springboard to business ownership for countless women, minorities, and recent immigrants.

At least 30 percent of minority—at least 30 percent of franchises are minority owned. At least 35 percent are women owned. Franchises have been the springboard for millions. But Mr. Weil wants to shut them down. Franchises exist in the restaurant industry, the childcare sector, the hospital industry and more. But Mr. Weil doesn't like it. You wrote a paper on it. So let me just say he is coming back. It is ironic that the President's recent executive order aimed at promoting competitive—competition when Mr. Weil's world view will instead lead to an extraordinary consolidation and less competition.

Millions will suffer as a result of his policies. But that is Okay because he wrote a paper about it, and he knows better than decades of real world experience with franchises around the country. David Weil believes he knows better than the many minority and women franchise owners in this country who have made their own living, who have climbed their own way up, who have created jobs for others along the way. He believes his academic credentials are worth more than real world experience and believes his policy papers are worth more than the hard earned paychecks.

Turning to the National Labor Relations nominees, I look at the NLRB website, it says the NLRB is an independent Federal agency that protects the rights of private sector employees to join together with or without a union to improve their wages or working conditions. The NLRB is charged with conducting elections to determine if workers want to be represented by a union. It is charged with handling complaints against both unions and companies. It has a balanced job to do.

The words independent and balanced stick out in my mind and our nominees today clearly failed to meet that test. Gwynne Wilcox involved herself in a project that referred to the American free en-

terprise system and by extension the wealth and opportunity it creates, as I quote, “the primary threat to the viability of American democracy.” Wow. This report proudly advocated banning employers from engaging their workers in a dialog over a work schedule, job structure, housing, and child care. All these conversations would have to have happened through a convoluted system of workforce monitors and work councils. So the small business owners need a huge bureaucracy. The worker can no longer talk to their boss like an equal with talent, unique skills, and individual merit, because there is nothing Americans like more than bureaucracy, I guess.

The report also demands banning right to work laws and would require special favoritism for labor organizations as an interest group. Such brazen advocacy for Government subsidized favoritism and grift disqualifies Ms. Wilcox as an impartial enforcer of our labor laws and raises serious concerns about her impartiality. Now, North Carolina knows Mr. Prouty. As we say in the south, bless your heart. His experience in North Carolina has only led to job loss and killing industries. I fear that he will do—I fear he will continue to do that if given a national platform.

Mr. Prouty doesn’t believe that you have a right to work unless, of course, you are a union member. He spent his career advancing the priorities of labor unions, those same unions pushing the ban—to ban secret ballots in union elections. This would allow union organizers to stand over your shoulder and watch your vote. I am sure there wouldn’t be any intimidation on how to vote or retribution if you didn’t vote the right way. Madam Chair, America faces an enormous economic challenge from China. Part of that is China’s sheer size, population, and natural resources, but I think it is mostly their unfair trade practices and unending intellectual property theft. Yet no small part of China’s success is the fact that people like Mr. Weil, Ms. Wilcox, and Mr. Prouty have declared America business as an enemy.

We can’t combat China’s communist country by growing our own Government control of the private sector. We can’t tell American workers that they are free when union organizers are going to watch how they vote. Was anyone surprised when President Xi was elected in 2,952 to 1? Is the future of America’s labor, what is—is that the future of America’s labor elections? Rather than make the United States an economic powerhouse of opportunity for employers and job seekers, these nominees want to stifle growth. When workers seek innovation and freedom to control their own work life balance, these nominees say no, no to the gig economy, no to new workplace solutions.

Instead of bringing employers and workers together to resolve problems, these nominees want to create conflict, expand bureaucracy, and empower unions above all else. Madam Chair, these nominees are very troublesome. They don’t reflect the mainstream. They are partisan idealists set out to remake the American economy, to expand the control of Government over the lives of workers, employers, job creators, and innovators.

I hope the American people are watching this hearing. I hope they see that this is a danger to their future, and they will speak out. Before I yield to you, though, I ask unanimous consent to enter

two letters into the record signed by a total of 15 business groups, including small businesses opposing the nomination of Dr. Weil, and another letter from the United States Chamber expressing concerns with Dr. Weil's nomination.

The CHAIR. Without objection.

[The information referred to can be found on page 33 in Additional Materials]

Senator BURR. I yield.

The CHAIR. We will now introduce today's witnesses. And I want to first turn it over to a former Member of our Committee, Senator Warren, to introduce Dr. Weil.

STATEMENT OF SENATOR WARREN

Senator WARREN. Thank you very much, Chair Murray and Ranking Member Burr. I am here to introduce Dr. David Weil who has been nominated to be our next Administrator at the Department of Labor's Wage and Hour Division. I am proud to say that Dr. Weil has strong Massachusetts ties. He has taught in Massachusetts for more than two decades at Boston University School of Management and at Brandeis University.

He received his master's and his Ph.D. from Harvard University. Now, I introduced Dr. Weil at his nomination hearing in 2013 to serve in this position. At the time, I told this Committee that there are few, if any, more knowledgeable or qualified people that the president could have nominated for this position. And that remains true. Today, Dr. Weil served as the Wage and Hour Division Administrator from 2014 to 2017. He came to that role with an extensive background in labor and employment research, writing, and policy.

He will return with a deep understanding of the Division's tools, with a well-known strategy to protect workers, and an unwavering commitment to enforcing our Wage and Hour laws. While serving at DOL, Dr. Weil built the Division's capacity to enforce some of workers' most fundamental protections, including minimum wage and overtime laws. He pursued investigations that sought justice for some of our Nation's most vulnerable workers, and he demanded accountability from industries with widespread abuses of Wage and Hour laws. He shifted DOL enforcement to take a proactive approach seeking to prevent Wage and Hour violations before workers experienced harm.

There is a wealth of examples of the impact of his work at DOL, where he recovered millions of dollars in back wages for workers and sought to collaborate with employers to increase compliance with Wage and Hour laws. I just want to highlight one example. In 2016, Dr. Weil helped secured more than \$1 million in back wages for the food service workers in this building, people who had been cheated out of money that they were owed.

Dr. Weil literally wrote the book on fissured workplaces. And he is singularly prepared to take on the complex ways that companies evade their legal responsibilities to workers, whether they do it through outsourcing, subcontracting, or misclassify—misclassifying workers. America's workers deserve a Wage and Hour Administrator as committed, as diligent, and as innovative as Dr. Weil, and

I look forward to his speedy confirmation. Thank you, Madam Chair.

The CHAIR. Thank you, Senator Warren. Dr. Weil, thank you for joining us today. Our next witness is Ms. Wilcox. She is a partner at Levy Ratner, PC, a law firm devoted to representing unions in contract negotiations, arbitration, and before the NLRB and other administrative agencies. When her workers organized a walkout of 20,000 people to protest sexual harassment in their workplace and to call on their employer to end mandatory arbitration and provide a public report on the issue, Ms. Wilcox fought for them.

When workers seeking a higher wage participated in walkouts and strikes and faced retaliation like reduced hours and threats and firing, Ms. Wilcox fought for them. When an employer required workers to sign an arbitration agreement waiving their right to any class actions, Ms. Wilcox fought for them, and the NLRB ultimately ruled that provision unlawful. And outside of her work at Levy Ratner, Ms. Wilcox has long been fighting for workers. Before joining the firm, she worked as a field attorney for the NLRB at region 2 in New York City.

Ms. Wilcox also currently serves as Associate General Counsel of 1199 SEIU, the largest health care union in the country and is the labor representative to the New York City Office of Collective Bargaining. She has written papers on a variety of labor law topics, including the COVID-19 pandemic's implication for workers' rights related to privacy, concerted activities, and bargaining, and has served as an editor of *Developing Labor Law*, a major labor law treatise.

She has also taught labor law classes at CUNY Murphy Institute in the Cornell ILR School. In other words, her career has been defined by a clear commitment to fighting for workers and their rights. Thank you for joining us today, Ms. Wilcox. I am glad to have you with us. With that, I am going to turn it over to Senator Van Hollen who is here today to introduce Mr. Prouty.

STATEMENT OF SENATOR VAN HOLLEN

Senator VAN HOLLEN. Thank you. Thank you, Chair Murray, Ranking Member Burr, Members of the Committee for the opportunity to introduce to you one of President Biden's nominees to serve on the National Labor Relations Board, David Prouty. While I am grateful that President Biden has nominated a fellow Marylander for this post, what makes Mr. Prouty an outstanding choice for this position is his long record of using his sterling legal skills to stand up for the rights of working people and their right to freely decide to join a union to raise the standard of living for all workers.

Mr. Prouty began his career as an organizer for the American Federation of State, County and Municipal Employees, where he gained firsthand knowledge of the laws that govern collective bargaining and workers' rights. A graduate of Harvard Law School, Mr. Prouty, later served for 15 years as the Southern Regional Council for Unite and its predecessor union, the Amalgamated Clothing and Textile Workers Union. He then became the General Counsel to the labor union Unite Here, which represents workers

from hotels and restaurants, of course, a sector that has been especially hard hit during this pandemic.

Unite Here also represents industrial and textile employees. From 2013 to 2018, Mr. Prouty served as the Chief Labor Counsel to Major League Baseball Players Association—and that is General Counsel from 2013 to 2017. He currently serves as General Counsel to SEIU 32 BJ, a strong branch of the broader SEIU, which has over 175,000 members and has been a consistent leader at the national level for workers' rights, including during the Government shutdown. This stretched from late 2018 into 2019, when many of their members were locked out of their jobs without pay as employees of Federal contractors.

As General Counsel, Mr. Prouty played a key role in the fight to protect their livelihoods during that period. President Biden has made it clear that he will be a champion for American workers and their right to organize and to pursue the American dream. His nomination of David Prouty is more evidence of that commitment and the president's determination to restore balance to the NLRB after 4 years of relentless attacks on workers' rights. Members of the Committee, I would also like to join the Chair in welcoming David's wife, Olive, and his brother Doug to today's hearing.

I have worked with Doug on education issues in Maryland for decades. And I know that David and Doug's late father, Keith Prouty, is smiling down on this hearing and would be very proud. Keith Prouty was a legendary labor leader in Maryland and chairman of the Maryland NAACP. David Prouty is carrying on that important legacy and work. Madam Chair, Ranking Member, Members of the Committee, I urge you to support his nomination.

The CHAIR. Thank you very much, Senator Van Hollen, for joining us today. Mr. Prouty, welcome to you as well. With that, we will begin our witness testimony. And Mr. Weil, we will begin with you.

**STATEMENT OF DAVID WEIL TO BE ADMINISTRATOR OF THE
WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR**

Mr. WEIL. Thank you, Chair Murray, Ranking Member Burr, and distinguished Members of the Committee for the opportunity to appear before you today as you consider my nomination to serve as the United States Wage and Hour Administrator. I am deeply grateful to President Biden for nominating me to the position of Wage and Hour Administrator, and to Secretary of Labor Marty Walsh for the confidence he has shown me in supporting my nomination.

I want to thank Senator Warren for her kind and generous introduction this morning, and I also wish to acknowledge and thank my wife Miriam Weil for joining me today and along with my daughters, Rachel and Lonnie, for supporting and inspiring me. I am humbled by the opportunity, if confirmed, to once again serve my country by leading the Department of Labor's Wage and Hour Division. Serving as Administrator during the Obama administration and leading its dedicated and capable staff of men and women was one of the greatest professional honors and experiences of my life.

My appearance before you today arises in large part by the opportunities afforded my parents and grandparents by this country. My maternal grandparents, Rose and Abe Shapiro, came to the United States at the turn of the last century. Like countless other immigrants, they toiled for years in the garment industry in order to save enough to start a small business to support their family and educate my mother, Nancy, and her brothers and sister. My father, Jerry Weil, and his family fled Nazi Germany and arrived in the United States in 1939 with little more than the desire to build a new life in a free and democratic nation.

My father, now 90, often recounts the many jobs he held as a young man, whether stocking shelves in a grocery store, selling shoes, delivering mail, or working on a truck assembly line. He was able to earn enough to help support his family, go to college, attend medical school, eventually providing a solid economic foundation for my sisters and me. Growing up in Greeley, Colorado, a small farming and ranching town, I had many classmates whose families were seeking the same pathway. They were children of farmers, farm workers, workers in the local meatpacking and livestock industry, or of small business owners.

Many of those families made their way into the middle class like mine, but other families were not so fortunate. The Greeley of today is a much larger and economically vibrant place, but many of its families still struggle to get by. Throughout my academic career as a business school professor and now as Dean of Brandeis University's Heller School for Social Policy and Management, I have focused on understanding the forces that shape economic opportunities for workers. As an economist, I understand that a market acts as a positive force in allocating the scarce resources of society toward economically productive outcomes. But I also know how our workplace laws seek to balance those market forces to make sure that the economic value created by businesses are shared with the workforce who helps create them.

For decades following World War II, families like mine benefited from that balance where economic growth and real earnings moved up together. But since the 1980's, the growth in economic value created by businesses and their workforces has diverged from the earnings of working people, leading to wage stagnation and growing inequality. Restoring that balance requires, in part, making good on the Wage and Hour Division's long standing mission, promoting and achieving compliance with labor standards to protect and enhance the welfare of the Nation's workforce.

When I led the agency, we pursued that mission by targeting our resources on high violation industries and employers whose failure to comply hurt workers, as well as undermine the many responsible employers who followed the law. We did so by being data driven and committed to evaluating the impact of our enforcement efforts, as well as developing multiple ways to educate and engage with businesses, workers, and other stakeholders about their rights and responsibilities.

The pandemic revealed starkly what has been true long before it hit. Too many hard working people who provide essential services failed to receive the pay and treatment that our law requires that

not only harms them but undermines the social fabric we depend on as communities.

If confirmed, I would redouble my commitment to the responsible, effective, and transparent administration of the agency, and in that way contribute to President Biden's effort to build back better.

Chair Murray, Ranking Member Burr, and Members of the Committee, I once again thank you for the opportunity to discuss my views and look forward to addressing your questions.

[The prepared statement of Mr. Weil follows:]

PREPARED STATEMENT OF DAVID WEIL

Thank you Chair Murray, Ranking Member Burr, and distinguished Members of the Committee for the opportunity to appear before you today as you consider my nomination to serve as the United States Wage and Hour Administrator.

I am deeply grateful to President Joe Biden for nominating me to the position of Wage and Hour Administrator and to Secretary Marty Walsh for the confidence he has shown me in supporting my nomination. I want to thank Senator Warren of Massachusetts for such a kind introduction this morning. I also wish to acknowledge and thank my wife, Miriam Weil for joining me today and, along with my daughters Rachel and Lani, for supporting and inspiring me.

I am humbled by the opportunity, if confirmed, to once again serve my country by leading the Department of Labor's Wage and Hour Division. Serving as Administrator during the Obama administration and leading its dedicated and capable staff of men and women was one of the greatest professional honors and experiences of my life.

As you well know, the mission of the Wage and Hour Division is to assure that working people receive a fair day's treatment for a fair day's work and that the businesses that employ them comply with the law and compete on a level playing field. Through enforcement, education, and stakeholder engagement, the agency assures that basic concepts of fairness that underpin our fundamental workplace laws like the Fair Labor Standards Act are realized in the day-to-day experience of working people.

My appearance before you today arises in large part by the opportunities afforded my parents and grandparents by this country. My maternal grandparents Rose and Abe Shapiro came to the United States at the turn of the last century. Like thousands of other immigrants, they worked for years in the garment industry in order to save enough to start a small business to support their family and educate my mother Nancy and her brothers and sister.

My father Jerry Weil and his family fled Nazi Germany and arrived in the United States in 1939 with little more than their desire to build a new life in a free and democratic nation. My father, now 90, often recounts the many jobs he held as a young man. Whether stocking shelves in a grocery store, selling shoes, delivering mail, or working on a truck assembly line, he was able to earn enough to help support his family, go to college, and attend medical school, eventually providing a solid economic foundation for my sisters and me.

Growing up in Greeley, Colorado, a small farming and ranching town, I had many classmates whose families were seeking the same pathway—they were the sons and daughters of farmers or farm workers, of workers in the local meatpacking and livestock industry, or of small business owners. Many of those families made their way into the middle class. But other families were not so fortunate. The Greeley of today is a much larger and economically vibrant place, but many of its families still struggle to get by.

Throughout my academic life, as a business school professor and now as Dean of Brandeis University's Heller School for Social Policy and Management, I have focused on understanding the forces that shape economic opportunities for workers. As an economist, I understand that a market acts as a positive force in allocating the scarce resources of society toward economically productive outcomes. But I also know how our workplace laws seek to *balance* those market forces to make sure that the economic value created by businesses are shared with the workforce who helps create them.

For decades following World War II, families like mine benefited from that balance. But since the 1980's, the economic value created by businesses and their work-

force and the earnings of working people have diverged, leading to wide scale wage stagnation and growing inequality.

This work informed my approach as Wage and Hour Administrator and would continue to do so if confirmed by the Senate. That approach was grounded in the mission of the agency: “Promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation’s workforce.” When I led Wage and Hour previously, we prioritized our resources toward industries, workers, and employers most hurt by failure to comply or most in need of assistance. We were data-driven and committed to evaluating the impact of all our efforts as well as developing multiple ways to engage with our many stakeholders.

The pandemic revealed starkly what has been true long before it hit: too many hard-working people who provide essential services fail to receive the pay and treatment that the law requires. That not only harms them, but undermines the social fabric we depend on as communities. If confirmed and given the opportunity to lead the Wage and Hour Division, I would redouble my commitment to the responsible, effective, and transparent administration of the agency and in that way contribute to President Biden’s efforts to build back better.

Chair Murray, Ranking Member Burr, and Members of the Committee, I once again thank you for the opportunity to discuss my views with you and I look forward to addressing your questions.

The CHAIR. Thank you very much, Mr. Weil.
We will turn to Ms. Wilcox.

**STATEMENT OF GWYNNE WILCOX TO BE A MEMBER OF THE
NATIONAL LABOR RELATIONS BOARD**

Ms. WILCOX. Thank you. Good morning. Chair Murray, Ranking Member Burr, and Members of the Committee, I thank you for the opportunity to appear before you today. I am both honored and humbled to have been nominated for consideration as a member of the National Labor Relations Board. When I started working at the NLRB over 38 years ago, I could not have imagined I would be considered for this highest honor.

I understand that if I am confirmed, I will be making history as the first Black woman to serve as a Board member. My experiences have laid a foundation for my nomination. I give thanks to my siblings, David Wilcox, Dr. Susan Wilcox, and my friend Michelle Weisminson as my rocks of support for joining me here today. I am being considered for this critically important position because of our parents, Dr. Katherine Knight Wilcox, an educator, and Preston Wilcox, an educator and social worker, who are here with my siblings and I in spirit and who prepared us to lead our lives with meaning and purpose, one of caring and working to improve the lives of others.

As first in their families to attend college and attain graduate degrees, they stood on the shoulders of their parents and other ancestors who did not have access to education, essential resources, and any number of other opportunities, including our paternal grandfather, who only had an elementary school education but supported his family at the Youngstown Steel Mills. Upon graduating from a public high school in New York City, my path led me to Syracuse University School of Social Work. My internships opened my eyes to consider law school in order to have a broader impact upon the lives of many.

While attending Rutgers Law School in Newark, New Jersey, I had the goal of representing people living in poverty. I enjoyed working at legal services offices during and after law school, but

I realized no matter what I accomplish for individual clients, I was not actually helping to get them out of poverty. That experience fortunately led me to a position at region 2 of the NLRB in New York City. The employees, subject to the National Labor Relations Act, had the prospect for economic security due to collective bargaining.

My cases over my 5 years at the region impacted the working and personal lives of employees and employers. Post NLRB, I joined the firm now known as Levy Ratner, PC in New York City, where I am currently a Senior Partner and have been a Partner for 25 years. I have had an even greater opportunity to engage with union leaders and members in different industries and continue to handle and supervise NLRB cases over the past 32 years. The collective bargaining process came to life for me as I recognize that effective labor management relations is truly about relationships.

Since 2000, I have also developed a collegial relations with unions' management and NLRB staff and officials on the committee of the American Bar Association's Labor and Employment Section focused on the NLRA. Also since 2012, I have been an Advisory Board Member of the Scheinman Institute for Conflict Resolution of Cornell University's ILR School. And for close to 10 years, my public service as a representative of the New York City Office of Collective Bargaining, the Agency for City Employees and Unions, to address their workplace disputes, has also prepared me to join the NLRB because I have enforced a local law similar to the National Labor Relations Act, where labor and city representatives bring different experiences and perspectives with the goal to being impartial.

Before I close, I want to recognize that in the past 18 months we have lived under a pandemic that has taught us many things. Enough cannot be said about the essential workers who worked tirelessly with personal sacrifices and employers who provided support to their essential workers under difficult circumstances. Having the honor and privilege to represent essential workers in hospitals, nursing homes, and home care has given me yet more respect for their commitment to go to work every day, whether as a union member or in management.

Surrounded by mounting numbers of seriously ill and dying people, they were also faced with profound concerns about spreading the virus to their own families. When management and the union worked together to resolve workplace and patient care issues, they were literally saving lives of many people. As we move forward with the worst of the pandemic behind us, these lessons are ones that I will remember.

In closing, it would be an honor to return to the National Labor Relations Board, which has been so important to my evolution as a lawyer and to the lives of working people in this country. Thank you for the opportunity to appear before you today, and I look forward to your questions.

[The prepared statement of Ms. Wilcox follows:]

PREPARED STATEMENT OF GWYNNE WILCOX

Chair Murray, Ranking Member Burr, and Members of the Committee, I thank you for the opportunity to appear before you today. I am honored and humbled to have been nominated by President Biden for consideration as a Member of the National Labor Relations Board as a result of my wealth of experience both inside and outside the NLRB. When I started working at the National Labor Relations Board as a Field Attorney over 38 years ago, I could not have imagined I would be considered for this highest honor, to serve on the National Labor Relations Board. I have also been informed that if I am confirmed, I will be making history as the first Black woman to serve as a Board Member. I do not take this history-making lightly nor the significance of serving on the National Labor Relations Board.

I believe that my personal and professional life experiences, which I will outline in a moment, have laid a strong foundation for my nomination.

I would like to begin by recognizing my family whose example, encouragement, strength and unwavering support have led me here today.

My brother, David Wilcox, and my sister, Dr. Susan Wilcox, who have joined me here today, are my rocks of support and their wisdom has been a steady guide to me over years. I am here today—being considered for this critically important position—because of our parents.

Dr. Katherine Knight Wilcox and Preston Wilcox, who are here with my siblings and me in spirit, are surely so proud of us and pleased at their own success in preparing us to lead our lives with compassion, meaning and purpose. They instilled in us a commitment to improve the lives of others pressed down by racial, economic and gender inequity. Our parents stood on the shoulders of their parents and other ancestors who did not have access to education, essential resources and any number of other opportunities, and therefore encouraged and enabled my siblings and me in word and deed.

Both of our parents were the first in their families to attend college and obtain graduate degrees. They met at City College of the City University of New York and married some time thereafter. Our mother was born in Richmond, Virginia, and lived in New York City from the age of 3 years. She was a stay-at-home mother for many years, then a public school teacher before becoming a college professor at Barnard College where she educated generations of student teachers and mentored many others in her position as a Dean of Students. After retiring from Barnard College, she returned to her *alma mater*, City College, to serve as a college administrator until retiring for good a few years later. Despite her years teaching at Barnard, our mother earned her Doctorate in Education toward the end of her career. Her personal story, her resilience and dedication, her advocacy for her children, family, friends and community, provided me and so many others with a proximate example of a strong Black woman possessed with immeasurable grace, wisdom and poise.

Our father was born in Youngstown, Ohio and eventually made his way to New York City after his military service. He earned a Masters in Social Work, and went on to teach new generations at his *alma mater*, Columbia University, at Lincoln University and other schools, while also performing social work in the field. His parents were proud of their eldest son's educational achievements, his father, my grandfather, having only attained an elementary school education. But in a family history that brings me to where I am sitting today, our grandfather was able to support his family as a Union member working in the Youngstown steel mills. It is likely that our father drew from this example for he was a life-long community advocate working on behalf of parents and their children living in underserved areas while encouraging their school systems to make *Brown v. Board of Education* a tangible reality. A love of education and history permeated my father's life and he was committed to sharing the heritage and accomplishments of Black people in Harlem, New York, throughout the country and beyond.

This is the stock from which I come.

Upon graduating from a public high school in New York City, I chose to attend Syracuse University, recognized for its social work school, because I wanted to follow in my father's footsteps. My internship experiences, however, made me more aware of the critical needs of youth and elders, and those in between, and of the great need that they have for access to professional advocates. When I thought being a social worker was the right path for me, the internships opened my eyes to consider law school in order to have a broader impact upon the lives of many.

I attended Rutgers Law School in Newark, New Jersey with the goal that I would represent people living in poverty. From part-time to full-time work at Legal Serv-

ices offices, including Hudson County Legal Services Office and Middlesex County Legal Services Office, I realized I enjoyed my work and also that, no matter what I accomplished for individual clients, I was not actually helping to get people out of poverty.

Having learned about the NLRB through a labor law course at Rutgers, I decided to apply for a position at Region 2 of the NLRB in Manhattan, New York, with the belief it would be an opportunity for me to learn about the National Labor Relations Act. In contrast to clients at the legal service offices where I had worked, employees subject to the National Labor Relations Act had the prospect for economic security as a result of it advancing collective bargaining between unions and employers and, at the same time, providing jobs with higher wages and increased benefits. In my new position, I handled cases that impacted the working and personal lives of employees and employers. I analyzed the National Labor Relations Act and applied it to the facts and circumstances of pending cases for over 5 years. I worked with dedicated colleagues and under the wonderful guidance and leadership of the supervisors and administrators. My years at the NLRB were memorable due to the important and impactful work of the agency and the dedicated Regional staff and supervisors with whom I worked assisting the resolution of disputes among employers, unions and workers.

After leaving the NLRB, I went to work at a union and employment law firm, in New York City, now known as Levy Ratner, PC. I am currently a senior partner and have been a partner for 25 years. At Levy Ratner, I had an even greater opportunity and privilege to engage with Union officers, staff and members in different industries and continued to handle and supervise NLRB cases over the next 32 years, in addition to being involved in collective bargaining, among many other responsibilities. The collective bargaining process came to life for me as I recognized that effective labor management relations is truly about relationships. Yes, it is about constantly resolving disputes, but at the core is the need to listen carefully with the objective of helping parties who may enter the process miles apart, learn to also listen and to compromise in order to address their mutual concerns.

Since 2000, I have engaged with union, management and NLRB staff and officials from across the country and developed collegial well-established relationships with my many colleagues. During my years at the firm, I became involved with a committee of the American Bar Association's Labor and Employment Law Section that focuses on the National Labor Relations Act and decisions of the NLRB.

Since 2012, I have been an Advisory Board member of the Scheinman Institute for Conflict Resolution of Cornell University's Industrial and Labor Relations School which has provided me an opportunity, like my parents before, to be an educator, my focus being on labor issues in the field of conflict resolution and engaging with neutrals, professors, and other union and management advocates.

I would also note that besides being a union lawyer I have worn a management hat when representing and defending a large union as an employer concerning issues relating to its 800-person staff. Additionally, in my capacity on some non-profit boards on which I have served, I have addressed employer issues.

My entire resume has led me to this confirmation hearing, but my volunteer public service as a representative to the New York City Office of Collective Bargaining, which is the agency for city employers and city unions to address their workplace disputes, has very particularly prepared me to join the National Labor Relations Board. As a labor representative, my responsibility has been to enforce a local law that is similar to the National Labor Relations Act. The labor representatives and city representatives to the New York City Office of Collective Bargaining serve as a model of effective labor relations. While we bring different experiences and perspectives to the tasks at hand, our goal is to be similarly impartial by applying the law to the facts as I would do if I am confirmed to serve on the National Labor Relations Board.

I have given you some insight into my background, some of the influences and impacts of both my professional and personal life. But before I close, I want to recognize that in the past 18 months, we have lived under a pandemic that has taught us many things. By resolving workplace issues as they arose on a daily or moment-by-moment basis, employers, unions, workers, families and communities benefited. Enough cannot be said about the essential workers who have done monolithic work amid many personal sacrifices and the employers who provided support to their essential workers under difficult circumstances. Having the honor and privilege to represent essential workers in the healthcare industry in hospitals, nursing homes or home care, has given me yet more respect for their commitment to go to work everyday. Whether as a union member or in management, surrounded by mounting

numbers of seriously ill and dying people, they were also faced with profound concerns about spreading the virus to their own families. The best of situations under this untenable moment were when management and the union worked together to resolve workplace and patient care issues—the impact of which might literally save the lives of staff, their families and their patients in the multiple thousands. As we move forward with the worst of the pandemic behind us—these lessons are ones I will remember.

In closing, my parentage and extensive experiences have prepared me to become a Member of the National Labor Relations Board and it would be an honor to return to this agency which has been so important to my evolution as a lawyer and to the lives of working people in this country.

Thank you for the opportunity to appear before you today and I look forward to your questions.

The CHAIR. Thank you, Ms. Wilcox.
Mr. Prouty.

**STATEMENT OF DAVID PROUTY TO BE A MEMBER OF THE
NATIONAL LABOR RELATIONS BOARD**

Mr. PROUTY. Thank you. Chair Murray, Ranking Member Burr, and Members of the Committee, thank you for the opportunity to appear before you. I am honored and grateful for President Biden's nomination and for your consideration of me for this position as a member of the National Labor Relations Board.

I am joined today by my wife, Olive Crone, a midwife and a native of the Republic of Ireland, and by my brother, Douglas Prouty who is a high school English teacher in Montgomery County, Maryland, and the vice president of the Maryland State Teachers Association. Watching on C-SPAN I hope are my 93 year old mother, Muriel Prouty, my sisters Carolyn and Eleanor, and my children, Connor and Molly. By way of giving you some background about myself, I would like to pay tribute to two individuals who were no longer with us, who had an outsized influence on me both as a labor lawyer and as a person.

The first, who is very kindly mentioned by Senator Van Hollen, is my late father, Keith Prouty. My father was a World War II veteran who went to work afterwards as an aircraft engine mechanic at the Avco Lycoming plant in Fairfield, Connecticut, where he became a shop steward and a member of United Auto Workers Local 1010. In fact, one of my earliest memories is of standing with him on the union's float in the Labor Day parade in Bridgeport, Connecticut. My father eventually left the shop and became a staffer and research director for several unions. He then served for 20 years in the office of the Secretary of the U.S. Department of Transportation, where he acted as a liaison between nine secretaries of transportation, both Republicans and Democrats, and the country's railway and airline unions. My father taught his children many lessons.

One that has been a particular touchstone of my career is the idea of always dealing with everyone we encounter in good faith. I only wish he were here with us today. The second person to recognize is my late friend Jonathan Cain, who is a management lawyer in Philadelphia, Pennsylvania. John and I became good friends while serving as co-chairs of the ABA's Committee on Practice and Procedure under the National Labor Relations Act. We spent hours together doing the work of the committee, including arranging

presentations for members of the NLRB, and we spent even more hours debating the finer points of labor law.

Despite our differences, we wholeheartedly agreed on the importance of the institution of collective bargaining and of its benefits for both sides, labor and management when conducted in an open, respectful, and creative manner. From Jonathan I learned another touchstone that has guided my career, that a good idea is a good idea no matter who first introduces it. John passed away in 2016. I still miss him, and I wish he were here today as well. These two touchstones, dealing with everyone in good faith and recognizing that no party has a corner on good ideas are ones that I hope to bring to my service on the NLRB if I am fortunate enough to be confirmed.

These two principles transcend partisan wrangling and underscore my understanding that my service on the Board will be as a neutral and that my obligation will be to listen openly and fairly to all parties while deciding the cases that come before the Board. In my career as a labor lawyer since 1986, I have represented, among other occupations, clothing and textile workers, housekeepers, waiters, Major League Baseball players, and currently doormen and office cleaners.

I would bring those experiences to my work as a member of the Board. I would also an equally important bring to this position the knowledge gained in negotiating contracts with employers in all of those industries. From countless hours at the bargaining table, I have learned, I believe, a great deal about the art of compromise and about the value of settlements that leave both parties better off for having resolve their differences in a peaceful manner. I have also learned to work with and benefited from the outlooks of many excellent management lawyers, just as I expect I will do with my Republican colleagues on the Board.

Another viewpoint I would bring to my service on the NLRB is the nearly 20 years I have spent as a General Counsel of four different unions. In that capacity, I have had to safeguard the legal status of large institutions, supervise their business and financial affairs and Government compliance, and indeed act as a management lawyer with respect to the unions' employees and also the unions that represent those employees. I have thus gained, I believe, a degree of empathy for the role that my management counterparts have played vis a vis their own clients.

Finally, I have for many years practiced and litigated before the NLRB in regions all around the country. I have come to have great respect for the National Labor Relations Act and great appreciation and affection for the dedicated employees of that agency.

They, too, are sworn to uphold the tenets of the law that, as its preamble so eloquently says, "is intended to encourage the practice and procedure of collective bargaining." I look forward, if I am confirmed, to supporting their efforts and to drawing on their experience. Thank you. And I would be happy to answer any questions you may have for me.

[The prepared statement of Mr. Prouty follows:]

PREPARED STATEMENT OF DAVID PROUTY

Chair Murray, Ranking Member Burr, and Members of the Committee, thank you for the opportunity to appear before you. I am honored and grateful for President Biden's nomination, and for your consideration of me for a position as a Member of the National Labor Relations Board.

I am joined today by my wife, Olive Crone, a midwife and a native of the Republic of Ireland, and by my brother Douglas Prouty, who is a high school English teacher in Montgomery County, Maryland and the Vice President of the Maryland State Teachers Association. Watching on C-SPAN, I hope, are my 93 year old mother Muriel Prouty, my sisters Carolyn and Eleanor, and my children Conor and Molly.

By way of giving you some background about myself, I would like to pay tribute to two individuals who are no longer with us who had an outsized influence on me as a labor lawyer and as a person. The first, who was very kindly mentioned by Senator van Hollen, is my late father, Keith Prouty. He was a World War II veteran and went to work afterwards as an aircraft engine mechanic at the Avco Lycoming plant in Fairfield, Connecticut, where he became a shop steward and a member of United Auto Workers Local 1010. In fact, one of my earliest memories is of standing with him on the union's float in Labor Day parades in Bridgeport, Connecticut. My father eventually left the shop and became a staffer and Research Director for several unions. He then served for 20 years in the Office of the Secretary of the U.S. Department of Transportation, where he acted as a liaison between nine Secretaries of Transportation—both Republicans and Democrats—and the country's railway and airline unions.

My father taught his children many lessons. One that has been a particular touchstone of my career is the idea of always dealing with everyone we encounter in good faith. I only wish he were here with us today.

The second person to recognize is my late friend Jonathan Kane, who was a management lawyer in Philadelphia, Pennsylvania. Jon and I became good friends while serving as co-chairs of the ABA Committee on Practice and Procedure Under the National Labor Relations Act. We spent hours together doing the work of the Committee, including arranging presentations from Members of the NLRB, and we spent even more hours debating the finer points of labor law. Despite our differences, we wholeheartedly agreed on the importance of the institution of collective bargaining, and of its benefits for both sides—labor and management—when conducted in an open, respectful and creative manner. From Jonathan I learned another touchstone that has guided my career: that “a good idea is a good idea,” no matter who first introduces it. Jon passed away in 2016. I still miss him and wish he were here today as well.

These two touchstones—dealing with everyone in good faith and recognizing that no party has a corner on good ideas—are ones that I hope to bring to my service on the NLRB if I am fortunate enough to be confirmed. These two principles transcend partisan wrangling, and underscore my understanding that my service on the Board will be as a neutral and that my obligation will be to listen openly and fairly to all parties while deciding the cases that come before the Board.

In my career as a labor lawyer since 1986 I have represented, among other occupations, clothing and textile workers, housekeepers, waiters, Major League Baseball players and, currently, doormen and office cleaners. I would bring those experiences to my work as a Member of the Board. I would also and equally importantly bring to this position the knowledge gained in negotiating contracts with employers in all of those industries. From countless hours at the bargaining table, I have learned, I believe, a great deal about the art of compromise, and about the value of settlements that leave both parties better off for having resolved their differences in a peaceful manner. I have also learned to work with, and benefited from the outlooks of, many excellent management lawyers—just as I expect I will do with my Republican colleagues on the Board.

Another viewpoint I would bring to my service on the NLRB is the nearly 20 years I have spent as a General Counsel for four different unions. In that capacity, I have had to safeguard the legal status of large institutions, supervise their business and financial affairs and governmental compliance and, yes, act as a management lawyer with respect to the Union's employees and, indeed, the unions that represent them. I have thus gained, I believe, a degree of empathy for the role that my management counterparts have played vis a vis their clients.

Finally, I have for many years practiced and litigated before the NLRB in regions all around the country. I have come to have great respect for the National Labor Relations Act and great appreciation and affection for the dedicated employees of

this agency. They too are sworn to uphold the tenets of the law that, as its preamble so eloquently says, is intended to “encourage the practice and procedure of collective bargaining.” I look forward if I am confirmed to supporting their efforts and to drawing on their experience.

Thank you, and I would be happy to answer any questions you may have for me.

The CHAIR. Thank you very much. We will now begin a round of 5 minute questions. And I ask our colleagues to keep track of the clocks, stay within those 5 minutes. We do have votes beginning at 11 a.m.. Mr. Weil, I am going to begin with you. The pandemic has hurt workers across the country, as you well know, especially our frontline workers, women workers of color, workers with disability, and millions faced new challenges, lost child care, increased risk of illness, sudden loss of a job and work.

Many of these individuals worked, as we know, in low wage sectors with limited access to sick family and medical leave and other workplace protections. The previous administration’s Wage and Hour Division did little to advocate for our workers. Fortunately, the Biden administration and Secretary Walsh have reinstated the Department of Labor’s pro-worker mission.

I wanted to ask you today, if you are confirmed, how will you ensure the Wage and Hour Division helps workers as they now recover from the pandemic and build greater economic security?

Mr. WEIL. Thank you, Chair Murray, for the question. I think what would guide me is what always guided me in the past when I was Wage and Hour Administrator, and what if I was confirmed going forward, and that is the mission of Wage and Hour, and that is to raise compliance with our labor standards laws.

I would do that and including focus on the workforce that have been seen to be very exposed to failure to pay the wages and enforce the laws that they are entitled to, first by using strategic enforcement as we did in the past to make sure that we are targeting industries and employers who are really violating the law and who erode those kinds of standards. Second, though, enforcement alone cannot achieve that mission. Equally important is outreach to the employer community in terms of education and engagement about their responsibilities under the law.

We did a great deal of that when I was Wage and Hour Administrator in a variety of ways. And third, as your question indicated, the pandemic did reveal that far too many workers are falling through the cracks of the laws that they should be covered by.

The third thing I would look very closely at are the causes for the reasons workers are not being covered and working again through the different instruments the Wage and Hour Division has to make sure that those people are protected by our laws.

The CHAIR. Thank you very much. Ms. Wilcox, Mr. Prouty, you both have extensive experience advocating for workers, including workers who have been on the front lines during this pandemic. And you have seen the significant challenges those workers faced as they tried to exercise their right to organize, to improve their pay and working conditions. And you also each have previous experience with the NLRB.

If confirmed, how will your professional experiences inform your approach now to serving as a neutral arbiter in the cases brought before the Board? And I will start with Ms. Wilcox.

Ms. WILCOX. Thank you. Senator, my experiences as a union lawyer and as a zealous advocate on behalf of workers will obviously change because I will have to be a neutral arbiter of the law as I was at the NLRB and also when I have served at the New York City Office of Collective Bargaining. But I would say that my experience is that I have a deep understanding of the challenges that workers and unions actually suffer on the day to day basis.

Hearing what was very informative as a field attorney and reaching two of the NLRB, I was able to really hear stories about how difficult it is. And certainly in my role as a union lawyer, I understand that. But that is not without understanding the fact that as a union lawyer, I also have to deal with collective bargaining. And collective bargaining is really about solving problems and understanding what the management's positions are in order to breach issue.

I believe that those experiences will really help guide me as I—if I am fortunate enough to be confirmed in a position within NLRB.

The CHAIR. Thank you.

Mr. Prouty.

Mr. PROUTY. Thank you, Senator Murray. I think as a way of answering that question, I refer to my opening statement where I spoke about the experience I have had with collective bargaining. And most recently, I think illustrative of that and the experience I bring to the Board is with the real estate industry in New York, which, as you might imagine, was very hard hit by the pandemic.

We have just worked through an entire series of agreements to try to protect both the health insurance of workers who were laid off, provide them with personal protective equipment, provide them with the means of getting vaccinated, and ensure also that the real estate industry survives in New York, which is important because it is an employer of so many of the members of Local 32 BJ.

I think that my service, if I am fortunate enough to be confirmed, would bring that perspective of working with employers, working with management to try to solve problems for the benefit of both parties.

The CHAIR. Thank you very much.

Senator Burr.

Senator BURR. Thank you, Madam Chair. Dr. Weil, welcome. I have written to you asking for your emails related to your work with the Massachusetts Office of Attorney General Labor Advisory Board. I ask you for this—I asked you for these documents because a public records request from an outside group to the Attorney General's Office for Records that totaled some 1,200 is not going to be answered until December.

It is my understanding from them that—and what we asked for were emails from you to them or them to you, which should reside within your mailbox, is that an accurate statement?

Mr. WEIL. Yes, thanks. Thanks for your question, Senator Burr. I do know the request you made. I know that both the Labor Department and the White House have been in discussions with your

office about that. And I am happy to comply with whatever is resolved from that discussion.

Senator BURR. You are willing to turn over those emails to the Committee?

Mr. WEIL. I know that there are discussions going on with the Labor Department and White House and your Committee, and I am happy to comply with whatever is resolved from that, sir.

Senator BURR. Well, I appreciate that. I think it is safe to say every Member on this Committee should have an opportunity to look at those conversations. They are not privileged in any way, shape, or form, and you possess them. You have got full control to turn them over to the Committee and let them look at it. I mean, it just raises a suspicion. I just point that out. Listen, The Wall Street Journal said, and I quote, "that you are a lifelong left wing academic with labor union sympathies, no private sector experience, or legal training and limited management experience." Are they accurate?

Mr. WEIL. Thank you, Senator. No, I would contest that characterization of me. First of all, I was a business school professor, and I am proud of the thousands of MBAs I taught in managerial economics and other issues. I am proud of the work I have done as a mediator with employers and labor groups in terms of economic competitiveness.

I am very proud in particular of my record when I served running an agency with a \$235 million budget, 2,000 employees, and a very complex organization in my efforts to reach out to the business community and my engagement with the business community, which I am happy to talk about further, and also in running in the last 4 years a school with a \$32 million budget, more than 200 full time equivalent employees, and all the complexities of any organizations. So I think that characterization of my experience is a little off.

Senator BURR. Ms. Wilcox and Mr. Prouty, just one question for you. I have sort of examined the SEIU bylaws, and I think both of you have an affiliation either at the national or local levels with SEIU. And under the expanded definition of a joint employer that was adopted during the Obama administration in NLRB, can you explain why SEIU, under that definition, would not be considered a joint employer given the local and essentially using the franchise model where the international can override anything that happens at the local level?

Ms. WILCOX. Well, Senator, thank you for your question. And I would say that it is really not the same arrangement. The local that I represent is an independent local of SEIU. And so that the union index independently has its own bylaws and has its own governing body and makes many decisions on its own without regard to SEIU.

Senator BURR. Would you disagree with my interpretation that the SEIU's bylaws state that the international union controls?

Ms. WILCOX. I would disagree. From my understanding of what the rules are, I have not looked at them in quite some time, but the relationship between the local and the SEIU, for my understanding, having represented the local for many years, is that there

is not any type of franchise, branch, or franchisee arrangement between those parties.

Senator BURR. Mr. Prouty.

Mr. PROUTY. Thank you for your question, Senator.

Senator BURR. Microphone, please.

Mr. PROUTY. Thank you. If I could just add, I have great affection for the State of North Carolina. If you ask my wife, I think she thought for many years I was a resident of the State of North Carolina.

Senator BURR. We would welcome you back in North Carolina.

Mr. PROUTY. Thank you. Just to echo Ms. Wilcox. I am an employee of the local 32 BJ, which is part of SEIU, but a separate entity. It files its own registrations under the Department of Labor. I don't—I am not employed by SEIU and so I don't think that the joint employer model, as you laid out, is analogous to the situation between SEIU and its locals.

There have been a lot of court decisions over the years establishing that locals and international unions are actually distinct entities. If either Ms. Wilcox and I or both of us are fortunate enough to be confirmed, we have both done work for locals and would abide by all the ethical rules regarding recusal.

Senator BURR. I am not a lawyer and I certainly leave the legal determinations up to the two of you rather than myself. But it seems that the expanded interpretation is on the architecture of a franchise and the architecture seems identical to that of the bylaws of the SEIU. Let me just ask, because the international union has such power over locals, should you both recuse yourself of SEIU cases that come before the NLRB so there is no appearance of impropriety?

Ms. WILCOX. I will start. Senator, thank you for your question. Before appearing here today, I have signed an ethics pledge and the ethics pledge would require me to uphold the recusal policy, both in letter and spirit of that policy. And so with regard to any issue that might come up regarding an SEIU local or the international its own, I would be consulting with the ethics officer of the agency. And with that, I would look to see what is the guidance that would be provided in those circumstances.

There is no—other than the two-year recusal policy with regard to any cases at my firm or myself handled within the last 2 years, that is very clear. In terms of cases coming up in the future, I would have to evaluate those facts as they arise, and certainly consulting with the Ethics Office of the agency would be very important.

I would also want to assure you that I have, throughout my career, 42 years as a lawyer, I have upheld to the highest standard possible the ethical and professional responsibilities that I am required to adhere to. And if I am fortunate enough to be confirmed, I expect to continue to uphold those highest standards. And so I want to assure you as well as the Committee that I will take—I take these obligations very seriously. So I will seek guidance in that matter.

Senator BURR. Thank you.

Mr. Prouty.

Mr. PROUTY. Thank you, Senator. I, too, have tried to maintain throughout my career a high level of ethical responsibility. And I understand your concern about the appearance of impropriety. In preparation for this nomination, I spent a great deal of time with the NLRB Ethics Office, and I have signed the Biden administration ethics pledge.

I will recuse myself from any SEIU local 32 BJ case that comes before the Board in the next 2 years. If any SEIU matter comes before the Board, I would, as Ms. Wilcox said, go to the designated agency ethics officer and consult on their opinion and act accordingly.

Senator BURR. Thank you for that. Thank you.

The CHAIR. Thank you.

Senator Smith.

Senator SMITH. Thank you. Madam Chair and Ranking Member Burr. And welcome to Dr. Weil and Ms. Wilcox and Mr. Prouty. Thank you so much for your willingness to serve and your commitment to public service. I greatly appreciate it. Now, it is my hope that as America recovers from the COVID-19 pandemic and as our country continues to grapple with the injustice of systemic racism, that you will hold fast to your commitment to the value that every worker in this country should have the opportunity to work and to be fairly compensated, and that in particular should have the opportunity to benefit from the real value of their labor.

Dr. Weil, you said in your testimony, working people receive a fair day's—should receive a fair day's treatment for a fair day's work, and the businesses that employ them should comply with the law and compete on a level playing field. So I want to ask you, Dr. Weil, about one issue of great concern to me. According to the Economic Policy Institute, Americans lose three times more in wage theft than they do in street robberies, bank robberies, gas station robberies, and convenience store robberies all combined.

Think of that. That is money that workers are—that has been stolen by their employees who they should trust as their employees to stand up for them. And of course, the victims of wage theft are disproportionately low wage workers, they are women, they are workers of color. So, Dr. Weil, could you—how do you assess this challenge, this problem of wage theft? And if you are confirmed, what do you see that you can do in your role to prevent this from happening?

Mr. WEIL. Thank you, Senator Smith, for the question and I think a very apt characterization of the scope of the problem. Unfortunately, wage theft is far too common in the economy. It tends to be concentrated in certain industries and often focused on certain kinds of employers. One of the things that I was very intent on doing when I had the honor of serving before was making sure, through data driven kinds of analysis, we focused on those places where workers were most vulnerable to the wage theft you have described.

To really understand that we were not only protecting them, but we were protecting really the unwinding of compliance that happens once one party starts playing games with the law on the competitive playing field for others. So as an agency, we have very lim-

ited resources. We cover some 10 million workplaces of the fair labor—under the Fair Labor Standards Act and other laws.

The challenge is to make sure that those resources, whether for enforcement or through engagement and education, are really getting to the businesses and to the workers who are most affected by the problems that you have outlined. And if I was confirmed, I would redouble those kinds of efforts to make sure that we were focusing on where the real big problems were.

Senator SMITH. Thank you for that. I think so often these workers are in work environments where they have so little power. And in fact, many of them are forced into forced arbitration clauses as they take on employment, which makes it even more difficult for them to exercise their power and to do what they need to do to stand up for themselves. And more and more, we are seeing these forced arbitration clauses being imposed on workers as a condition of employment.

I have seen an estimate recently that says that by 2024, forced arbitration will be in place and over 80 percent of workplaces covering more than 85 million workers. And again, this is a problem that disproportionately affects Black and women female workers. Almost 60 percent of Black workers and 58 percent of women female workers are subjected to this practice in the workplace.

Could you tell us, Dr. Weil, how you see this—how you see the impact of forced arbitration clauses on individuals' ability to exercise their rights and what we can do about it?

Mr. WEIL. Thank you for the question, Senator Smith. I think what you are raising is part of a much larger problem that we often experience in terms of making sure that the rights and responsibilities of the law are acted upon. And that is many, many workers, particularly in the industries you were talking about in your first question, are very frightened of exercising the rights they have. In terms of what Wage and Hour did during my time there, and is doing, to my understanding under the Biden administration, is very cognizant of that fact. And that is why the agency used a mix of following up on complaints and also doing proactive investigations, because we know many of the workers who we need to help at the time, and I would say this is still true today, don't exercise those rights and there are barriers.

The kinds of arbitration clauses you cite are additional barriers in many cases. While the Wage and Hour Division doesn't have any direct authority over that, I think it can be very cognizant of the underlying problem of people being able to exercise their rights as you have outlined it.

Senator SMITH. Thank you. I know, Madam Chair, I am out of time. I would just like to say in closing that I believe that protecting workers rights to organize and to bargain collectively for better working conditions and better wages and benefits actually contributes to the competitiveness of our economy and contributes to the overall health of our economy. It is not a choice between workers, stronger workers' rights and protecting businesses that employ them. So I hope that you will carry that value forward as you, I hope, are confirmed. Thank you.

The CHAIR. Thank you.
Senator Marshall.

Senator MARSHALL. Thank you, Madam Chair, and welcome to our nominees to our Committee hearing. Like the Ranking Member, I come from the private world as well. For 25 years, every other week I signed a paycheck for as few as three people, for as many as 300 people. Every day in my office, I would say 40 to 50 women. There wasn't a board, voluntary board in our community that I didn't serve on, practically speaking. And until—I was on the Small Business Committee on the House side for 3 years as well. And until we started seeing nominees come here at the HELP Committee, I never heard a bad word about franchises. I had never heard of disdain about them.

As a matter of fact, I think just quite the opposite. I think it is a shot at the American dream. I have seen so many people from the franchise model be successful, quite often giving minorities and women that opportunity to run and own their own business. The franchise model has a recipe that fixes sometimes when people try it independently that they fail.

I have just seen the success over and over again. Some people like a Starbucks model where it is a big corporation and then taking care of the employees and other people prefer Dunkin Donuts, where there is a franchise, and a local franchisor is making the decisions on the wages and the hours of those employees. So I guess I am shocked to dive into some of your background.

Dr. Weil, I would just assume you don't like franchises and you think that they are a bad model. You have described them as a form of outsourcing. And I guess I just want to know how specifically is franchising a form of outsourcing? And if you had your way, would you abolish the franchise model?

Mr. WEIL. Thank you, Senator Marshall, for your question and I am happy to clarify on that because I think both in my writing and more importantly in what I did at Wage and Hour, I showed that I didn't have an inherent antagonism toward franchising. What I have written and what we did was looking closely as the law requires, beginning with the law in terms of who is described as a joint employer and who isn't. The law has to always frame where we start. I mean that is where we always started when I was Wage and Hour Administrator.

From there you go to the facts. And this is where there is a whole range of different arrangements under franchising. Some very legitimate forms of franchising where joint employer relationships might not be on the table, other forms where there is joint employment, and some forms of franchising which are problematic.

When I was at the Wage and Hour Division in some cases where we had problematic forms of franchising which were in our view and the view of the solicitor at the time, a form of misclassification, we used enforcement strategies, but I was also very proud of a relationship we built with Subway sandwiches, which was about working with them for training of their franchisees where there was no allegation or effort to establish joint employment.

Quite the opposite, we worked collaboratively together. I signed an agreement with the then CEO, Susanne Greco, that we were all very proud of. So I think it ultimately comes down to the facts, as in any case of applying the law as it is established and as courts have interpreted it to the specific facts of the case. And that cer-

tainly applies to my view of franchising as a whole range of business relationships.

Senator MARSHALL. Kind of have a follow-up question there. Whether we are jeopardizing the IRS or weaponize the Wage and Hour Division, my concern is just the increased legal burden and the costs that your office created historically. 93 percent increase in litigation after your interpretation regarding the joint employer. We lost 376,000 job opportunities. Are you aware of the impact of the litigation cost to a small business that you are putting on people? And do you feel like it is justified now retrospectively?

Mr. WEIL. Thank you, Senator Marshall. I am very cognizant of those costs. And that is why, again, at Wage and Hour when I was Administrator, we took a very focused approach based on, in some cases using enforcement, but in many other cases using outreach, education, and engagement. I know that most businesses in this country are complying with the law, and our efforts shouldn't be focused on them.

There are some employers who violate Fair Labor Standards Act because they don't fully understand it. That is what we did with Subway to help them educate newer franchisees about their obligations under the law. I think it is that spectrum of approaches that is absolutely important to address the very real issues you are raising, Senator.

Senator MARSHALL. Thank you. I yield back.

The CHAIR. Thank you.

Senator Tuberville.

Senator TUBERVILLE. Thank you very much. Thank you for being here today. Ms. Wilcox, in your current legal practice, you primarily represent unions and legal matters. Throughout your career, you have written numerous publications outlining your support for unions, including one in particular where you advocate for a ban on state right to work laws.

Even further, you wrote that you believe work organizations should be given the right to require worker dues from employer, irrespective of their status as an exclusive representative or non-exclusive representative of employees. As you know, Alabama is right to work. We just had a big fight down there with Amazon and they voted the union out. Do you believe the Federal Government knows better than workers in your opinion, on whether to unionize or not?

Ms. WILCOX. Well, thank you, Senator, for your question. The National Labor Relations Act is a statute that protects the right of employees to engage in collective bargaining and organizing, and also to refrain from that as well. The role of the NLRB is to monitor cases that come before it. It does not, as you know, go and look for cases. Parties have to come to the NLRB.

The obligation of the NLRB is to enforce those—enforce the Act based upon the facts as a result of any type of an investigation. Certainly, the NLRB staff are very dedicated professionals who understand the Act, have been enforcing it, and I understand and both the employee side, the union side, as well as employers. So I do think that the agency is a very well established agency to understand and enforce the Act that is required to do.

Senator TUBERVILLE. Thank you. Mr. Prouty, in some of your most recent writings, you have shown yourself to be very critical of former NLRB General Counsel Peter Robb, who was abruptly fired by President Biden on Inauguration Day well before his term was scheduled to expire. These writings outline unions' concerns with Mr. Robb. In your opinion, was that appropriate for President Biden to fire him the first day?

Mr. PROUTY. Thank you for your question, Senator. I don't have an opinion about the firing of Mr. Robb. I was not involved in it. And it is a matter that may come before the NLRB. If I am fortunate enough to be confirmed, I might have to look at that again and I don't want to prejudice myself by anything I might say here.

Senator TUBERVILLE. Thank you. I worked in higher education for almost 40 years, and you have expressed the notion that college students working in jobs on their campuses should have the opportunity to unionize. Could you explain that?

Mr. PROUTY. Senator, thank you for your question. I wrote the article you are referring to when I was an advocate, as I still am right now. My understanding of my position on the National Labor Relations Board will be as a neutral, not as an advocate for one side or the other. And so my obligation would be to look at all the facts and circumstances of the case that come before me, including on the issue that you raised there. And if I am fortunate enough to be confirmed, I will do so. And I will obviously bring my experience to bear on that. But I will pledge to you that I will look at every issue and consider all sides that come before us.

Senator TUBERVILLE. Okay, thank you. Dr. Weil, because you—this is a your second go around here in this situation. The International Franchise Association, along with dozens of other organizations contacted my office, ringing off the wall. There is many fears that your return to Wage and Hour will directly, immediately pose a threat to their business models, with potential to put countless Americans out of jobs.

Your past actions have shown that you believe in organized labor above all else, even when that comes at a cost of jobs themselves. So my people are out there listening today in Alabama. Give me your thoughts about your first go around at this point and how you can help people of Alabama that are franchisees owners.

Mr. WEIL. Thank you, Senator Tuberville, and I am fond of the State of Alabama. I have a new son in law from your state.

Senator TUBERVILLE. Hope he is an Auburn fan.

Mr. WEIL. I would rather not answer that part of the question. No, thank you, thank you for the question. I think what I would say is look at my record when I was Wage and Hour Administrator last time. I think we had a very fine record of reaching out and working with businesses and understanding their needs, whether that was in the process of how we worked on regulations, how we implemented existing policies, or how we thought about our outreach efforts.

I was very proud of the creativity of different ways we used to make sure that people understood that, businesses understood their responsibilities under the law. And I often said, and you can find in my public statements, often began basically acknowledging most businesses are complying with the law and that what our

task was, is to enforce where people were playing games with the law or undermining those who were actually complying with the law or providing the kinds of outreach and assistance that I think would help businesses in Alabama and across the country.

Senator TUBERVILLE. Thank you. I would just like to throw one thing out there, Madam Chair.

The CHAIR. We do have votes—go ahead.

Senator TUBERVILLE. I don't want an answer from you. I just want to let you know that in Alabama we are being overwhelmed with thousands of people that are coming across the border looking for jobs. Dr. Weil, you are going to have to be responsible in your new position of how in the world are we going to feed these people and feed the people that their jobs are going to overtake. It is going to be an unbelievable job that we are going to have.

A million probably people coming in this year taking jobs away from American workers. I don't know how we are going to control that, especially when they are illegal. They don't have identification. They don't have any way to make a living other than the American taxpayer and hard workers are going to pay for their welfare and their well-being.

We have got to find a way to get them involved, and a lot of people in my state are up in arms in terms of how do we handle this. Thank you very much.

The CHAIR. Thank you, Senator Tuberville.

Senator Lujan.

Senator LUJAN. Thank you, Madam Chair. And I appreciate the line of questioning from my friend as well. And I think there is a reason why the agricultural community across America, they are trying to secure visas now because they don't have enough labor. Many people coming in. And we have got to fix this broken immigration system that we have in the United States, reminding ourselves that about half the folks that are in the country undocumented are here on expired visas as well. And so I think it is a reason for us to fix this and for us to work together and make sure we are able to have the labor that we need so we have a stronger economy.

When we look at economic growth in America, a lot of that is built on migration to America. As a matter of fact, if we don't have enough folks come into the country, GDP doesn't grow. And that is what smart economists say. I am just a Senator from New Mexico, but I depend on the smart folks to help me understand what is going on there. So I look forward to working with all my colleagues in that space. I want to thank our Chair and our Ranking Member for this important hearing. And I want to thank our witnesses for joining us today for all of these important positions at the Department of Labor.

Dr. Weil, in advance of a major infrastructure package, we must ensure robust protections for workers by strengthening Davis Bacon enforcement. The president's budget request of \$30 million in increases for the Wage and Hour Division to aggressively combat worker misclassification, along with fully enforcing the other areas under its—like prevailing wages.

Unfortunately, I have heard concerns that the inclusion of unnecessary labor and craftsman subcategories in the Department of La-

bor's Vocational Wage Service undermined its ability to establish a fair wage. Dr. Weil, if confirmed, will you commit to working with me to address issues in the wage categories within the wage service process?

Mr. WEIL. Thank you, Senator Lujan, for that question, and I would be delighted to work with you and your office on that. The Davis Bacon program really requires three elements. It requires, first and foremost, that the wage determinations are accurate and really capture local labor market conditions.

Davis Bacon can do the things of predicting the wages for communities it meant to, and then working as well with the agencies who make—who actually contract the work to make sure that they are making the right designations, and then finally, that the Wage and Hour Division enforces the Davis Bacon rules as they apply. So I would be happy to work closely with you to make sure that all three of those things are happening.

Senator LUJAN. Appreciate that. And Chair, I think it is also important that we work together to have robust enforcement of Davis Bacon, so I appreciate that mentioned. Ms. Wilcox, reaching non-English speaking and other vulnerable workers should be one of the National Labor Relations Board's top priorities, especially in the wake of a pandemic.

The National Labor Relations Board launched a new Spanish language version of its website in March 2021, along with two Spanish language Twitter accounts for news and information from the General Counsel's Office. Ms. Wilcox, if confirmed, what would you do to enhance the National Labor Relations Board's Spanish Language Outreach?

Ms. WILCOX. Senator, thank you for your question. As a Board member or as a potential Board member, and I certainly—I look forward to having the opportunity to be confirmed and to become a Board member, some of those issues will come up in the matter of cases and so I can't really specifically address the issues that might come before me. But I certainly believe it is important that the National Labor Relations Board continue on its efforts to communicate and provide opportunities for everyone to understand the Act and what the agency is about and its services that it provides.

That making language communications in Spanish and other languages to make certain that Americans who are here are able to be able to access the agency's efforts and website, as well as other communications as effectively as possible.

Senator LUJAN. I would like to follow-up with you on that. New Mexico is the only state in the country whose state constitution was drafted in English and in Spanish. My grandparents and parents first language was Spanish. Generations of people in the United States, this is important, and I look forward to following up and working with you on that. Mr. Prouty, if confirmed, what would you do to strengthen outreach to rural populations, especially those without access to reliable broadband?

Mr. PROUTY. Thank you for that question, Senator. I have done a lot of work in rural areas. A lot of the work earlier in my career was in textile industries, which were located mostly in rural areas. So I am familiar with that. And I know that there is an issue with the amount of knowledge that people have about the Labor Act.

One thing I would point to is that the NLRB has asked for authorization for an increased budget, which would include money for outreach specifically to underserved areas, and also to find new means and new media to make sure that employees are advised and know about their rights under the National Labor Relations Act.

Senator LUJAN. Appreciate that. And Chair Murray, I do have a question on wage theft. I will submit into the record. I want to follow-up specific to farm workers and others that I know that have been victims of wage theft and see if we can work together there. I thank all the witnesses and the nominees for being here today. Thank you, Madam Chair.

The CHAIR. Thank you.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Madam Chair. And I will be brief. I know we have got votes. Thank you for being before the Committee and for your willingness to serve here. Dr. Weil, let me start with you. You have been quoted that the only way to implement an ABC style test for determining whether a worker is an independent contractor is through legislation not regulation. So the question for you hopefully briefly is, is whether that is accurate and if you still stand by that in terms of this ABC test?

Mr. WEIL. Thank you, Senator Murkowski. I have to mention my daughter, who is married to the man from Alabama, is on her way to Alaska as we speak. First trip there.

Senator MURKOWSKI. Good. Have a wonderful time.

Mr. WEIL. She is very excited. The statement that you quoted is accurate. The Fair Labor Standards Act describes to employee as to suffer or permit work, and courts and the agency over decades have used that to fashion an economic realities test. And that is what the Administrator needs to work under.

The Administrator doesn't have the authority to independently set another criteria. Only Congress could do that in terms of defining who isn't and who is an employee. And we would follow what I followed when I was last Administrator, which is what both the agency has done historically and what courts have said in terms of the interpretation of who is an employee and who is an independent contractor.

Senator MURKOWSKI. Recognizing that, for instance, in California, there have been—there has been a fair amount of latitude, I guess, with exemptions. How does that fall into I guess your response to me here?

Mr. WEIL. Thank you for the question. I think where that falls in, it is very important. And we—for the regulated community to understand what the law says as it currently stands in terms of economic realities. That is why we did issue a great deal of guidance when I was head of Wage and Hour.

To clarify that, to clarify on where things fall. In many cases it is clear, but in some cases it is a gray area. And I think that is where guidance and then the consistent application of the economic realities test remains very important in terms of the responsibility of an Administrator.

Senator MURKOWSKI. One more question for you. This relates to the paid program, the Payroll Audit Independent Determination

program. This was the one that allowed employers to self-audit, identify minimum wage, overtime errors, pay employees everything that they were owed without expanding Wage and Hour Division resources.

In exchange, these employers wouldn't be subject to liquidate damages or civil monetary penalties. As we look back on that program, it was credited with recovering more than \$7 million in back wages for more than 11,000 workers. So the Biden administration still canceled this program. Your views on this program, should it be reinstated?

Mr. WEIL. Thank you for your question. I was obviously not involved in that decision. What I would say is what I would consider on any enforcement or engagement program is its impact on compliance. I always come back to the mission about increasing compliance.

My concerns with earlier forms of self-audits was that, in my view, the time required to do them properly could have been better spent in other forms of either outreach, education, or enforcement that would yield higher impacts ultimately on raising compliance, particularly in problematic industries and problematic employers.

I would evaluate any initiative sort of with that economist logic, what is the impact, given the resources expended for it?

Senator MURKOWSKI. Thank you. This is to both Ms. Wilcox and Mr. Prouty. You have both been labor side attorneys, Ms. Wilcox since 1988 and Mr. Prouty since 1986. How can each of you describe how you will approach the job of being a neutral, fair arbiter of the law for both employers and unions, if you are confirmed? You have been working on one side of it. How can you give me the assurance that you are going to bring balance to this position? Ms. Wilcox, do you want to start?

Ms. WILCOX. Senator, thank you for your question. First I would like to say that actually starting in 1983, I started working at the NLRB, which really gave me the experience of working as really a neutral and that my goal was to enforce the National Labor Relations Act. And so that experience really has helped to inform me in terms of this position.

Second, as a union lawyer, I have also worn a management hat at times. The union I represented—a large union I represent, has close to 800 employees. And so in that capacity, I have also defended and represent the union with regard to the myriad of employee issues. And I would also add that with the process of being a union lawyer, really it is really important to understand the collective bargaining space that in order to do and be effective as a union lawyer, you really do have to understand management's position.

Those relationships that I have built up over the years in terms of collective bargaining and dealing with management and understanding what their issues are, really allows the parties to get to a point of reaching a compromise and agreement.

Those experiences are really just help—will be very helpful, as well as the fact that as a labor representative to the New York City Office of Collective Bargaining, I actually have to be impartial in terms of making a decision. Certainly myself and the city rep-

representatives bring our different experiences to the table, but our goal is to be impartial. So—

Senator MURKOWSKI. Ms. Wilcox, I am going to cut you off because I am well over my time.

The CHAIR. Yes, and I would like to let all the Committee Members know we do have a vote on. So we are actually going to—this will be our last questioner at this point. So I apologize to Senator Braun for just coming in, but we do vote. We have to get to it, or we will miss the vote. They are holding it for us.

Senator MURKOWSKI. Mr. Prouty, can you just very quickly address this and—thank you.

Mr. PROUTY. Sure. Thank you Senator Murkowski for your question. I just want to add that I spent one of the best summers of my life in Sitka as a law student for a firm there. Just very briefly, in my opening statement I said, I believe wholeheartedly in collective bargaining. I believe that it is a win-win process and that employees benefit from being able to negotiate their terms with employers, and employers benefit from hearing the voice of workers. If I am fortunate enough to be confirmed, I would want to make sure that principle is enforced, and indeed the Act calls for the promotion of the collective bargaining process.

The CHAIR. Thank you. Thank you, apologies to Senator Braun. Senator Burr. Thank you very much. That will end our hearing today. And I want to thank all of our colleagues and our witnesses, Dr. Weil, Ms. Wilcox, Mr. Prouty, for a very thoughtful discussion about how to protect workers' rights and build an economy that truly works for them and their families.

For any Senators who do wish to ask additional questions, questions for the record will be due tomorrow at 5 p.m. and the hearing record will remain open for ten business days for Members who wish to submit additional material for the record.

The Committee will meet next on Tuesday, July 20th, at 10 a.m. in Dirksen 430 for a hearing on the Federal response to the COVID-19 pandemic. The Committee stands adjourned.

ADDITIONAL MATERIAL

DOMESTICWORKERS.ORG,
45 BROADWAY, SUITE 320 NEW YORK, NY.
Aug 3, 2021

Hon. PATTY MURRAY, *Chair*
Hon. RICHARD BURR, *Ranking Member*
Senate Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC.

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

On behalf of the National Domestic Workers Alliance, we write to strongly support the nomination of Dr. David Weil to serve as the Administrator of the Wage and Hour Division of the U.S. Department of Labor (DOL).

The National Domestic Workers Alliance (NDWA) is the Nation's leading voice on behalf of the 2.2 million domestic workers. Domestic workers are the nannies that take care of our children, the house cleaners that bring order to our home, and the care workers that ensure that our loved ones can live with dignity and independently. These essential workers are majority women, and mostly immigrants and women of color. NDWA has 74 affiliate organizations and local chapters.

As Administrator, Dr. Weil would be responsible for enforcing wage and hour laws, including the minimum wage, overtime pay, recordkeeping, and family and

medical leave. Dr. Weil's exemplary record in academia and public service experience leading the Wage and Hour Division from 2014 to 2017 make him uniquely and eminently qualified as an advocate for domestic workers and millions of other workers in our economy.

Dr. Weil has been one of our country's most important public policy leaders who has spent his career studying and understanding labor policy and labor markets. He is an internationally recognized expert that has quite literally written the book on the matter of changing labor market dynamics, and more importantly, what can and should be done about it. Dr. Weil has both the expertise and experience to hit the ground running from day one, which is critical, given the extraordinary public health and economic crises we face. When he held this same position during the Obama-Biden administration, Dr. Weil was a leader in "strategic enforcement." He sought the most effective ways to use limited resources to increase compliance with workplace protections by pursuing investigations and enforcement actions that would have the greatest impact and most long-lasting results. He was also instrumental in righting a historical wrong that extended basic protections to some of our Nation's most important essential workers—homecare workers—by upholding the DOL's decision to bring them within Fair Labor and Standard Act's minimum wage and overtime protections after decades of exclusion.

America's workers were in crisis before the pandemic. The COVID-19 pandemic has laid bare and exacerbated that too many low-paid workers lack basic workplace protections, and lack access to financial security. In addition, women of color workers and their families have borne the brunt of the economic fallout, while also lacking access to many of the relief measures needed to survive this pandemic.

We need proactive, thoughtful leaders who are experts and have decisively led on these matters for decades to steer the important work of protecting and enforcing the rights of millions of workers. Dr. Weil is unequivocally qualified to be Administrator of the DOL Wage and Hour Division and has the enthusiastic support of our domestic worker movement. If we can answer any questions, please do not hesitate to contact us.

Sincerely,

AI-JEN POO,
DIRECTOR,

NATIONAL DOMESTIC WORKERS ALLIANCE.

AMERICAN ASSOCIATION OF FRANCHISEES AND DEALERS,
P. O. BOX 10158, PALM DESERT, CA.,
January 10, 2022

Hon. PATTY MURRAY, *Chair*
Hon. RICHARD BURR, *Ranking Member*
Senate Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC.

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

As Chair of the Board of Trustees of the American Association of Franchisees and Dealer (AAFD), I am pleased to express my support for the confirmation and re-appointment of Professor David Weil for Administrator of the Wage and Hour Division of the Department of Labor (DOL).

AAFD is the oldest and largest national not for profit trade association advocating the rights and interests of franchisees and independent dealer networks. The AAFD supports affiliated chapters for more than 50 brands engaged in franchising, representing thousands of franchisee operated business outlets. Since our establishment in 1992, the AAFD has focused on its mission to define, identify and promote collaborative franchise cultures that respect the legitimate interests of both franchisors and franchisees, cultures we describe as embracing our vision of *Total Quality Franchising*.[®] The AAFD came into existence in response to a franchising community that has been evolving toward increasingly one-sided and controlling franchise agreements and cultures whereby franchisee equity and business ownership has been continually eroding such that many modern franchise systems have lost all vestiges of business ownership.

Professor Weil has been a strong supporter of protecting franchisee rights and fighting against the very oppressive control exercised by many franchisors that have led to the formation of franchisee associations and AAFD chapters. The concerns he has raised closely mirrors the arguments we have raised for years regarding the ero-

sion of equity rights among franchisees. Having a voice who will champion franchisee rights will be a refreshing plus that can support franchisee advocates' efforts to claw back against excessive franchisor controls.

For these reasons, I believe Professor Weil's reappointment will be a good steward at the DOL and we ask that you support his nomination and move forward with his confirmation as Commissioner.

Respectfully submitted,

ROBERT L. PURVIN, JR.,
CHAIR, BOARD OF TRUSTEES,
AMERICAN ASSOCIATION OF FRANCHISEES AND DEALERS.

AMERICANS FOR TAX REFORM,
June 22, 2021.

DEAR MEMBERS OF THE SENATE HEALTH, EDUCATION, LABOR, AND PENSIONS COMMITTEE:

President Joe Biden has nominated David Weil to lead the Department of Labor's Wage & Hour Division, an agency with a \$330 million budget that is responsible for enforcing all major labor laws. A recycled Obama-era appointee, Weil previously served in this position from April 2014 to January 2017, and was confirmed on a party-line vote with unanimous Republican opposition.

Based on Weil's extensive record in the Obama administration and his anti-free enterprise views, it is obvious that Weil does not deserve a second chance at DOL to further his harmful agenda.

Members of the Senate HELP Committee should reject David Weil to lead DOL's Wage & Hour Division.

Weil suffers a lack of real-world experience beyond the ivory tower and his previous stint as Wage & Hour chief. *In 2013, the Wall Street Journal called Mr. Weil a "life-long, left-wing academic with labor-union sympathies, no private-sector experience or legal training, and limited management experience."*

Weil is not shy about using the full force of government power to advance his radical agenda. In a 2007 academic paper, *Weil wrote: "Regulatory systems provide the government with tools to change private behavior, and those tools are usually related to enforcement activities."*

Weil has a longstanding hostility to free enterprise. Weil is a major proponent of the liberal "fissured workplace" theory, which alleges that outsourcing, independent contracting, and franchising are responsible for every single progressive criticism of employers. Weil has used this left-wing theory to push for an aggressive expansion of the DOL's enforcement capabilities to expand government control over American businesses.

Weil would work overtime to dismantle business models that employ millions of Americans, the last thing we need as our economy attempts to rebound from the pandemic. Weil has attacked franchising, which employs an estimated *7.6 million Americans*, as "a form of outsourcing." Weil is a staunch opponent of the right to work as an independent contractor, issuing a report in 2015 that construed the definition of an "employee" in an overly broad fashion that made it impossible for businesses to work with freelancers. Approximately *59 million Americans* engage in some form of freelance work.

Weil supports doubling the Federal minimum wage to \$15/hour, a death blow to millions of American jobs and thousands of small businesses. A \$15 minimum wage would drastically raise labor costs at a time when businesses are struggling just to keep the lights on thanks to government-mandated lockdowns. According to the nonpartisan Congressional Budget Office, a \$15 minimum wage could kill as many as 3.7 million American jobs.

If confirmed as Head of the Wage & Hour Division, Weil would be in the pole position to enforce the radical PRO Act if President Biden signs it into law. The PRO Act *would nullify* Right to Work laws in 27 states, which prevent employers from forcing workers to join a union just to get a job. The PRO Act nationalizes California's onerous ABC test that makes it nearly impossible to work as an independent contractor. Finally, the PRO Act stacks the deck in favor of Big Labor by changing several election rules for unionizing efforts.

Ultimately, Weil is a radical left-wing academic that has a long paper trail of anti-worker, anti-free enterprise, pro-union boss views. Weil did enough damage during

his first tenure at the Wage & Hour division, so no Republican should give him a second bite at the apple.

Members of the Senate HELP Committee should reject David Weil to lead the DOL's Wage and Hour Division.

Onward,

GROVER G. NORQUIST PRESIDENT,
AMERICANS FOR TAX REFORM.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
July 13, 2021.

Hon. PATTY MURRAY, *Chair*
Hon. RICHARD BURR, *Ranking Member*
Senate Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC.

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

The U.S. Chamber of Commerce has concerns regarding the nomination of David Weil to be the Administrator of the Wage and Hour Division (WHD) at the Department of Labor (DOL).

As WHD Administrator during the Obama administration, Dr. Weil took positions on critical questions under the FLSA. This includes whether an employee would be exempt from overtime, finding joint employment relationships, and whether a worker is an employee or an independent contractor. His actions regarding these issues are detailed below.

Overtime Exempt Status under the FLSA—Dr. Weil promulgated a regulation that raised the salary threshold for determining whether an employee is exempt from overtime from \$23,660 annually to \$47,476 annually—more than doubling it. As a result, millions of employees who had enjoyed flexible hours and professional status were converted to non-exempt status and put on the clock. Surveys showed that many employees who had been previously exempt valued the flexible hours and work schedules being exempt provided them. Furthermore, the rule applied to all employers including charitable non-profits who could not afford to keep employees working the same hours and would have been forced to reduce the services they provide to those in need. The regulation was eventually struck down by a Federal judge in Texas who ruled that the new threshold was so high it rendered moot the salary test for exempt status. The Trump administration's DOL promulgated a new salary threshold of \$35,568 which is currently in effect. Employers are concerned that this salary threshold may be increased under Dr. Weil.

Joint Employment Under the FLSA—Whether two employers are considered joint employers is a key issue when one company contracts with another for services. This has also been alleged to occur in franchising relationships. If they are considered joint employers, the hiring company, or franchisor, can be held liable for the other employer's FLSA violations. While Administrator of WHD, Dr. Weil issued an Administrator's Interpretation on finding joint employment under the FLSA. Dr. Weil's AI determined a joint employment relationship existed even when one employer only had "indirect control" of the other employer's employees, such as in a staffing arrangement where the so-called joint employer did not control work rules, hours, or wages of the staffing company's workers. The AI was rescinded by the Trump DOL and replaced by a regulation that reset the terms for joint employment to require actual control of another employer's employees. That regulation is now in the process of being rescinded. If confirmed, Dr. Weil would be able to promulgate a new regulation reflecting the definition of joint employment in the AI he issued.

Employee versus Independent Contractor Classification Under the FLSA—Dr. Weil issued another AI that sought to clarify when a worker should be classified as an employee and when that worker can be considered an independent contractor. The AI relied on the "economic realities" test which includes several factors such as the nature and degree of the employer's control; the permanency of the worker's relationship with the employer; the amount of the worker's investment in facilities, equipment, or helpers; the amount of skill, initiative, judgment, and foresight required for the worker's services; the worker's opportunities for profit or loss; and the extent of the integration of the worker's services into the employer's business. Under the AI, all of these factors were to be considered together, with no specific factor or factors being considered more important than the others. Because of this, an employer would never be able to tell whether they had properly classified

a worker as an employee or an independent contractor until the WHD made the determination. The AI was rescinded by the Trump DOL and replaced with a balanced regulation that ordered the various factors so that employers would be able to properly classify a worker as an employee or independent contractor. That regulation has been rescinded by the current DOL, restoring the previous state of confusion and uncertainty to classification of employees.

In addition to the economic realities test, another test for determining whether a worker is an employee or independent contractor is known as the ABC test. An individual is classified as an employee unless they satisfy all three prongs: (A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact; (B) the service is performed outside the usual course of the business of the employer; and (C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed. The ABC test makes finding an independent contracting relationship exceedingly difficult. Dr. Weil has been quoted as saying that an ABC test could only be implemented through legislation, not regulations.

Therefore, if confirmed, Dr. Weil may promulgate a regulation for determining independent contractor status under the FLSA that will reflect the AI he issued, thereby preserving confusion and uncertainty for employers.

Thank you for reviewing these issues. We hope the Committee gives these actions serious attention as Dr. Weil's nomination is considered.

Sincerely,

GLENN SPENCER.

COALITION FOR A DEMOCRATIC WORKPLACE,
July 14, 2021

Hon. PATTY MURRAY, *Chair*
Hon. RICHARD BURR, *Ranking Member*
Senate Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC.

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

The Coalition for a Democratic Workplace (CDW) writes to urge the Senate Health, Education, Labor, and Pensions Committee to oppose the nominations of Gwynne Wilcox and David Prouty to serve as members of the National Labor Relations Board (NLRB) due to their biases against the employer community and clear conflicts of interest. If confirmed, both Wilcox and Prouty will face conflicts of interest based on their previous employment histories, the organizations they have represented, and the litigation and issues they have previously supported. They cannot and will not serve as neutral arbiters of the law.

CDW is a broad-based coalition of hundreds of organizations representing hundreds of thousands of employers and millions of employees in various industries across the country concerned with a long-standing effort by some in the labor movement to make radical changes to the National Labor Relations Act without regard to the severely negative impact they would have on employees, employers, and the economy. CDW was originally formed in 2005 and has since focused on pushing back against regulatory overreach by the NLRB.

Wilcox previously represented the Fight for \$15 advocacy group where she worked on various issues under the NLRB's jurisdiction, including the joint employer standard, one of the most controversial and divisive issues of the day. Wilcox represented the organization during the NLRB's biggest joint employer liability case in the agency's history. Any cases before the Board dealing with this and other issues that she worked on during her time with Fight for \$15 will raise conflict of interest concerns. Prouty, on the other hand, as the current General Counsel of the Service Employees International Union (SEIU), will likely be forced to recuse himself from any case involving the union or its numerous affiliates and partner organizations and any issues on which he worked during his time with the union.

CDW is concerned that Wilcox and Prouty will not be able to fairly adjudicate cases involving issues or policies on which they have previously participated. They will have predetermined notions on policy outcomes prior to analyzing the case or circumstances in question. After several years of back and forth over the NLRB's recusal policies, it is clear that these nominees will create additional uncertainty for the Board and all stakeholders under their jurisdiction.

CDW urges the Committee to oppose these nominations over their biases and the potential impact they will have on the ability of the Board to act as neutral arbiters of the Nation's labor-management relations law.

Sincerely,

KRISTEN SWEARINGEN,
CHAIR,
COALITION FOR A DEMOCRATIC WORKPLACE.

COALITION LETTER,
July 13, 2021

Hon. PATTY MURRAY, *Chair*
Hon. RICHARD BURR, *Ranking Member*
Senate Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC.

DEAR CHAIR MURRAY AND RANKING MEMBER BURR:

The undersigned are writing to express our serious concerns with the nomination of David Weil to be Administrator of the Wage and Hour Division (WHD) at the U.S. Department of Labor (DOL). Dr. Weil previously served as WHD Administrator from 2014 to 2017. Based on his previous service at DOL, and his track record of bias against employers, particularly the smallest employers in America, we are concerned that Dr. Weil would implement policies at the DOL that are unbalanced and would harm workers and small businesses, in particular women and minority-owned businesses that employ millions of Americans. For these reasons, we urge the Committee to reject Dr. Weil's nomination.

We respectfully submit our concerns with Dr. Weil's agenda, including:

Open Bias Against Small Businesses. Dr. Weil has an extensive track record of hostility toward specific business models, industries, and companies that employ millions of Americans in every state. In his 2014 book "The Fissured Workplace," as well as numerous academic writings, and public forums in coordination with labor unions, Dr. Weil has expanded on his ideology and belief that the DOL should take an aggressive and activist approach to enforcement, particularly against lead enterprises that do business with smaller firms. During his time in the Obama administration, this worldview resulted in several harmful actions that are outlined in this letter. Dr. Weil's ideology is a cause for great concern for small employers, who are often the contractors and franchisees against whom Weil has telegraphed his intended enforcement.

Unlawful 2016 Overtime Rule. During his tenure as Administrator, Dr. Weil was the architect of DOL's revised white collar overtime rule, which would have more than doubled the minimum salary level for exempt employees from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually), an unprecedented expansion of Fair Labor Standards Act (FLSA)'s overtime coverage. In a successful legal challenge to the rule, the U.S. District Court for the Eastern District of Texas characterized the increased overtime threshold as a "drastic" change that would extend FLSA mandates to 4.2 million employees from the exemption even though they performed exempt job duties. The court ultimately concluded that DOL unlawfully and impermissibly exceeded its rulemaking authority by promulgating these regulations and enjoined them on a nationwide basis. The Obama overtime rule would have been a massive burden on employers, and we are concerned that Dr. Weil will pursue an aggressive revision to overtime rules that will harm small businesses as our economy works to recover from the COVID-19 pandemic.

Restrictive Independent Contractor Status. In 2015, Dr. Weil issued an Administrator's Interpretation (AI) under the FLSA, in which DOL adopted an unreasonably strict standard for "independent contractor" classification, rejecting decades of case law emphasizing "control" over an individual's work, and focusing instead on "economic dependency" in a manner that would effectively eliminate the use of independent contractors across a range of business models. Indeed, the standard adopted in this AI was premised on Weil's well-publicized view that most workers should be classified as statutory employees under the FLSA, and would have eliminated the preferred model of work for countless individuals who choose to work as independent contractors to control their own schedule, work flow, income, and independence. Notably, this move to dramatically limit the ability of workers to operate as independent contractors almost exactly squares with the abolition of independent contracting sought by organized labor in H.R. 842/S. 420, the Protecting the Right

to Organize Act or “PRO Act,” which would adopt a draconian “ABC test” for determining independent contractor status, and as a practical matter, destroy the business model and disrupt the livelihoods of millions of Americans.

Unprecedented Expansion of Joint Employment. In 2016, Dr. Weil issued another AI which dramatically expanded joint-and-several liability for “joint employers” under the FLSA. This change broadened the definition of “joint employer” to include employers who exercised only indirect control of the employees, for example, in a staffing arrangement where the so-called joint employer did not control work rules, hours, or wages of the staffing company’s workers. Particularly significant and onerous, the AI would have made national franchisors “joint employers” of their franchisees’ employees, even where franchisor has little to no direct control over terms and conditions of these workers’ employment. Again, the theories of joint employment Dr. Weil has espoused mirror the disastrous PRO Act, which would seek to impose liability on a wide range of employers for unfair labor practices in which they played no role.

Between 2016–2018, Mr. Weil’s unilateral broader standard of joint employment cost franchise businesses an additional \$33.3 billion per year in operational and legal costs, resulted in 376,000 lost job opportunities, and led to a 93 percent increase in lawsuits.¹ Had it not been withdrawn by the previous Administration, this AI would have sacrificed more jobs and increased frivolous litigation. Given Dr. Weil’s open hostility to certain small businesses, we are concerned he will again seek a harmful joint employer standard that will reduce job and entrepreneurial opportunities for many Americans.

The undersigned organizations believe that Dr. Weil will, if confirmed again, once more use the power of the DOL beyond congressional intent to enact policies that will harm workers and small businesses during the economic recovery. We believe that a thorough and fair review of Dr. Weil’s record will illustrate that he is unfit to lead the WHD in the impartial manner that is critical to both enforce Federal law and encourage economic growth during the post-pandemic recovery.

Thus, we urge Committee Members to reject Dr. Weil’s nomination. Thank you for considering these views.

Sincerely,

ASSOCIATED BUILDERS AND CONTRACTORS,
 COALITION OF FRANCHISEE ASSOCIATIONS,
 FRANCHISE BUSINESS SERVICES,
 JOB CREATORS NETWORK,
 INDEPENDENT ELECTRICAL CONTRACTORS,
 INTERNATIONAL FRANCHISE ASSOCIATION,
 INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION,
 NATIONAL ASSOCIATION OF HOME BUILDERS,
 NATIONAL ASSOCIATION OF WHOLESALERS-DISTRIBUTORS,
 NATIONAL FRANCHISEE ASSOCIATION,
 NATIONAL RESTAURANT ASSOCIATION,
 SMALL BUSINESS AND ENTREPRENEURSHIP COUNCIL,
 TECHNET,
 TRUCK RENTING AND LEASING ASSOCIATION.

Wall Street Journal—Biden’s PRO Enforcer

<https://www.wsj.com/articles/president-joe-biden-pro-act-david-weil-union-progressive-labor-nominee-11626384645>

What unions can’t get from Congress, they seek from Labor nominee David Weil.

July 15, 2021

By Kimberly A. Strassel

Some people fear the unknown. The Biden administration inspires alarm over the familiar. Consider the business community’s welcome new focus on David Weil.

Mr. Weil will receive a confirmation vote next week for his nomination to run the Wage and Hour division of the Labor Department. If successful, Mr. Weil will retake the position he held in the latter Obama years. These pages *described* him at his first nomination as a “life-long, left-wing academic with labor-union sympathies, no private-sector experience or legal training, and limited management experience.” That depiction turned out to be generous.

¹ *Jointemployerfacts.com.*

From 2014 to early 2017, Mr. Weil lumbered business with an unlawful overtime rule, sweeping restrictions on the use of independent contractors, and new “joint employment” rules that imposed crushing operational and legal costs on small companies. He exhibited a particular hostility to any business model innovative enough to avoid Big Labor tyranny. Think franchises, contractors, gig workers—the models that provide scrappy entrepreneurs (often women and minorities) the chance to break into business, and sectors that employ millions.

Bad as those years were, business is aware that a Weil reconfirmation would prove even more destructive. The Biden administration is pressing Congress to pass the Protecting the Right to Organize Act, a legislative monstrosity that would eliminate right-to-work states and turn union bosses into the masters of workplaces everywhere. Should they fail to sneak the bill through as part of a budget-reconciliation measure (Senate rules could make that hard), the White House will deputize the Labor Department to implement as much of it as possible through regulatory fiat. Mr. Weil would be a chief enforcer, and history shows he won’t be shy.

Put another way, the Weil nomination is shaping up as a proxy vote for the PRO Act. And it’s had the remarkable effect of reminding U.S. business that there are battles to fight, and that they matter far more than scraping for approval from woke America. In the run-up to Mr. Weil’s Senate hearing this Thursday, the business community engaged in a fierce campaign against the nomination, exhibiting a determination that’s been missing for too long in corporate world. It was downright refreshing.

Among the letters of rejection that flowed in was one signed by a coalition of 14 industry groups, including the International Franchise Association, the National Association of Home Builders, the Independent Electrical Contractors and the National Restaurant Association. (Only a handful of groups opposed Mr. Weil’s nomination in 2013.) The U.S. Chamber of Commerce has raised red flags, and free-market outfits from Americans for Tax Reform to the Hispanic Leadership Fund have joined the fight. Mr. Weil is downright “unfit” to run the division, especially during the “post-pandemic recovery,” reads the coalition letter.

Ideology is one thing, but what these groups consider disqualifying is Mr. Weil’s contempt for the law, his track record of imposing by regulatory fiat what Congress refused to do. That includes a 2016 overtime rule that more than doubled the salary threshold for which employees counted for extra pay, a change that would have saddled companies with overtime outlays for four million additional employees. It was an untethered expansion of Labor Department policy, and a Federal judge in Texas struck down the “drastic” rule in 2017, noting that it rode roughshod over Congress’s clear overtime exemption for certain white-collar employees. Imagine what Mr. Weil, and this mentality, could do with dozens of unenacted PRO Act provisions.

Business is also focusing on Mr. Weil’s enmity toward franchises and contractors, just as these sectors are proving a post-pandemic lifeline, and even as Senators all insist they want to help small business. In his prior Federal go-round, Mr. Weil issued rules stripping most contractors of their independence, forcibly reclassifying them as employees (the better to unionize them). He more recently worked with the Massachusetts attorney general to sue *Uber* and *Lyft*, part of that blue state’s effort to kill its own gig economy. Sen. Richard Burr and the American Accountability Foundation, a nonprofit watchdog, have requested his email correspondence in that case, but the state government and the White House are stonewalling. The documents ought to be a prerequisite for any Senate vote.

The anti-Weil lobby is focusing its attention on the three Senate Democrats who haven’t signed on to the PRO Act. Virginia’s Mark Warner has expressed concerns about the bill’s attack on independent contractors, while Arizona’s Kyrsten Sinema and Mark Kelly claim to be friends of small business. The coalition wants Democrats to understand they won’t be allowed to split the difference quietly—to distance themselves from a bill that isn’t likely to pass anyway, while green-lighting a nominee who will institute it by other means.

Their message: A vote for Mr. Weil is a vote for the PRO Act. And whatever the outcome, at least business is making itself heard.

[Whereupon, at 11:27 a.m., the hearing was adjourned.]