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SHOULD TAXPAYER DOLLARS GO TO COMPANIES THAT VIOLATE LABOR LAWS?

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BEFORE THE

COMMITTEE ON THE BUDGET UNITED STATES SENATE

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THURSDAY, MAY 5, 2022

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Washington, DC.

The Committee met, pursuant to notice, at 11:00 a.m., via Webex and in Room SD–608, Dirksen Senate Office Building, Hon. Bernard Sanders, Chairman of the Committee, presiding.

Present: Senators Sanders, Kaine, Van Hollen, Padilla, Graham, Grassley, Crapo, Braun, and Scott.

Staff Present: Warren Gunnels, Majority Staff Director; and Nick Myers, Republican Staff Director.

OPENING STATEMENT OF CHAIRMAN SANDERS

Chairman SANDERS. Okay. Let us get to work.

Let me first thank all of our witnesses for being here, and we look forward to hearing your testimony. Let me thank Ranking Member Graham for his cooperation and that of his staff.

And today we are going to be discussing a very important issue that gets much too little attention here in the halls of Congress or in the corporate media, and that is that in a time, as everybody knows, when the middle class of this country is struggling, when people are working longer hours for lower wages, when half of our people live paycheck to paycheck, when people cannot afford health care, they cannot afford childcare, they are finding it hard to fill up their gas tanks, all over this country there is a growing movement on the part of workers to try to organize and form unions, because they understand that if you have a union you are going to have better wages, better working conditions, and better benefits.

And yet, at exactly the same time that working people are standing up and fighting back and are interested in joining unions, we are also seeing that there are hundreds of corporations in the United States, including some of the very largest, that receive Federal contracts that amount to many billions of dollars, they receive huge subsidies, they receive special tax breaks, and they receive all kinds of corporate welfare, despite the fact that these very same companies are engaging in widespread illegal behavior, including massive violations of labor law.

And the question that we are asking today is a very simple one. Should Federal taxpayer dollars go to companies that violate labor law and illegally prevent workers from exercising their constitutional rights to join a union?

While corporations engaging illegal activities against union organizing is not new, and it is widespread, this morning we are going to focus on one company, Amazon, who, as we speak, right at this moment, is engaged in massive well-funded anti-union activity.

As I think all of us know, just last month Amazon workers in Staten Island voted to form the first union at Amazon—and Amazon is one of the largest employers in the country, almost 1 million workers—and this followed a union-organizing attempt at an Amazon warehouse in Bessemer, Alabama, and organizing a union in Bessemer, Alabama, ain't easy, and we thank those workers who are here with us today for joining us from Bessemer.

From the very beginning of the union-organizing efforts until today, Amazon has done everything possible, legal and illegal, to defeat union-organizing efforts. The National Labor Relations Board, NLRB, found that Amazon's flagrant disregard of the law infringed on workers' legal rights to a free and fair union election in Bessemer, Alabama, ruling that Amazon's behavior was, quote, "dangerous and improper." That is the National Labor Relations Board.

To date there are currently 59 unfair labor cases against Amazon pending at the NLRB. Amazon is currently being sued by the NLRB to reinstate a worker who was illegally fired for organizing a union. Several current and former employees have alleged that Amazon has engaged in illegal harassment and discrimination based on race, gender, and sexual orientation.

And that is not all. Amazon has already been penalized more than $75 million for breaking Federal discrimination and labor laws. Amazon misclassifies delivery drivers as independent contractors, rather than employees, to evade tax, wage, and benefit responsibilities. Amazon's inadequate workplace safety policies also pose grave risks to workers, and I hope we will be able to discuss that a little bit today. If you can believe it, and, Mr. Graham, Senator Graham, this is really rather an astounding fact, according to a New York Times investigation, Amazon has a 150 percent turnover rate—150 percent. Workers come into these warehouses, they are worked as hard as humanly possible, and then they leave, often crushed. And a whole set of new workers then comes in to replace them. Is that really the kind of business model that we should be rewarding with massive Federal contracts?

Further, in some locations, Amazon's workplace injury rates are more than 2.5 times the industry average, and that may be understating the case because not all injuries are reported. Last December, six Amazon workers died after they were required to continue working during unsafe weather conditions in a warehouse that did not have appropriate safety facilities or policies.

It is abundantly clear that time and time again Amazon has engaged in illegal, anti-union activity. Further, Amazon cannot even come to grips with the reality that the workers in Staten Island won their union election fair and square. In order to stall the process out, their lawyers have appealed that decision result to the NLRB. Their strategy is obvious, and I look forward to discussing that with our panelists. They are going to stall and stall and stall. In every way possible they are refusing to negotiate a first, fair contract with the Amazon Labor Union.

So today my question to Jeff Bezos, who is the second-wealthiest person in our country, worth about $150 billion, is a pretty simple one, and it really speaks to the kind of corporate greed and excessive greed that we are seeing right now in America. Mr. Bezos, you have enough money to buy a $500-million yacht. You have got enough money to buy a $175-million estate in Beverly Hills and a $23-million mansion right here in D.C. Given all of your wealth, how much do you need? Why are you doing everything in your power, including breaking the law, to deny Amazon workers the right to join a union so that they can negotiate for better wages, better working conditions, and better benefits? How much do you need?

And the answer is not complicated. What Mr. Bezos understands and what he is fighting is the reality that union workers in America earn about 20 percent more than non-union workers, on average. Mr. Bezos understands that 79 percent of union workers have a defined benefit pension plan, compared to just 17 percent of non-union workers. Mr. Bezos understands that union workers are half as likely to be victims of health and safety violations compared to non-union workers. And that is why Mr. Bezos and Amazon have spent over $4 million last year on union-busting consultants and lawyers. That is why Amazon is forcing workers to attend captive anti-union meetings. Take a group of workers—they do not have any choice—put them in a room, and you brainwash them with anti-union propaganda. And that is why Amazon has fired workers simply because they are pro-union.

Well, my message to Mr. Bezos is this, and that is that all over this country people are standing up and fighting back for economic justice. They are tired of seeing billionaires get much richer while they cannot afford health care or childcare or, in fact, in some cases, the ability to feed their families.

So we say to Mr. Bezos, stop the intimidation. Stop the harassment. Stop the coercion. Stop the illegal behavior. Start treating your workers with the respect and dignity they deserve. They are the people who made you your billions. Give your workers a seat at the bargaining table. Give all of your workers the freedom to join a union if that is what they choose to do.

In the presidential campaign, then-candidate Joe Biden promised, and I quote, "to institute a multi-year Federal debarment for all employers who legally oppose unions," end of quote, and to, quote, "ensure Federal contracts only go to employers who sign neutrality agreements, committing not to run anti-union campaigns," end of quote. That was what candidate Joe Biden said.

In my view, that campaign promise was precisely right, and today I am reviewing my request to President Biden to fulfill that promise. That is what you said on the campaign trail. Let's do it.

President Biden, more than any other President in my lifetime, has talked over and over again about being pro-union, and I appreciate the President's words and I believe him to be sincere. He is pro-union. In my view, however, the time for talk is over. The time for action is now. Taxpayer dollars should not go to companies like Amazon who repeatedly break the law. And we are talking about billions and billions of dollars in contracts.

No government—not the Federal Government, not the state government, and not any city government—should be handing out corporate welfare to union-busters and labor law violators.

Senator Graham.

OPENING STATEMENT OF SENATOR GRAHAM

Senator GRAHAM. Thank you, Mr. Chairman. I really enjoy working with you but wow. This Committee is taking a very dangerous turn under your leadership, to be honest with you. You are singling out a single company because of your political agenda to socialize this country. Every time I turn around you are having a hearing about anybody that makes money is bad, the government needs to grow beyond our ability to pay for it, and we are going to have an election on your ideas here soon, and I cannot wait.

As to the process, there is a process in this country. If you feel like the law has been violated in your efforts to unionize the workforce you can file a complaint, people have a hearing, and there is a process to debar companies who engage in illegal behavior. There is a process.

This is a political process here. This is an effort to get an outcome you want, using the United States Senate as your vehicle. This is very dangerous. You can have oversight hearings all you like, but you have determined Amazon is a piece of crap company. That is your political bias. They are subject to the laws of the United States. They should be subject to this.

If we get the Committee back, we are not going to do this. We are going to talk about how to save Social Security, keep Medicare from becoming insolvent, how to change the structural problems of our debt. I will talk to you about climate change, what happens if you electrify all the vehicles in the country. What does that mean for power producers? I would like to work with unions—I have got an uncle who was a vice president of a union, paper mill union—to bring jobs back into America. I would like to work with companies, unions, and the private sector to become energy independent again.

So I am not here to demagogue the union process in this country. I am here to say that if you are a business you can have say too about your workforce. The idea that you can only get a government contract if you promise to be neutral is ridiculous.

Boeing is in South Carolina, making the 787. There have been efforts to unionize Boeing. They lose. The people in that plant will make that decision. The idea that Boeing cannot argue the merits of a right-to-work environment for their business is ridiculous, and I think patently illegal.

This is a heavy-handed approach, the most radical agenda in my lifetime, and it should be carried out at the ballot box, and it will be. If we take this body back, this demonization of individual companies that are subject to the law will cease.

Thank you.

Chairman SANDERS. Thank you. Now we all are going to hear from our panelists, and I thank them very much for being here. We have five panelists: Mr. Christian Smalls, Mr. Sean O'Brien, Mr. Greg LeRoy, Ms. Rachel Greszler, Mr. Glenn Spencer.

Let me begin with Mr. Christian Smalls. Mr. Smalls is the President and Founder of the Amazon Labor Union. Mr. Smalls has been organizing labor actions at an Amazon warehouse in Staten Island, known as JFK–8, since 2020. The JFK–8 warehouse voted in favor of unionizing with representation of the American Labor Union on April 1st. Mr. Smalls, thanks very much for being with us.

STATEMENT OF CHRISTIAN SMALLS, PRESIDENT, AMAZON LABOR UNION

Mr. SMALLS. Thank you for having me. Well, first of all I want to address Mr. Graham. First off, it sounded like you were talking about more of the companies and the businesses in your speech, but you forgot that the people are the ones who make these companies operate. We are not protected, and the process for holding these companies accountable is not working for us. That is why we are here today. That is the reason why I am here, to represent the workers who make these companies go. And I think that it is in your best interest to realize that it is not a left-or-right thing. It is not a Democrat or Republican thing. It is a workers thing. It is a workers' issue, and we are the ones that are suffering in the corporations that you are talking about, the businesses that you are talking about, in the warehouses that you are talking about.

So that is the reason why I think I was invited today, to speak on that behalf, and you should listen because we do represent your constituents as well. So just take that into consideration that the people are the ones that make these corporations go. It is not the other way around.

As the current interim President of the Amazon Labor Union, who represents 8,300 workers in Staten Island, an independent worker-led union that won their election on April 1st, I am going to tell you this. We organized for over a year, and throughout the course of that year Amazon spent millions of dollars, as you mentioned, Senator Sanders, myself, including a few other organizers, were arrested outside for organizing, arrested for delivering food to their co-workers. I wanted to reiterate that as well.

You know, the type of things that Amazon does, breaking the law, intimidation, these are real things that traumatize workers in this country. Thousands of workers across this country are in the process of organizing, who have decided to organize in the United States. We want to feel that we have protections, and we want to feel that the government is allowing us to use our constitutional right to organize.

The notion that people united in this democracy will outmatch tyranny is the oldest American ideal. There is a clearly defined legal process to do this, and workers like us have the rights, protected by the First Amendment and the National Labor Relations Act. However, despite all of this, our victory in Staten Island was lauded as newsworthy and inspirational for the thousands of workers across the country, hundreds of thousands of workers. And even though we may have won, we did everything right pressuring Amazon to recognize our victory and comply with our legal obligation to meet us at the bargaining table, but Amazon is refusing to do so. As you mentioned, they are going to stall. They filed 25 objec-

tions, and they got the NLRB to move the hearing to a whole other location.

To me, it just sounds like the corporations have the control and they control whatever they want. They break the law, they get away with it. They know that already, that breaking the law during these election campaigns will not be resolved during the election campaigns. So they purposely continue to break the law.

For example, we filed over 40 Unfair Labor Practices (ULPs) in 11 months. Most of them, quite a few of them got merit for the action. Some of them even got injunctions. For example, Gerald Bryson, who was fired two years ago, finally, over two years later, there is a 10(j) in motion for his reinstatement.

Another prime example, Daequan Smith, was fired by the company for organizing. He is still out of a job. He is living in a shelter right now. We raised money through GoFundMe. These are just a few examples, including myself, who has been out of a job for the last two years.

I want to just end off by saying this. We need to pass the Protecting the Right to Organize Act (PRO Act) so that workers are protected and workers are encouraged to organize. And if that does not work, you know, I am going to let you know right now that on behalf of the Amazon Labor Union and the hundreds of thousands of workers across this country, that we will continue to organize. And once again I want to remind you that this is not a left or right thing. This is a working-class issue, and the workers at the bottom are the ones who make these corporations go.

Thank you.

[The prepared statement of Mr. Smalls appears on page 26]

Chairman SANDERS. Mr. Smalls, thank you very much.

Our next panelist is Sean O'Brien. Mr. O'Brien is a fourth-generation Teamster and the General President of the International Brotherhood of Teamsters, one of the largest unions in this country, with some 1.4 million members.

Mr. O'Brien was the youngest person elected as President of Teamsters Local Union 25, a position for which he was reelected six times. He was sworn in as the 11th General President of the Teamsters this March. Mr. O'Brien, thanks so much for being with us.

STATEMENT OF SEAN O'BRIEN, GENERAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. O'BRIEN. Thank you very much. Good morning Mr. Chairman and members of the Committee. My name is Sean O'Brien. I am the General President of the International Brotherhood of Teamsters. Thank you for the opportunity to appear before you today to discuss Amazon, its labor and business practices, and its relationship with the Federal Government.

To put it plainly, it is wrong for our government to be giving taxpayer dollars in the form of Federal contracts to companies like Amazon. You are rewarding employers who repeatedly, knowingly, and purposefully violate Federal labor laws, drive down wages and standards in core Teamster industries, and create dangerous working conditions.

To be clear, President Joe Biden is the most pro-union President of our lifetime, and the Teamsters Union applauds his Administration's actions on issues of great concern to working families.

We proudly support President Biden's Executive orders on pay equity and $15-an-hour minimum wage requirements for Federal contractors, and the recommendation for Federal procurement included in the White House Task Force on Working Organizing and Empowerment will support and encourage responsible, high-road employers. But as Chairman Sanders has said, we have the power to completely stop companies that break labor law from receiving Federal contracts, so why are we not doing it?

As we already know, Amazon is a habitual lawbreaker. The company was found guilty last year of illegally firing two workers after they advocated on behalf of their coworkers at an Amazon warehouse. Amazon broke labor law in Alabama when workers tried to organize, forcing their election to be rerun this year. In December, the NLRB cited Amazon for illegally threatening, surveilling, and interrogating workers who were trying to start a union at the Staten Island facility.

These kinds of actions make something very clear. When workers try to organize, Amazon breaks the law. When workers raise their voices, Amazon does whatever it takes to shut them up, because Amazon is terrified of the power workers have when they act collectively.

Sadly, while Amazon acts with impunity to break the law, our government recently saw fit to award the company a $10 billion Federal contract for cloud computing services. While our government was spending taxpayer dollars on Amazon Web Services, the company reportedly spent $20,000 per week on union-busting consultants in Staten Island alone.

What is more alarming is we know that these numbers barely scratch the surface of what Amazon spends to prevent workers from having any voice whatsoever on the job. Americans have the fundamental right to join a union together and bargain collectively over the terms of their employment.

The Federal Government, under the National Labor Relations Act, has a mandate to encourage worker organizing and collective bargaining and to promote equality of bargaining power between employers and employees. As President Biden's Executive order on Worker Organizing and Empowerment boldly states. But our government ignores that mandate with every dollar that it puts into the pockets of Jeff Bezos and his organized crime syndicate known as Amazon. Why are elected officials giving taxpayer money to a company that is willing to use any available means—illegal or not illegal—to deny workers their federally protected right? Why are we supporting the growth of a company that is destroying good middle-class jobs, creating unsafe working conditions, and assuming no responsibility for much of its workforce?

As a Teamster, I have faced countless union-busting companies. As a proud Bostonian from a tough neighborhood, I have confronted my fair share of schoolyard bullies too. Let me tell you, you do not take a beating from a bully, then fill his pockets with money and expect fewer beatings. Amazon has been beating up on Amer-

ican workers for too long, and our government has been letting them do it, and it needs to stop.

Amazon relies on an exploitive business model that is simply brutal for workers. The company's punishing pace of work results in worker injury rates that are nearly twice as high as that of all other non-Amazon warehouse facilities. Amazon employees are seriously injured at rates nearly 80 percent higher than the rest of the entire warehouse industry. Amazon accounts for all warehouse worker injuries, yet the company only employs a third of all workers nationwide. Why is our government rewarding this behavior? Why are we not doing more to actually protect American families?

As the General President of the Teamsters' Union, a union that represents more than 1.2 million working people, I have been traveling the country a lot this year, spending time with workers face-to-face, and I will tell you this: working people of all parties are losing faith in our government.

It feels like big business is the only thing our government cares about. What happened to "We the People"? Billionaires pay little to no taxes and then they are handed billions more by our government after they break the law. When our government turns a blind eye to Amazon's lethal and illegal practices, it feels like the system is rigged against everyone but the rich and powerful.

But working people are not stupid. We see what is going on here. It is long past time for the pendulum to swing back to the side of hard-working families in this country. To this Committee and to the entire Federal Government, do your duty to protect American workers. We are watching, we are listening, and we are voting. Tell Amazon that enough is enough, and then show them you mean business. Do not give this company, or any employer, another penny until the labor laws of this land are truly upheld and workers' voices are finally heard.

Thank you very much.

[The prepared statement of Mr. O'Brien appears on page 28]

Chairman SANDERS. Thank you very much, Mr. O'Brien.

Our next panelist is Mr. Greg LeRoy. He is the Executive Director of Good Jobs First, which he founded in 1998. Good Jobs First is a national policy resource center for grassroots groups and public officials promoting corporate and government accountability.

Mr. LeRoy, thanks a lot for being with us.

STATEMENT OF GREG LEROY, EXECUTIVE DIRECTOR, GOOD JOBS FIRST

Mr. LEROY. Thank you, Mr. Chairman, and Committee members for the opportunity to be here. My name is Greg LeRoy and I direct Good Jobs First, a nonprofit, nonpartisan research center on economic development incentives and corporate accountability.

We believe that companies which receive government economic development subsidies or procurement contracts should be held to the highest standards of corporate ethics. Government money should not keep going to any company that violates laws, rules, or regulations intended to protect workers, consumers, free markets, or the environment. Otherwise, public dollars are subsidizing corporate behavior that is at odds with the policy objectives of economic development and ethical procurement.

Amazon.com is perhaps the most aggressive company in America today seeking economic development subsidies. Since 2012, when it opened its Economic Development Office, it has been averaging almost 20 state and local subsidy awards per year, for data centers, warehouses, office buildings, and its various subsidiaries. They now total almost $4.2 billion. Last year alone, Amazon pulled down 20 deals worth at least $700 million.

These understate the rate of subsidization. Some of the subsidies are not fully disclosed. For example, sales, property, or utility tax exemptions granted to some of their data centers are incompletely or wholly undisclosed in some states.

According to the Wall Street Journal in 2017, the top management team gave the economic development team at Amazon a goal of extracting $1 billion per year in subsidies.

It is also very aggressive seeking government procurement contracts, especially for its profitable cloud-computing division, Amazon Web Services (AWS). In 2013, AWS was awarded a contract by the Central Intelligence Agency worth up to $600 million over 10 years. It was later, in 2020, along with four other companies, awarded a new cloud computing contact for the intelligence community reportedly worth tens of billions of dollars over multiple years, and now recently the new NSA award for $10 billion for the NSA Hybrid Compute Initiative.

Less well known than these high-profile Federal contracts is Amazon's push into local and state procurement. It began that push in 2016, and now claims to sell to 90 of the biggest cities and counties in the United States, and 45 state governments buy at least once a month from them. It is one of the two fastest-growing segments in the company's sales, the company wrote last year.

So it is clear that public economic development and procurement dollars are deeply baked into Amazon's business model.

Given that fact, we believe that Amazon should be held to the highest ethical standards of conduct, and if it fails to meet those standards it should be disqualified from both government contracts and development subsidies.

In addition to the company's widely reported Unfair Labor Practices that my fellow panelists have already discussed, Amazon or its subsidiaries have been penalized scores of times by Federal or state regulatory agencies or as a result of private litigation on workplace issues, such as wage and hour violations. Five wage and hour cases totaling almost $82 million include a Federal Trade Commission penalty—and I am quoting the Commission now—saying, "a final administrative consent order against Amazon, which agreed to pay more than $61.7 million to settle charges that it failed to pay Amazon Flex drivers the full amount of tips they received from Amazon customers over a two-and-a-half-year period."

Amazon entities have been penalized dozens of times by the Federal Aviation Administration for air safety violations and more than 20 times by the Occupational Safety and Health Administration, or OSHA, for workplace safety violations.

When a company violates workers' rights to freely organize a union that contradicts a fundamental idea within economic development and public procurement, that idea being that public dollars should always serve to raise living standards and reduce inequal-

ity, never to suppress wages or suppress benefits and thereby exacerbate inequality. Otherwise, why would we collectively favor a company with subsidies or contracts? Why would we pay a company to make inequality worse?

Corporate recidivism is a longstanding problem in the United States, and many have observed that it continues because penalties are not stiff enough, especially personal penalties for top executives. We at Good Jobs First submit that losing government contracts and subsidies might get the attention of a company like Amazon that is so wed to public dollars.

Thank you.

[The prepared statement of Mr. LeRoy appears on page 39]

Chairman SANDERS. Thank you very much, Mr. LeRoy.

Our next panelist is Ms. Rachel Greszler, who is a Senior Research Fellow with the Institute for Economic Freedom at The Heritage Foundation. Ms. Greszler's work focuses on retirement and labor policies such as Social Security, disability insurance, pensions, and worker compensation.

Ms. Greszler, thanks very much for being with us.

STATEMENT OF RACHEL GRESZLER, SENIOR RESEARCH FELLOW, INSTITUTE FOR ECONOMIC FREEDOM, THE HERITAGE FOUNDATION

Ms. GRESZLER. Chairman Sanders, Ranking Member Graham, and members of the Committee, thank you for the opportunity to be here today.

Regarding the question of taxpayer dollars going to companies that violate U.S. labor laws, the Federal contracting process is not an appropriate or effective way to address the apparent concerns. It would do far more harm to taxpayers and strip Americans of vital services, including health care and national security, than it would to penalize the targeted companies. Moreover, a Federal judge issued an injunction against a similar Obama order in 2016, and Congress already struck down individual agencies' similar blacklisting rules in 2017.

A more relevant question for the Budget Committee, given the $30 trillion Federal debt, reckless spending, high inflation, and an unprecedented labor shortage is how can policymakers promote a better-functioning labor market with more people working and with real incomes rising instead of falling? To that end I would like to briefly consider the current labor market conditions and evaluate two different labor policy approaches.

Today's labor market is unlike any before in history. Massive government spending, financed by the Fed's printing of money, has artificially increased demand while other government policies have discouraged work. That has contributed to a record high 11.5 million job openings. There are almost two jobs available for every unemployed worker.

Employers are responding to the labor shortage by providing greater flexibility, expanded benefits, including a 64 percent increase in workers with access to paid family leave, and also higher pay. In March alone, 49 percent of employers reported that they increased compensation.

But despite the fact that average earnings are up $3,300 over the past year, the average worker is $1,600 poorer after inflation. The problem is that when employers are forced to raise compensation without workers actually producing more they have to raise their prices, and that adds to the inflationary cycle.

Similarly, unions' use of muscle as opposed to merit-based compensation increases, leads to higher prices and fewer jobs. Policies like protecting the Right to Organize Act that prioritized union membership over workers' desires would add to inflation, fail to meet many workers' needs, and ultimately lead to a smaller labor force and lower incomes. Under the PRO Act, workers could lose a lot, including their right to a secret ballot union election, the privacy of their personal information, the choice of joining a union and paying union dues, the ability to be their own boss, and the opportunity to own a franchise business.

Most troubling to me, as a mother of six young children, is the PRO Act's attack on independent workers. Fifty-nine million Americans participated in independent or freelance work this year. During the pandemic it was a lifeline to many, including 12 percent of the entire workforce that started freelancing in 2020.

Independent work is growing because people want it. They report greater work-life balance, less stress, better health, and the same or higher incomes. For many people, it is independent work or no work. Half of those who freelance say they do it because they cannot work for a traditional employer. Closing off opportunities for people to work in the way that they want and need may increase union dues but it will not help workers and it will not help the economy grow.

Instead of attempting to recreate the workplace of yesteryear, dominated by unions, manufacturing, and men, Congress should modernize labor laws. First, policymakers should protect flexible and autonomous work by clarifying in law that people who control their own work can be independent contractors.

Congress should also protect the franchising model by codifying the longstanding precedent that franchise owners are their workers' sole employer. The Employee Rights Act includes these two important provisions, along with other important worker-first policies like privacy protections, secret ballot union elections, and the right to earn a raise.

Congress could alleviate worker and union clashes by respecting both parties' rights to choose. That is, by ending forced unionization and also ending exclusive representation so that workers are not forced to join unions and unions are not forced to represent workers that do not join them.

Finally, policymakers should help expand lower costs and more effective education alternatives by reducing higher education subsidies and allowing things like industry-recognized apprenticeship programs that have proven effective at helping workers.

The future of work requires an agile and expanding workforce, not a one-size-fits-all model, so lawmakers' goals should be to allow more people to gain the skills they need, to work in the jobs they want, to choose the employment arrangements that work best for them, and to earn rising incomes that allow them to pay for what they want and to pursue what they desire.

Thank you.

[The prepared statement of Ms. Greszler appears on page 42]

Chairman SANDERS. Thank you.

Our last panelist we will be hearing from virtually, and that is Mr. Glenn Spencer, who is the Senior Vice President of the Employment Policy Division at the U.S. Chamber of Commerce. In this role he oversees the Chamber's work on traditional labor relations, wage hour and worker safety issues, and state labor and employment law, among other issues.

Mr. Spencer, thanks very much for being with us.

STATEMENT OF GLENN SPENCER, SENIOR VICE PRESIDENT, EMPLOYMENT POLICY DIVISION, U.S. CHAMBER OF COMMERCE

Mr. SPENCER. Chairman Sanders, Ranking Member Graham, and members of the Committee, I appreciate the opportunity to speak to you today.

The U.S. Chamber of Commerce directly represents 300,000 businesses and represents approximately 3 million more through our federation partners. These businesses take seriously their obligations to follow all laws, including those involving labor and employment matters. These businesses devote considerable time, talent, and resources towards achieving compliance.

The unfortunate truth, however, is that some laws are less than clear and can be extremely complex. The same applies to regulations implementing those laws. In addition, these laws and regulations sometimes overlap, and there are additional laws and regulations at the state level. Take, for example, independent contracting. There are multiple standards just at the Federal level. The IRS, the Department of Labor, and the National Labor Relations Board all use different tests. In addition, there are state tests, and some states use separate tests for wage and hour, workers compensation, and unemployment insurance. The result is a confusing patchwork of laws and regulations that can be challenging to understand.

This type of complexity, which occurs across numerous areas, is why we see so much litigation around labor and employment issues. Two people can look at the same factual situation and draw two different conclusions about whether a particular workplace policy is compliant. This is why it is important not to jump to conclusions about whether a company has actually violated the law. Upon further review by agency officials or a court, allegations can be found to be without merit.

All of this leads to the question of whether an additional penalty structure for contractors, up to and including debarment, is an appropriate policy. As a general matter, Congress has concluded that it is not. Statutes like the National Labor Relations Act, for example, articulate a specific penalty structure that does not include restrictions on contracting, or debarment.

Moreover, Congress has declined to pass numerous proposals to amend the penalties in the NLRA, including labor law reform legislation in 1978, the Employee Free Choice Act, and most recently the Protecting the Right to Organize Act.

Where Congress has affirmatively spoken on the question of contracting and additional penalties it has rejected that concept. In

2017, Congress used the Congressional Review Act to overturn the so-called Fair Pay and Safe Workplaces regulation, which sought, in part, to require contractors to report violations of labor and employment laws to their contracting agencies with the ultimate threat of the loss of Federal contracts as a penalty.

While there are undoubtedly many reasons Congress has chosen this course of action, one factor might be that while many businesses participate in Federal contractor—by some estimates as many as 25 percent of employers—these businesses specialize in different services. Preventing a company from participating in Federal contracting would limit the ability of the Federal Government to seek out the most efficient and effective provider of a particular service. In some cases that service might not be available at all. For example, some national defense products are produced by just one lead supplier, an issue of particular salience as we look at our policy in Ukraine.

Administrations of both parties have often used the Federal contracting process to impose policies that they could not get through Congress. For example, the Biden administration required contractors to pay a minimum wage of $15 per hour. The Trump administration attempted to block contractors from certain types of diversity training. The Obama administration required contractors to provide paid leave. And the Bush administration required contractors to post notices about union rights.

Without commenting on the wisdom of any of these policies, the unifying theme is that these were issues that did not receive congressional approval. The justification claimed was the authority of the Federal Property and Administrative Services Act. However, courts are starting to question the limits of that law, with cases in numerous courts of appeals. So as the Committee contemplates the question of restrictions on contracting or debarment as an enhanced penalty, it should be mindful of those limits.

One additional challenge confronts the idea of imposing such enhanced penalties via regulation, and that is the very CRA resolution that was passed in 2017. Under the CRA, a rule that is struck down "may not be reissued in substantially the same form." This is a significant barrier.

In conclusion, Congress has enacted numerous labor and employment statutes. Each of those statutes contains specific penalty provisions. If the consensus in Congress is to change those penalty structures, Congress is free to do so. However, attempts to do so administratively are likely to run into the barrier of the CRA, and may also face greater scrutiny by the courts.

Again, thank you for the opportunity to speak to the Committee today.

[The prepared statement of Mr. Spencer appears on page 49]

Chairman SANDERS. Mr. Spencer, thank you very much.

Let me begin my questioning by responding briefly to Senator Graham. I think he suggested that a hearing like this is radical. And you know what? I think he is right. In a Congress dominated by corporate lobbyists and wealthy campaign contributors, the idea that we would actually hear from the working class of this country is, in fact, radical, but I make no apologies for that.

Let's begin with Mr. Smalls. Mr. Smalls, if you could, describe a little bit about the pressures that exist at Amazon when workers have decided that they want to form a union.

Mr. SMALLS. Absolutely. Well, for one, let me first just describe what the environment is. These buildings are 14 NFL football fields, a million square feet, some of them over a million square feet. Staten Island, for example, JFK, these workers are commuting from all five boroughs, and New Jersey as well, so their commute could be anywhere between 2½ to 3 hours each way, not including their 10- to 12-hour shift if they are full-time. Only subjected to a 30-minute lunch period and two 15-minute breaks. If you work 12 hours you get 45 minutes and two 15-minute breaks.

So just think about that by itself, just working under those conditions as well as enduring union-busting, which Amazon flies in hundreds of union-busters from all over the country, pretty much all over the world. There are some now coming from overseas as well.

They come into the facility and they isolate workers every single day to question them, pretty much gaslighting them, acting like they are working to improve the conditions but really are just polling to see who is pro-union and who is not. They report that information back to management. They have captive audiences every single day. For example, at JFK, they did them every 20 minutes. They brought in classrooms the size of 50 to 60 workers, drilled anti-union propaganda into their heads for nearly an hour, and they did this four times a week. Every single day workers come in, they go right to a captive audience.

So imagine being a new hire at Amazon. Your second day, you do not even know your job assignment, and the first thing they do is march you into an anti-union propaganda class.

Other examples are they post and plaster the building with anti-union propaganda. You walk in and the first thing you see is "vote no." You walk in and the first thing you see is union dues coming out of your check, they calculate union dues without even knowing how a union operates. They pretty much spread rumors and lies about the union members, trying to claim that this independent worker-led union that are all Amazon workers are some third party. The lied and said that the union dues, the money is going to go towards my financial gain. Pretty much the demonized myself as the union representative, saying that I have a vendetta because I was fired two years ago, wrongfully.

Other things that they do, they use the police to intimidate the workers. There was a large presence in Bessemer. I remember when I went down there for the first campaign they had police at every entrance. The same thing in Staten Island. They used the police at all our demonstrations. Myself and two other organizers were arrested, not once but twice, and we are still sitting here, as we speak, on papers because of that.

Chairman SANDERS. Senator Graham, I am going to take an extra two minutes, and I will give you an equal amount of time.

Let me ask President O'Brien. Do non-union companies that pay workers low wages with no benefits and repeatedly break the law and have an unfair advantage when they compete for Federal con-

tracts and subsidies with companies that obey the law and have a union contract?

Mr. O'BRIEN. The answer to that question, Mr. Chairman, is absolutely. You know, we represent 1.2 million working people in various industries. We have a similar company under contract that has a 70-year history with the Teamsters Union, that does and has a proven model of what it is to work for a unionized workforce and still remain very profitable and very successful. Those jobs are 67 percent at UPS, part-time jobs, which provide full-time benefits—full-time health care and full-time pension contributions.

But more importantly, it provides a means to an end. Unlike Amazon, when you go to work and they have a 150 percent turnover, that is criminal. When you go to work at UPS, as a part-timer, you know that at some point in time you have a means to an end for a full-time career, delivering packages and parcels.

And, you know, I think the one thing that is getting lost in this whole testimony is we are talking, and we are all entitled to our opinions, and that is the beauty about being an American, but we do have a proven model that worked. It worked through the toughest economic time when there were no vaccinations but people needed goods and services delivered. Our Teamster members, whether it was at UPS, whether it was in the freight division, whether it was picking up rubbish or stocking and delivering essential groceries to people, we proved our worth. We proved our value. And, you know, Amazon workers should have that same ability and/or any workforce that is being taken advantage of or retaliated for their beliefs.

Now as far as a competitive advantage, when employers use a subcontracting or an independent contractor model they are not paying benefits. They are not paying retirement. They may be skirting the laws as far as wage and hour violations go. They have a significant competitive advantage with a service that is awful. If you go to any neighborhood right now and you talk to an Amazon subcontractor or, as I think was referred to by one of my panelists as an opportunity to be their own boss, that is the furthest from the truth. They have to buy the vehicle or lease the vehicle from Amazon. They have to wear the uniform that Amazon says. They have to follow policies and procedure. It sounds like not being their own boss to me.

Look, in any event we need this. We need the PRO Act. We need America to do the right thing. If someone does something wrong in their neighborhood they are held accountable. Amazon needs to be held accountable, and how you hold people accountable is taking back some of these contractors until they are a responsible employer.

Chairman SANDERS. Thank you very much. Senator Graham.

Senator GRAHAM. Thank you. One way you should not hold people accountable is have a hearing where you make accusations. There is a legal system. You reach conclusions and you want a result that I think would do a lot of damage to the country. That is what is radical here, is we have taken a single company, you have brought people making accusations. There is a legal system in this country to complain about unfair labor practices.

But what you have done here today is you have tried and convicted Amazon. You have taken anecdotal testimony and said Amazon is the worst offender on the planet, of the workplace. All I can say is that Mr. Smalls, had you filed a complaint when you thought you were wronged?

Mr. SMALLS. Have I?

Senator GRAHAM. Yes.

Mr. SMALLS. The Attorney General of the State of New York has on my behalf.

Senator GRAHAM. Okay. But you had a process where somebody could advocate for your interest.

Mr. SMALLS. There is a process that is not working.

Senator GRAHAM. Okay. Well, that is your opinion.

Mr. SMALLS. It is a fact.

Senator GRAHAM. Now let me ask you this. Do you believe that if you are in a workplace you should be required to join a union?

Mr. SMALLS. I believe that we should have the right to choose to join a union.

Senator GRAHAM. Okay. So you would agree with me that if you did not want to join a union you should not be made to do so.

Mr. SMALLS. Who is making them do that?

Senator GRAHAM. The PRO Act. You have to pay union dues whether you agree to it or not.

Mr. SMALLS. I do not believe that is correct. I think the PRO Act is giving——

Senator GRAHAM. Ms. Greszler, is that correct?

Mr. SMALLS [continuing]. Assuming you could do that.

Ms. GRESZLER. Yes. That is precisely what the PRO Act does is that as a condition of being employed at a company you have to pay union dues.

Senator GRAHAM. So this is a good deal for the unions, right?

Mr. O'Brien, do you support the idea that if you receive a government contract as a company you must sign a statement of neutrality regarding unionization?

Mr. O'BRIEN. I definitely believe in that, sir.

Senator GRAHAM. Yeah, well I do not.

Mr. O'BRIEN. If that is your opinion, that is great.

Senator GRAHAM. And let me tell you why I do not. Because that means if you are Boeing in South Carolina and you want to do business with the military you cannot give the other side of the story why unionization may hurt productivity and is not the best way for the worker.

So unionization efforts in this country have gone from 11.9 percent to 10.3 percent, of the private sector workforce, including government employees, I think, maybe non-government employees, are down to 6.1 percent. Maybe people are listening to what you are having to say and want to go a different way. Maybe they do not want to pay dues to a union because they work at the site that has been unionized. Maybe people are making a different choice. The number of people joining a union in this country is going way down. Is it due to the abusive behavior of all the companies or is maybe people want to make an individual choice?

I had an uncle who was in a paper mill union. I love him dearly. I understand the union argument, and let people listen to it. I just want the employer to be able to give the other side of the story.

Ms. Greszler, in your view, this idea of requiring companies to sign a neutrality agreement to do business with America, what would that lead to?

Ms. GRESZLER. Well I think that is actually unfair to workers. Companies are required to notify workers of things that are important to them in their workplace, and what we are doing here is preventing workers from having that right to know something that is significant for the future of their work.

Senator GRAHAM. This is not about righting wrongs, because there is a system to do that. This is about getting an outcome you want. There was a Staten Island vote Monday where the union effort was rejected 62 to 38. If you believe this panel, the 62 percent of the people are crazy. They do not know what they are doing. They were intimidated, and maybe they just made a different choice.

Chairman SANDERS. Thank you. Senator Kaine.

Senator KAINE. Thanks, Mr. Chairman. Thanks to all of you. Very, very interesting testimony.

I said at a hearing, Mr. Chair, I think about two weeks ago here, that maybe I am not fit for this line of work because I was born with a paintbox that has no broad brushes in it. And so, I mean, I will start with you, Mr. President.

I do not challenge some of the facts that my Chairman laid out, or that you have laid out, and I think some compelling stories, but I do not think Amazon is an organized criminal syndicate.

Mr. O'BRIEN. It definitely is the way they treat their workers, sir, with all due respect.

Senator KAINE. Yeah. Yeah. So I know that is your opinion and you are as sincere in stating that as I am in saying that I think that is a vast overstatement.

Amazon employs a million Americans. Not everyone hates their jobs at Amazon. Thousands of them work in Virginia, and not everyone hates their job at Amazon. Amazon is going to open a huge headquarters in Northern Virginia that was going to have 25,000 employees, but after New York said "we do not want you" it is going to be 35,000 employees in Northern Virginia, and Virginians are very excited about it. It is in probably the bluest part of Virginia and the County Board of Supervisors there is thrilled to have Amazon.

Mr. SMALLS, I agree with you. I do not care one whit about Jeff Bezos. I think the workers make Amazon go, and the customers, the customers that use Amazon, they use it because they think it is convenient. And during the pandemic, when they were at home and they did not want to go to some places because they were worried about their health, Amazon usage went up. We cannot wave a magic wand and make customers suddenly not like Amazon.

So I would say I just do not see it. All the facts that have been laid on the table are facts that I am now going to dig into with some of the others on the panel. But I think you have to acknowledge, a million employees and customers that find Amazon to be

somebody good they want to work with, that is, at least, also a fact that has to be put on the table.

My view is coming from the way I come from. I come from a very pro-labor household, and I am a PRO Act supporter, and I am going to talk about why. My dad was management. He ran an ironworking shop that was organized by the ironworkers, and we all grew up working with union ironworkers in my family. It was my dad and my mother and my two brothers and me, and in a good year, five employees and in a great year, seven employees. My dad was on the ironworker pension fund as the management representative, and he just taught us, growing up, unions and management should not be fighting. It should be a team.

And I hope we would want to be a team without owners kicking workers around and without employers being demonized. I mean, Democrats, if we want to love jobs, we have got to also work with those that are building companies that create jobs.

Now I want to get over on why I am a PRO Act supporter because I think, Ms. Greszler, you said a couple of things that I do not think are true. You said the PRO Act gets rid of the secret ballot. No it does not. It strengthens the secret ballot. There were earlier bills in Congress that got rid of secret ballot, like the Employee Free Choice ACT (EFCA).

But what the PRO Act does is it requires a secret ballot if the employer wants it. If the employer does not want to accept cards at more than 50 percent the employer can require a secret ballot, and there will be a secret ballot. Unless the employer conducts such unfair labor practices during the election, then the NLRB can order that that showing of a majority of the workforce wants a union will go into effect. I think that solidifies secret ballot.

The other thing the PRO Act does on secret ballot is this: under current law, employers can decertify a union without a ballot. If they feel like they have evidence that there is no longer majority support, an employer can decertify a union. The PRO Act says you cannot decertify a union without a secret ballot.

So I have heard you and others come up here and say, oh, the PRO Act gets rid of secret ballot. I think that is just a flat-out misstatement. I have heard it made over and over again. It does not. It actually strengthens secret ballot.

Mr. Smalls said he thinks people should have the choice about a union. You should have a choice to vote for a union or not. And if a majority votes for the union, the law has been, for decades, that the union then has to represent the entire bargaining unit.

The PRO Act does not require that you join the union if there has been a successful election. It does require that you make some payment to the union for that representation so that you are not a free rider. If the union is obligated to bargain for somebody whether they join the union or not, get them benefits, get them health care, get them pensions, why should they be able to get that for free? If we are going to respect the democracy of a vote for a union then you are going to get some benefit from it. What is your right to just be like a free rider on that?

The other thing about the PRO Act that really convinced me, Mr. Chair, and this goes to Mr. Smalls' testimony about them waiting you out. We have a National Labor Relations Act that says, okay,

you have got to have a campaign and have an election. So if the union wins the election, should there not be a contract? I mean, it would see if the union wins the election, should there not be a contract?

Well the average number of days it takes after the union wins an election—and they do not always win—but after the union wins an election the average number of days to get to a contract is 409 days, and about a third of victorious unions cannot get a contract in the first three years because the employer just stonewalls.

So what the PRO Act does is it requires that after a successful union election, after there has been a democratic determination by the workers that they want a union, that you have to produce a contract within a certain period of time and if you do not it goes to arbitration, that seems completely fair to me. Otherwise, you are not respecting the democratic desire of workers for a union.

The Chairman did a nice thing. He came down to Virginia to celebrate five Richmond Starbucks, that recently unionized. I was out with the Starbucks employees during that time. And another one, Mr. Chair, in Farmville, just unionized a couple of days ago. And I strongly supported their right. If you want a union—I am not telling you what you should want, but if you want a union, you should have it. And once they voted to have a union, they should be entitled to have it and get a contract within a reasonable period of time.

I just hope, you know, we can—I do not know. Maybe I am naïve thinking that the world can work the way it did in my dad's ironworking shop, you know, and that if workers vote for a union that they would not be kicked around, they would not be harassed, they would not be fired, they would not be stonewalled. But we get to the business of creating a working relationship that is a productive one for everyone.

The last thing I will say, and Mr. Chair has heard me say this before. My dad used to always tell us, "Listen, my business acumen is going to put all my workers' kids into career programs, union programs, or colleges, but you boys"—my brothers and me—"you guys need to remember that the artistry of these ironworkers is going to put all you guys through college."

I just hope we might have an economy that people view themselves as on the same team.

Thank you, Mr. Chairman.

Chairman SANDERS. Senator Kaine, thank you. Senator Braun.

Senator BRAUN. Thank you, Mr. Chairman.

Senator KAINE, I do not think you are naïve. I think that I came here today knowing that there would not be many of us here, number one. Coming from Main Street where 37 years prior to becoming a Senator I ran a business, and you do not have high turnover if you have high wages. You do not have accidents at your business that are way out of norm if you run it like your own family is working there. If you are conscientious for your employees it is kind of a moot point, and sooner or later it works itself out.

I had 15 employees for 17 years. Lucky, finally, that it scaled into a larger business. Lived with low overhead, hardscrabble. All along the way—and I mentioned it about eight, nine years ago when I was awarded an entrepreneur's recognition, and mentioned

at that get-together that high wages and good benefits should be the hallmark of running a business, growing it, and return on investment. I saw some kind of reaction out in the crowd, which would have been mostly Chamber of Commerce, other entrepreneurs.

But if you do it, you know, a union is probably not going to be necessary, but when you look at concentration in industries, you look at Amazon itself. They have actually created a new mousetrap that will have its own reconciliation in terms of where that can be scalable. It is not going to be scalable ultimately if you have 150 percent turnover rates or if you have accident rates way above the norm.

So do we resolve it here? Do we put regulations in place? Sometimes you have got to. But I do believe the system, in the long run, will take care of itself. And when you have got big concentration in industries you are going to get folks like me, from the entrepreneurial business side, that do not like it. Most of us do not have lobbyists. Most of us do not business partner with the Federal Government like large companies do. So you have got to be careful that you do not stereotype I think what has made this country great, which would be mostly Main Street entrepreneurs, many small businesses, where they are as blue-collar as a blue-collar job would be working for a larger company because they make their earnings out of those businesses.

So when you get in situations where it is egregious, sooner or later you will be held accountable. Standard Oil did. The telephone business did.

I have been railing, along with the Chair here, about the health care industry. It costs too much. Everybody in this day and age ought to be entitled to health care that you have got access to, whether it is provided by an employer—some have to turn to government—that does not cost you twice as much, in some cases, as what it does in other countries. That is why you have hearings like this.

All of this has to blend together. It does not necessarily have to be mandated by government. But when somebody does get out of line, when wealth gets too concentrated, when you have got 150 percent turnover rates, high accident rates you are going to have to have a medium to vent your grievances, and unions, vis-à-vis large companies, probably the only way you can do it.

I have always been a believer that you can organize, but you can never let something get out of hand to where it gets too far the other direction, and never lose sight of what has made the country great. It has been based upon hard-working individuals. The town I come from is blue-collar entrepreneurs. We all play together, we work together, and we get along together. And when you pay the highest starting wages, basically, in the lowest unemployment areas your business prospers and your employees do along with you.

I have always had a beef too, owning a business, CEO pay of 150 times the average workers. That is not going to work. You know, I never did it in my own business. I would have been embarrassed to do it. On the other hand, you want to make sure you do not squash innovation, entrepreneurialism, because that is what makes

our country great. And that has got to walk alongside workers benefitting along the way.

That is my two cents. That is why I came today. Thank you.

Chairman SANDERS. Thank you, Senator Braun.

Senator Van Hollen is with us virtually.

Senator VAN HOLLEN. Thank you, Mr. Chairman, and let me thank all of our witnesses today.

Mr. Smalls, you mentioned in your testimony that in addition to firing you, Amazon also fired Gerald Bryson, who was one of the other protest leaders. Amazon claimed Mr. Bryson was fired for statements he made in an argument with a co-worker, but here is how an NLRB administrative judge described Amazon's review of Mr. Bryson's conduct that led to his illegal firing.

And I am quoting now from the judge: "An ostrich-like, head-in-the-ground investigation that seeks to avoid evidence which might disclose information mitigating the employee's misconduct," unquote. In other words, Amazon deliberately ignored the facts, deliberately misrepresented the situation, and that is why the NLRB ordered Amazon to reinstate Mr. Bryson with back pay and found that his termination had been wrongful.

So, Mr. Smalls, you know Mr. Bryson. Why do you believe, why did Amazon fire Mr. Bryson?

Mr. SMALLS. A few things. Number one, he is Black. Number two, he was protesting alongside with myself and others over COVID–19, which was running rampant at the time. New York was the epicenter. So they wanted to, once again, silence the organizers that were advocating for that, myself include. You know, I am still unemployed as we speak.

Senator VAN HOLLEN. And when a company like Amazon takes that kind of action in retaliation for a protest, does that make it more difficult for you to organize?

Mr. SMALLS. Of course it does. It is the intimidation factor. You know, they fire the people that are speaking up. Everybody else would not want to come forward because they think it is going to happen to them.

Senator VAN HOLLEN. Yeah. So, you know, and here is the thing about our system. It took two years, or a little longer than two years for this particular case to wind its way through the NLRB and get a decision from an NLRB judge. By that time the damage is already done, not just to the person wrongfully fired but also to the organizing effort. We have just got to dramatically improve this system, and that is why we want to provide additional resources to the NLRB and make other reforms.

You know, I chaired a hearing just earlier this week in the Appropriations Committee. I chair a subcommittee called the Financial Services and General Government Subcommittee. And I discussed with the IRS Commissioner the fact that we already debar, we already prevent Federal contractors who do not pay their taxes from getting government contracts, right? It makes sense that if you are not paying your taxes on time you should not benefit from a contract that taxpayers are funding.

We also will hear later from the GAO witness, on the second panel, that Federal contractors can also be debarred for violations of the Service Contract Act, and the existing Federal acquisition

regulations provide for debarring Federal contractors for any offense indicating a lack of business integrity or honesty.

Mr. LeRoy, given that we already have these provisions in place for violating tax laws, service contract laws, and other circumstances, why would we not also say that for contractors who are engaged in serious violations of labor law that they would be prohibited from getting Federal contractors, at least for some period of time?

Mr. LEROY. I wholly agree, Senator, and I am proud to say that I am a Maryland resident and that you represent us very well.

Looking at the Department criteria for some of the General Services Administration, even state governments, they all have procedures. We are simply saying we want to elevate labor law to the same magnitude and significance as tax law or integrity law or antitrust law, and I think that is a very reasonable thing to do. It is saying we care about workers and we are not going to pay companies to degrade or places suppressed wages make inequality worse.

Senator VAN HOLLEN. Just in my closing seconds here, Mr. Spencer, should we have a carve-out? In other words—and I am trying to hear where we would agree that there has been a significant violation of labor law, right—would you agree that that is the kind of violation that, at least for a period of time, should disqualify a contractor from getting a taxpayer-funded contract?

Mr. SPENCER. What I would say is I think I agree with you, or your point that there is a procedure in place currently, under the Federal acquisition regulations to determine whether a contractor is suitable to receive a contract.

I used to work in the Federal Government so I knew contracting officers when I was there. I still know some of them now, and I trust those folks to use their best judgment when evaluating a contract as to the suitability of an individual contractor.

I would just point out one thing here, not to talk about Amazon, but one of the things that they did during the pandemic, as we recall, there was a dramatic expansion in the unemployment insurance system to provide benefits to people who were out of work. Amazon Web Services helped some of the states deal with the computer upgrades that needed to happen, to make sure that those benefits could be paid on time and to people who had earned those benefits.

So if you are limiting the ability of companies like that to provide those vital services that is going to inhibit the ability of people to collect the benefits that they have earned.

So I would say that I think contracting officers can make those evaluations and can use their balanced judgment to determine whether a company is suitable to receive a contract.

Senator VAN HOLLEN. Right. We should not have a situation where gross violations of labor rights are actually treated differently than gross violations of other laws that bar people from getting contracts.

I see I am over my time. Thank you all. Thank you, Mr. Chairman.

Chairman SANDERS. Thank you, Senator Van Hollen. And with that let me thank all of our panelists for your presentations. I found them very interesting. Thank you all very much.

And now we are going to hear from Tom Costa with the GAO. [Pause.]

Chairman SANDERS. Mr. Costa, thanks very much for being with us. Tom Costa is the Director of the Education, Workforce, and Income Security team at the U.S. Government Accountability Office. Mr. Costa oversees GAO's work on worker protection, safety, employment, and training issues. He has worked at the GAO since 2005.

Mr. Costa, thanks for being with us.

STATEMENT OF THOMAS COSTA, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. COSTA. Thank you for having me, Senator. Chairman Sanders, members of the Committee, thank you for inviting me to testify about enforcement of the Service Contract Act, or SCA.

The SCA was enacted to provide labor protections for Federal service contractor employees such as administrative staff, janitors, security guards, and mail haulers. Contracting agencies such as the Department of Defense (DoD) or the Postal Service are responsible for administering the SCA while the Department of Labor (DOL) enforces the law.

Under the SCA, workers do not have a private right of action against employers. However, DOL can withhold funds from a contractor who is found to have violated the SCA to ensure that workers are paid what they are owed.

My written testimony summarizes the information we reported in our 2020 report, including what available data revealed about past SCA cases, challenges the DOL faced in enforcing the SCA, and challenges contracting agencies faced in implementing it. Let me start with a high-level overview of what we found.

DOL's Wage and Hour Division conducts investigations in response to complaints or on its own initiative, carrying out more than 5,000 investigations from fiscal year 2014 through 2019. Just over half of these cases involved DoD, the largest Federal contractor, or the Postal Service. DOL found violations in 68 percent of these completed cases, most of which involved fringe benefits or wage violations.

In 94 percent of the cases with violations, employers complied with DOL. And from fiscal year 2014 through 2019, employers agreed to pay back approximately $224 million in back wages. DOL also debarred 60 employers during that same time period, which prevented those employers from being awarded new contracts for three years.

I will focus the remainder of my statement on the updates we received from both DOL and the Postal Service in response to our six recommendations. First, while DOL tracks SCA information in an enforcement database, we found inconsistent data entry on Federal agencies hindered its efforts to use the data for enforcement purposes. For example, the Postal Service had over 35 different

namings in the database. And I am pleased to say that DOL has closed this recommendation by updating its database.

Second, we found that DOL lacked a complete picture of the effectiveness of its enforcement efforts because it did not analyze the information on its use of enforcement tools such as compliance agreements or debarments. Without analyzing this information DOL may not know how best to utilize its resources in resolving SCA cases. In response, DOL has revised its tracking system and plans to issue a summary report at the end of each year. However, while this is a positive first step, DOL has not indicated how it will analyze that information to see how effective their efforts are.

For our third and fourth recommendations we found communication gaps between the Postal Service and DOL. The Postal Service has the second-largest number of SCA cases of any agency and the largest number of debarments of any agency. We recommended that the DOL and the Postal Service develop written protocols to improve their communication. Both agencies agreed and have started working on a memorandum of understanding. However, after some back and forth, we heard from both agencies that they are waiting for the other to proceed forward, indicating that the communication gap still exists.

Fifth, we found that contracting agencies such as DoD and the Postal Service may have incomplete information about SCA violations from DOL which could affect their ability to make fully informed decisions when awarding new contracts. For example, the contracting agencies might not know that a contractor had been debarred, and this could increase the chance that a debarred contractor would get a contract it should not.

We recommended that DOL take steps to ensure that the unique contractor identifier be included in debarment records. According to DOL, it has developed a tool to link these numbers to both contracting and performance records. However, the government transitioned this past month to using a new, unique identifier, and we are not sure yet if DOL has adjusted its processes to accommodate the new system.

Finally, we found that DOL did not always communicate enforcement findings in a way that was readily accessible to contracting agencies. Information on past violations may assist contracting agencies to determine whether a prospective contractor has a satisfactory performance record. We recommended that DOL develop written procedures for relaying SCA findings to the contracting agencies, and DOL indicated it is in the process of doing so.

I am pleased that DOL and the Postal Service have taken our recommendations seriously and begun taking action. Nevertheless, more needs to be done, and we will continue to monitor both agencies' efforts.

This completes my prepared statement. I would be happy to answer any questions.

[The prepared statement of Mr. Costa appears on page 52]

Chairman SANDERS. Thank you very much, Mr. Costa.

Let me begin by asking you, are companies with past labor law violations still getting government contracts? Why is the Department of Labor not using its debarment authority to prevent this?

Mr. COSTA. Yes. Contractors who get debarred are still getting contracts. We identified 622 contractors that had SCA violations that received subsequent Federal contracts worth $35 billion. It is important to note that the SCA, unlike some other labor laws, does not grade on the scale of severity, so an honest mistake is treated the same as a willful violation.

That said, DOL did identify 379 cases where there were previous SCA violations or other violations and the contractor still got additional contracts. In 19 of those cases, those contractors were subsequently debarred.

Chairman SANDERS. Give us some examples of serious violations of the law by companies that still have government contracts.

Mr. COSTA. We looked at aggregate data, sir. We did not look at specific contractors, so I do not know exactly. Under the SCA it would be wage violations so it would be misclassifying someone as a much lower-paying position or it could be denying people their fringe benefits, like paid leave, vacation time, health benefits, things like that.

Chairman SANDERS. How widespread is that?

Mr. COSTA. As I noted, there was not too much above there. Well, I should take that back. In over 5,000 cases DOL found violations in 68 percent of those cases.

Chairman SANDERS. That seems to be pretty widespread.

Mr. COSTA. Yes. I am sorry. It was pretty widespread. What we do not know is the severity of those cases. We know that only 60 were debarred.

Chairman SANDERS. What portion of SCA violations included violations of other acts such as the Fair Labor Standards Act?

Mr. COSTA. Yes. At least 379 cases included either prior violations of the SCA or violations of other acts like the Fair Labor Standards Act or the Occupational Safety and Health Act.

Chairman SANDERS. Well, let me just thank you for being here and thank you for the work you are doing. I think the taxpayers in this country want to know that when their tax dollars are going to contracts with companies that those companies obey the law. I do not think that is asking terribly much. Do you agree?

Mr. COSTA. Companies should obey the law. That is correct, sir.

Chairman SANDERS. All right. So I think we are making progress but we still have a very long way to go. And with that, Mr. Costa, thanks so much for being with us.

Mr. COSTA. Thank you, sir.

Chairman SANDERS. As information for all Senators, questions for the record are due by 12 noon tomorrow with signed hand copies delivered to the Committee clerk in Dirksen 624. Email copies will also be accepted. Under our rules, the witnesses will have seven days from receipt of our questions to respond with answers.

With no further business before the Committee, this hearing is adjourned.

[Whereupon, at 12:29 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

[Prepared statements, responses to written questions, and additional material submitted for the record follow:]

PREPARED STATEMENT OF MR. CHRISTIAN SMALLS

Dear Chairman Sanders and Senator Graham,

I come to you in my capacity as President of the Amazon Labor Union to speak humbly on behalf of the 8,300 newly organized Amazon workers in Staten Island, as well as the hundreds of thousands of workers across the country who are in the process of organizing or desire to organize. In the United States, there are those of us who dare to challenge corporate power because we see it as necessary to improve our own lives and the lives of our coworkers and fellow citizens. The notion that people united in democracy will outmatch tyranny is the oldest American ideal. There's a clearly-defined legal process to do this, and workers like us have rights protected by the First Amendment and the National Labor Relations Act. However, despite this, our victory in Staten Island was lauded as newsworthy and inspirational precisely because workers rarely get this far. And, even though we may have won, even though we did everything right, pressuring Amazon to recognize our victory and comply with their legal obligation to meet us at the bargaining table is going to be an even greater struggle.

This is because the repression that Amazon exerts on its workers is the same as the repression it exerts on the legal system. The labor laws in our country are too weak, and Amazon violates them with impunity. We need additional penalties levied against employers who refuse to recognize the rights of their employees. Otherwise, working class people in this country will continue to suffer.

From our Staten Island campaign alone, there are over 40 unfair labor practice charges pending before the NLRB concerning everything from unlawful coercion to retaliation and wrongful termination. The board has already issued numerous complaints against Amazon, having found merit to workers' allegations of illegal union-busting. I, myself, was unlawfully terminated for engaging in protected workplace organizing , as well as my fellow coworkers Gerald Bryson and Daequan Smith. In the case of Gerald Bryson, an Administrative Law Judge has concluded his termination was wrongful and has ordered his reinstatement.

I come to you with the belief that we cannot allow Amazon or any other employer to receive taxpayer money if they engage in illegal union-busting behavior and deny workers' rights. We cannot provide federal contracts to these employers. We cannot allow them to receive taxpayer subsidies from our State and Local governments. In New York State alone, Amazon has been given almost $400 million in tax abatements through various programs which expressly stipulate the recipient must not violate labor laws and regulations. We are fighting to get this money back.

Moreover, we must increase funding to the National Labor Relations Board, which has become so mired in resource-intensive work that it struggles to carry out its executive function.

Most importantly, we cannot allow employers like Amazon to flaunt federal law by delaying the certification and bargaining processes for years on end. Workers who successfully organize

should serve as a beacon of inspiration to others, not a cautionary tale. Amazon spent tens of millions of dollars to interfere with our organizing efforts and we still won. They must recognize us and come to the table. In the end, our victory must mean something -- for ourselves and for others.

Lastly, I cannot understate the importance of the PRO Act. To organize Amazon, the workers in our union had to make incredible sacrifices. They had to put their livelihoods on the line. Organizing should not be this difficult and it should not be dangerous. The provisions of the PRO act will transform the way that working class people in this country build power. We must pass this bill no matter what.

Thank you for your time,
Christian Smalls

Testimony of Sean M. O'Brien

General President

International Brotherhood of Teamsters

Before the

United States Senate Committee on the Budget

U.S. Senate

May 5, 2022

International Brotherhood of Teamsters
25 Louisiana Avenue
Washington, DC 20015

Good morning, Chairman Sanders, Ranking Member Graham and distinguished members of the committee. My name is Sean O'Brien. I serve as the General President of the International Brotherhood of Teamsters. Thank you for the opportunity to appear before you today to discuss Amazon, its labor and business practices, and its relationship with the federal government.

To put it plainly, it is wrong for our government to be giving taxpayer dollars in the form of federal contracts to companies like Amazon. There is no excuse to reward employers who repeatedly, knowingly, and purposefully violate federal labor laws; drive down wages and standards across the supply chain, including in core Teamster industries; and create dangerous working environments.

To be clear, President Joe Biden is the most pro-union President of our lifetime, and the Teamsters Union applauds his Administration's action on issues of great concern to working families. We proudly support President Biden's executive orders on pay equity, pay transparency and $15/hour minimum wage requirements for federal contractors. Comprehensive Davis-Bacon prevailing wage requirements in the bipartisan infrastructure bill were a critical component for our support. And, when implemented, the recommendations for federal procurement included in the White House Task Force on Worker Organizing and Empowerment will support and encourage responsible, high road employers. But, as Chairman Sanders has said, we have the power to completely stop companies that break labor law from receiving federal contracts. So why aren't we doing it?

Sadly, while Amazon acts with impunity to break the law and destroy good middle class jobs, our government recently saw fit to award the company a $10 billion federal contract for web services. While our government was spending taxpayer dollars on Amazon's cloud computing services,[1] the company reportedly spent up to $20,000 per week on union-busting consultants at one Staten Island Amazon facility.[2] What's more

[1] https://www.washingtonpost.com/business/2021/08/11/amazon-nsa-contract/
[2] https://www.businessinsider.com/amazon-paid-anti-union-consultants-20k-week-new-york-jfk8-2022-4

depressing is we know that these numbers barely scratch the surface of what Amazon spends to prevent workers from having any voice whatsoever on the job. According to filings with the U.S. Department of Labor (DOL), Amazon spent $4.3 million on consultants last year alone to prevent its employees from unionizing.[3] As part of their illegal anti-union activity, they forced workers to attend closed-door anti-union meetings and discriminated against pro-union workers.[4]

Last year, Amazon was found guilty of illegally firing two workers after they advocated on behalf of their coworkers at an Amazon warehouse. Amazon broke labor law in Alabama when workers tried to organize, forcing their election to be rerun this year. Amazon pressured the United States Postal Service to install a postal drop box on the property of the Alabama facility after the National Labor Relations Board (NLRB) ruled that an all "mail-in" ballot for the representation election be used.[5] In December, the NLRB cited Amazon for illegally threatening, surveilling and interrogating workers who were trying to start a union at its Staten Island facility.[6]

These kinds of actions make something very clear: when workers try to organize, Amazon breaks the law. When workers raise their voices, Amazon does whatever it takes to shut them up - because Amazon is terrified of the power workers have when they act collectively. But unlawful union busting intimidation tactics are not the only reason why the federal government should not give Americans' tax dollars to Amazon.

Amazon relies on an exploitative business model that's brutal and dangerous for workers. According to a recent report by the Strategic Organizing Center, Amazon's punishing pace-of-work results in worker injury rates that are nearly twice as high as

[3] https://www.nytimes.com/2022/04/02/business/amazon-union-christian-smalls.html
[4] https://www.huffpost.com/entry/amazon-anti-union-consultants_n_62449258e4b0742dfa5a74fb
[5] Amazon exec Dave Clark pushed for mailbox in Alabama union election (cnbc.com)
[6] https://www.washingtonpost.com/business/2022/04/19/amazon-union-worker-nlrb-staten-island/; https://www.cnbc.com/2021/11/29/amazon-warehouse-workers-in-alabama-will-get-another-chance-to-vote-to-unionize.html

that of all other non-Amazon warehouse facilities.[7] Amazon's obsession with speed has played a role in driving its injury rates higher. Amazon uses extensive productivity and monitoring systems to pressure workers to move at dangerous speeds.[8] The company's high-pressure operations even prompted The Wall Street Journal to coin the term "Bezosism" to refer to "the way Amazon uses tech to squeeze performance out of workers."[9] Amazon employees are seriously injured at rates that are nearly double the rest of the entire warehouse industry. Amazon accounts for half of all warehouse worker injuries, yet the company only employs a third of all warehouse workers nationwide.

In 2021 and 2022, OSHA inspectors in Washington state issued citations for ten separate violations classified as "Willful," citing Amazon's "high pace of work" and "monitoring and discipline systems" as the direct cause of the high rate of serious injuries. This may represent the first time OSHA has ever found that pace of work constitutes a separate violation of the OSHA Act.[10] The only time Amazon's injury rate declined, according to the SOC study, was in 2020, which coincides with Amazon's suspension of productivity monitoring at the start of the pandemic. In fact, Amazon's injury rate increased by 20 percent between 2020-2021, further evidence that productivity monitoring, which was reinstated in late 2020, is to blame.

Delivery jobs for Amazon, performed by subcontractors, also have a terrible injury record – even worse than at the intensely-paced Amazon warehouses.[11] And there are rampant reports of accidents and other safety issues with subcontracted Delivery

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[7] https://thesoc.org/news/report-shows-amazon-workers-injured-more-than-twice-industry-average/; https://thesoc.org/what-we-do/the-injury-machine-how-amazons-production-system-hurts-workers/

[8] Colin Lecher, "How Amazon Automatically Tracks and Fires Warehouse Workers for 'Productivity,'" The Verge, April 25, 2019, https://www.theverge.com/2019/4/25/18516004/amazon-warehouse-fulfillment-centers-productivity-firing-terminations. See also: "Amazon fined $60,000 after 'willfully' violating safety rules at a Seattle-area warehouse, regulators say," Business Insider, Mar. 21, 2022: https://www.businessinsider.com/amazon-fined-serious-violation-washington-state-warehouse-worker-safety-2022-3

[9] "The Way Amazon Uses Tech to Squeeze Performance Out of Workers Deserves Its Own Name: Bezosism," The Wall Street Journal, Sept. 11, 2021: https://www.wsj.com/articles/the-way-amazon-uses-tech-to-squeeze-performance-out-of-workers-deserves-its-own-name-bezosism-116 31332821?m%E2%80%A6 "Amazon has resumed policies t

[10] https://thesoc.org/wp-content/uploads/2022/04/The-Injury-Machine_How-Amazons-Production-System-Hurts-Workers.pdf, page 10.

[11] https://thesoc.org/wp-content/uploads/2021/02/PrimedForPain.pdf, pages 9-10.

Service Provider (DSP) vans on residential streets – again, most likely because of the relentless pressure to meet the pace that Amazon dictates.

In 2018, Business Insider conducted interviews with Amazon drivers over the course of eight months. The drivers described a physically demanding work environment in which, under strict time constraints, they felt pressured to drive at dangerously high speeds, blow through stop signs, and skip meal and bathroom breaks.[12] Why is our government rewarding this behavior? Why aren't we doing more to protect American families?

Amazon's DSP program harms workers and small businesses — especially those who want to create good, safe, family sustaining middle-class jobs — while enabling Amazon to reap profits, but shoulder none of the liability. Amazon's network of DSPs is a vast network of small, undercapitalized companies set up under an Amazon-designed program to provide "last-mile" delivery services. Amazon has set up more than 2,000 DSPs in the U.S. to deliver its packages, employing an estimated 115,000 drivers.[13] Yet Amazon doesn't officially own these companies or employ these delivery drivers.

Nevertheless, Amazon not only controls the corporate set-up of these supposedly independent businesses, but also controls each delivery and the drivers who make them. Amazon dictates the order of deliveries, the route, the progress and speed of each delivery, and even the power to fire workers. DSP drivers and their trucks or vans are branded with the Amazon logo - from the delivery vehicles themselves to the drivers' uniforms. Amazon dictates routes and monitors DSP drivers though an app called Mentor that is installed on navigation devices DSP drivers must use.[14] Amazon has even deployed cameras in DSP vehicles that constantly record drivers – everything from their driving speed and turns to highly personal biometric information such as eye movements.[15]

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[12] https://www.businessinsider.com/amazon-delivery-drivers-reveal-claims-of-disturbing-work-conditions-2018-8
[13] https://www.cnbc.com/2021/06/21/drivers-speak-out-about-pressures-of-delivering-for-an-amazon-dsp.html
[14] https://thesoc.org/wp-content/uploads/2021/02/PrimedForPain.pdf, pages 8-9.
[15] Caroline Donavan & Ken Bensinger, *Amazon's Next-Day Delivery Has Brought Chaos And Carnage To America's Streets — But the World's Biggest Retailer Has A System To Escape the Blame*, BUZZFEED (Aug. 31, 2019), available at https://www.buzzfeednews.com/article/carolineodonovan/amazon-next-day-delivery-deaths. ;

Amazon controls DSPs by dictating prices for each delivery and limits the size of DSPs by limiting the number of routes it assigns to each. There are reports that Amazon terminates DSPs who attempt to reduce their drivers' grueling workload or increase their pay. As supposedly independent businesses, DSPs' contracts can of course be cancelled by Amazon whenever Amazon wants. DSPs and their workers cannot fight back. If they do, Amazon can simply terminate their contracts and shift this work to other DSPs. Keeping each DSP small and thus fragmented allows Amazon to prevent DSPs from challenging Amazon's power over them.[16]

Despite this extensive control and branding by Amazon, Amazon asserts that DSPs are independent businesses and disclaims corporate responsibility for the DSPs and employment responsibility for DSP drivers. This arrangement puts these small businesses and their workers at the mercy of Amazon, which controls the work but avoids any liability. Yet, in numerous instances, federal wage and hour lawsuits filed by drivers against DSPs often name Amazon as a co-defendant. In fact, Amazon has settled multiple cases in which it is a named defendant, accepting no liability under the terms of settlement agreements. Thus, the company has avoided lengthy litigation that could ultimately determine Amazon to be a joint employer.

American workers are experiencing the consequences of operations like Amazon's DSP program, as well as other aspects of Amazon's business model. Teamsters have fought for nearly 120 years to make delivery and logistics work a family supporting, middle-class job with benefits, but Amazon's power and approach to employing workers are gutting these industries. Bureau of Labor Statistics data show that, when adjusted for inflation, wages for workers in the Warehousing and Storage Industry (NAICS 493) have declined 7.6% in the last 10 years, despite employment increasing substantially.

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https://thesoc.org/wp-content/uploads/2021/09/Petition-for-Investigation-of-Amazon.pdf; https://www.cnbc.com/2021/02/03/amazon-using-ai-equipped-cameras-in-delivery-vans.html

[16] https://www.cnn.com/2021/09/22/tech/amazon-dsp-portland/index.html; https://www.vice.com/en/article/wxdbnw/i-had-nothing-to-my-name-amazon-delivery-companies-are-being-crushed-by-debt

Similarly, in the Couriers and Messengers Industry (NAICS 492), where DSPs are categorized, inflation-adjusted wages have dropped by 8%.[17]

A 2020 investigation into Amazon's labor practices by Bloomberg resulted in an expose titled *"Amazon has turned a Middle-Class Warehouse into a McJob."*[18] The article concludes that, "despite a starting wage well above the federal minimum, the company is dragging down pay in the logistics industry." The article cites a report by the Government Accountability Office (GAO) stating that Amazon is a close 4th behind Walmart, McDonalds and two dollar-store chains for having the largest number of employees, including full-time employees who struggle to pay their bills and who must utilize Supplemental Nutrition Assistance Program (SNAP) benefits.[19] The article goes on to say that "as Amazon opens U.S. warehouses at the rate of about one a day, it's transforming the logistics industry from a career destination with the promise of middle-class wages into entry-level work that's just a notch above being a burger flipper or convenience store cashier." Amazon's business model subsidizes its profit at the expense of American's that actually pay taxes.

The Strategic Organizing Center's (SOC) research also demonstrates Amazon's downward pressure on wages. The SOC conducted a survey of locations where Amazon directly employs a significant percentage of workers in the warehousing and storage industry and, based on evidence from the Bureau of Labor Statistics and other publicly available sources, identified several local labor markets where average wages in the industry fell after Amazon's arrival. The data detailed below were submitted to the Federal Trade Commission in February of 2020, calling on the FTC to open an investigation into Amazon's anti-competitive practices.[20]

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[17] Bureau of Labor Statistics Quarterly Census of Employment and Wages, 2010-2020.
[18] https://www.bloomberg.com/news/features/2020-12-17/amazon-amzn-job-pay-rate-leaves-some-warehouse-employees-homeless
[19] https://www.gao.gov/products/gao-21-45
[20] https://thesoc.org/wp-content/uploads/2021/09/Petition-for-Investigation-of-Amazon.pdf

For example, Amazon opened its largest New Jersey fulfillment center in Mercer County in June 2014. Mercer County's annual salary and weekly earnings averages in warehousing and storage have both fallen by 18 percent since the year of Amazon's arrival. A $45,699 average annual salary for warehouse work in 2014 had fallen to $37,546 by 2018. This was not part of a pre-existing trend. Prior to Amazon's emergence into this local labor market, wages in warehousing and storage had risen for three consecutive years at both the county and state levels.

Amazon is also one of the largest direct employers in Lexington County, South Carolina, and the county's largest source of warehousing and storage employment. After Amazon opened a fulfillment center in Lexington County in October 2011, the average annual salary and weekly earnings for warehousing and storage work in the county both fell by 21 percent. The story is the same in Chesterfield County, Virginia. Since Amazon opened a fulfillment center in Chesterfield County in October 2012, the average annual salary and weekly earnings for warehousing and storage work in the county have also fallen by 21 percent.

The SOC concluded that Amazon's establishment of warehouses in concentrated labor markets where it can easily drive down wages for warehousing and storage labor is not by accident, but rather by design. Amazon leases more of its warehouses from Prologis, a corporate real estate developer, than from any other landlord. Prologis assists clients like Amazon with locating their warehouses strategically, not only in a manner that is most efficient for logistics operations, but in a manner that allows them to take advantage of vulnerable workers and weak local economies.

For instance, one Prologis site selection document identifies a high unemployment rate and low local median income as being the "labor advantages" of one site's location outside of Atlanta, where Amazon also has a warehouse. In another Prologis document, the "labor advantages" for a second area where Amazon has a facility are presented as a "combination of low wages... in a non-union environment." These site selection preferences raise the prospect that when Amazon does act as a direct employer, it may

knowingly distance its warehouses from tighter local labor markets with higher wage expectations and place them instead in looser labor markets where workers are more likely to accept suppressed pay rates because of a lack of employment options. This strategy would allow Amazon to depress wages and exploit workers, particularly ones who lack union representation.[21]

In his 2021 testimony before the House Judiciary Committee Subcommittee on Antitrust, Commercial and Administrative Law, 23-year Teamster Daniel Gross testified to a similar degradation of job quality for freight and delivery drivers. Brother Gross stated that the tractor-trailer drivers Amazon uses are paid varying rates that are below industry standards, possibly by as much as half, even before benefits are factored in. Brother Gross went on to say that sometimes Amazon restricts the ability of these so-called independent tractor-trailer contractors to backhaul loads, forcing them into non-paying empty loads on their return trip. Like the DSP model, Amazon has debuted several platforms to build its capacity for low-cost freight trucking between its facilities.[22] At Brother Gross's Teamster facility, a seniority UPS package car driver currently earns $39.64 an hour. However, when he looked up job postings for Amazon DSP drivers in his area, they were advertising as low as $17.50 per hour as a starting wage, which is what Brother Gross earned at UPS 20 years ago.

Brother Gross described how Amazon's business practices are impacting his Teamsters collective bargaining agreement with UPS. For example, instead of using UPS Teamster tractor-trailers within its existing network, UPS has succumbed at times to Amazon's demand to accept deliveries from freight trucking subcontractors and independent operators who are not subject to the collectively bargained rules and working conditions that are in place to keep drivers and the public safe. Brother Gross said that his union, Teamsters Local 177 of Hillside, NJ, has won grievance settlements to address this and similar contract violations, but it's an ongoing uphill battle.

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[21] https://thesoc.org/wp-content/uploads/2021/09/Petition-for-Investigation-of-Amazon.pdf, pages 15-16.
[22] https://freightpartner.amazon.com/marketing/; https://relay.amazon.com/

Amazon's dominant position as an e-retailer enables it to exert dominance in business relationships with third-party last mile carriers, including larger firms like UPS, USPS, DHL, and its DSPs, on terms such as hours of operation and days of delivery. In 2012, the contract that the USPS negotiated with the postal service unions created a non-career letter carrier position to deliver Amazon packages on Sundays. In the 2018 Teamsters National Master UPS Agreement, a new delivery job classification was also created to accommodate the demands of Amazon for weekend delivery.[23]

This is in large part why I have made it a top priority for my administration as General President of the Teamsters Union to ensure that upcoming bargaining with UPS produces the strongest contract in the American labor movement. Amazon cannot be permitted to dictate working conditions and job quality in core Teamster industries. It is vital for the Teamsters to negotiate a strong contract to maintain industry standards that push Amazon to improve its business operations and labor practices. Our members deserve nothing less.

Just as every Teamster understands, Americans have the fundamental right to join together and bargain collectively over the terms of their employment. The federal government — under the National Labor Relations Act — has a mandate to "encourage worker organizing and collective bargaining and to promote equality of bargaining power between employers and employees, as President Biden's Executive Order on Worker Organizing and Empowerment boldly states. But our government ignores that mandate with every dollar that it puts into the pockets of Jeff Bezos and Amazon CEO Andy Jassy. Why are our elected officials giving taxpayer money to a company that is willing to use any available means — illegal or not — to deny workers their federally-protected rights? Why are we supporting the growth of a company that is destroying good middle-class jobs, creating unsafe working conditions and assuming no responsibility for much of its workforce?

[23] https://docs.house.gov/meetings/JU/JU05/20210928/114057/HHRG-117-JU05-Wstate-GrossD-20210928.pdf

As a Teamster, I've faced countless union-busting companies. I've seen Amazon beating up on the American worker for too long. And our government has been letting them do it.

As the General President of the Teamsters, a union that represents more than 1.2 million working people, I've been traveling the country a lot in the past year spending time with workers face-to-face. And I'll tell you this — working people of all parties are losing faith in their government.

It feels like Big Business is the only thing our government cares about. What happened to "We the People?" Billionaires pay little to no taxes, and then they're handed billions of tax dollars that are paid by working people. When our government turns a blind eye to Amazon's lethal and illegal labor practices, it feels like the system is rigged against everyone but the rich and powerful.

Working people aren't stupid. We see what's going on here. It's long past time for the pendulum to swing back to the side of working people in this country. To this committee, to the entire federal government, please keep your promise to American workers. We are watching, we are listening, and we are voting. Tell Amazon that enough is enough, and then show them you mean business. Don't give this company, or any employer, another penny until the labor laws of this land are truly upheld and workers' voices are finally heard.

Thank you.

GOOD JOBS FIRST

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Testimony of Greg LeRoy
Executive Director, Good Jobs First
To the United States Senate Committee on the Budget
"Should Taxpayer Dollars Go to Companies that Violate Labor Laws?"

Thank you, Chairman Sanders and committee members for the opportunity to speak with you this morning. My name is Greg LeRoy and I direct Good Jobs First (GJF), a non-profit, non-partisan research center on economic development incentives and corporate accountability. I founded GJF 24 years ago and have written, trained, consulted and advised on these issues almost continuously since the Carter administration. We maintain three unique national databases on subsidies (Subsidy Tracker, Tax Break Tracker and Covid Stimulus Watch) and two wide-ranging databases on corporate misconduct (Violation Tracker, which compiles U.S. federal, state and local data and Violation Tracker U.K., which covers the United Kingdom).

Good Jobs First believes that companies which receive economic development subsidies and/or government procurement contracts should be held to the highest standards of corporate ethics. Government money should not keep going to any company that violates laws, rules or regulations intended to protect workers, consumers, free markets or the environment. Otherwise, public dollars are subsidizing corporate behavior that is at odds with the policy objectives of economic development and ethical procurement.

That belief informs our work, including our work promoting full disclosure of public subsidies and contracts, including not just the initial awards but also the company's performance over time.

Amazon.com is one of the most aggressive, if not *the* most aggressive company in America today seeking economic development subsidies. Since opening its "economic development" office 10 years ago this March, Amazon has been receiving an average of almost 20 state and local government subsidy awards per year. These are mostly warehouse deals, but also data centers, office buildings and various Amazon subsidiaries. We have compiled them at our Amazon Tracker web page: they now total almost $4.2 billion.[1] Last year alone, Amazon.com was awarded 20 deals or payments worth at least $700 million.

These figures understate Amazon's subsidization. For example, some Amazon Web Services (AWS) data centers receive subsidies which are not fully disclosed. Some receive lucrative yet secret utility tax exemptions on their enormous amounts of electricity consumption. The same is true of some AWS facilities' sales tax exemptions for their cloud-computing equipment, which are sometimes awarded "as of right," or automatically. The costs of local property tax abatements for AWS facilities are also sometimes not disclosed.

According to a report in the *Wall Street Journal*, top Amazon management gave the company's "economic development team" a goal in 2017 of extracting $1 billion in subsidies per year.

Amazon is also aggressive seeking government procurement dollars, especially for its very profitable cloud-computing division, Amazon Web Services (AWS).

In 2013, AWS was awarded a contract by the Central Intelligence Agency worth up to $600 million over 10 years. That contract award was unsuccessfully contested by IBM. The cloud it created served all 17 agencies within the Intelligence Community.

In 2020, the CIA and its 16 sister intelligence agencies switched to a multi-cloud structure and contracted with AWS and four other companies to run segments of it: IBM, Oracle, Microsoft and Google. These contracts are reportedly for tens of billions of dollars over multiple years.

Most recently, the National Security Agency has re-awarded a $10 billion cloud-computing contract to AWS for the NSA's Hybrid Compute Initiative. This contract was also contested by Microsoft. Besides these large contracts, Amazon, according to USAspending.gov[2], has had more than 250 small federal contracts totaling about $1.6 million since 2011.

Less well known than these high-profile *federal* contracts is Amazon's push into local and state government procurement. As documented by the Institute for Local Self Reliance[3], Amazon began in 2016 to seek local government purchasing business through U.S. Communities, a national purchasing cooperative of 55,000 local government entities. Amazon Business now claims to sell to 90 of the 100 most populous local governments (cities and counties) in the United States, and that 45 state governments buy from it at least once a month.[4] Indeed, in a March 2021 blog[5], Amazon said that sales to governments, and to businesses, were its two fastest-growing sales segments.

It is clear in both economic development and government procurement at all levels: public dollars are deeply baked into Amazon's business model.

Given that fact, Good Jobs First believes that Amazon.com, Inc. should be held to the highest ethical standards of conduct and if it fails to meet those standards, it should be disqualified from both government contracts and development subsidies.

In addition to the company's widely reported Unfair Labor Practice citations, Amazon or its subsidiaries have been penalized scores of times by federal or state regulatory agencies or as a result of private litigation on workplace issues such as wage and hour violations.[6]

Five wage and hour cases totaling $81.9 million in penalties include the Federal Trade Commission approving, said the FTC, "a final administrative consent order against Amazon, which has agreed to pay more than $61.7 million to settle charges that it failed to pay Amazon Flex drivers the full amount of tips they received from Amazon customers over a two and a half year period."[7] Amazon entities have been penalized dozens of times by the Federal Aviation Administration for air safety violations, and more than 20 times by the Occupational Safety and Health Administration (OSHA) for workplace safety violations.

When a company violates workers' rights to freely organize a union, that contradicts a fundamental idea within economic development and public procurement: that public dollars should always serve to raise living standards and reduce inequality, and they should never be used to suppress wages and benefits and exacerbate inequality. Otherwise, why should we collectively favor a company with subsidies or contracts? Why should we pay a company to make inequality worse?

Corporate recidivism is a longstanding problem in the United States, and many have observed that it continues because penalties are not stiff enough, especially personal penalties for top executives. We submit that the risk of losing of economic development subsidies and government contracts might get the attention of a company like Amazon that is so wed to public dollars.

Thanks again for the invitation and I welcome your questions.

Notes

[1] https://www.goodjobsfirst.org/amazon-tracker
[2] Accessed May 3, 2022
[3] https://ilsr.org/amazon-and-local-government-purchasing/
[4] https://business.amazon.com/en/work-with-us/government
[5] https://business.amazon.com/en/discover-more/blog/us-public-entities-and-enterprises-accelerate-adoption-of-amazon-business
[6] https://violationtracker.goodjobsfirst.org/prog.php?parent=amazoncom. Some of the 126 violations listed occurred at companies before they were acquired by Amazon.com.
[7] https://www.ftc.gov/news-events/news/press-releases/2021/06/ftc-approves-final-administrative-consent-order-against-amazon-withholding-customer-tips-amazon-flex

The Heritage Foundation

CONGRESSIONAL TESTIMONY

Should Taxpayer Dollars Go to Companies That Violate U.S. Labor Laws?

Testimony before the

Budget Committee

U.S. Senate

May 5, 2022

Rachel Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation

My name is Rachel Greszler. I am Senior Research Fellow in Economics, Budgets, and Entitlements at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

Policymakers Should Not Restrict Competition for Federal Contracts

The question has been asked, "Should taxpayer dollars go to companies that violate U.S. labor laws?"

Americans' freedom and opportunity requires a well-functioning government, clearly defined laws, and consistent enforcement of the laws. Proper stewardship of taxpayers' dollars requires an efficient and effective use of federal funds, including a competitive and fair process for federal contracts.

The U.S. Department of Labor administers and enforces more than 180 federal laws covering thousands of pages of text, applied across 10 million U.S. workplaces. The consequences of violation can include fines, penalties, and prison sentences, and employers can violate laws knowingly or unknowingly.

Employers face a high chance of violating U.S. labor laws in any given year. Due to the complexity of labor laws (which not only include federal, but also state and local labor laws), employers can unknowingly violate labor laws by failing to post a required notice, posting a required notice in the wrong place, failing to provide sufficient accommodations for an individual, or alternatively, attempting to provide an employee with accommodations and asking for personal information that is prohibited under U.S. labor laws.

The U.S. justice system provides a process to address claims of labor law violations, to

determine guilt or innocence, and to apply the appropriate penalties. If policymakers believe that certain violations of the law deserve greater penalties, they should seek to change the penalties instead of blacklisting employers from federal contracts.

One of the roles of the federal government is to provide taxpayers with efficient and effective government services. The current White House webpage for the Office of Federal Procurement Policy states:

"Today, more than ever, the government must ensure that it spends money wisely and eliminates waste and abuse of taxpayer dollars. With approximately one out of every ten dollars of Federal government spending going to contractors, it is imperative that contract actions result in the best value for the taxpayer."[1]

That includes, "promot[ing] economy, efficiency, and effectiveness in acquisition processes."

Administration use of the federal procurement process as a bully pulpit would deprive taxpayers of the lowest-cost, most effective providers of certain government functions. This could impose significant harms on Americans—most notably increased national security risks—by potentially banning the majority of companies currently providing health care, transportation, defense, and many other contracts from fulfilling federal contracts.

Unprecedented Labor Market

The COVID-19 pandemic—including the responses by policymakers, businesses, and individuals—invoked significant changes in the labor market. Misguided and prolonged bonus unemployment benefits and other welfare-without-work benefits kept people out of the labor force. Employers were forced to adapt technology and to adjust work in ways that kept operations going in the short term and created more efficient and flexible platforms for the future. Job losses and an increased need for autonomy and flexibility in light of school and childcare closures contributed to 12 percent of the workforce newly taking on independent work in 2020,[2] buoyed by safety precautions that increased the demand for contract-based services offered on gig-economy platforms.

Today's labor market is unlike any before in U.S. history, and it is undoubtedly a worker's market. Job openings just reached another record high of 11.5 million, which means there are nearly two jobs available for every unemployed worker.[3] Employers are struggling to get the workers they need.

A surge in workers quitting their jobs—including a new record of 4.5 million in March and a total of one in three workers quitting over the past year—has been another pandemic-related phenomenon.[4] Although quit rates will not remain this high for the long run, even the pre-pandemic rate of quits demonstrates the reality that the average worker today will change jobs a dozen or more times throughout

[1]The White House, Office of Management and Budget, "The Office of Federal Procurement Policy," https://www.whitehouse.gov/omb/management/office-federal-procurement-policy/#:~:text=Today%20more%20than%20ever%2C%20the,best%20value%20for%20the%20taxpayer. (accessed May 3, 2022).

[2]"Freelance Forward 2020," commissioned by Upwork, September 2020, https://assets-global.website-files.com/5ece60393f5cbb1b2f25ef60/5f6b9e29a8eb552423039a37_Upwork_FreelanceForward%20(1).pdf (accessed May 3, 2022).

[3]Economic news release, "Job Openings and Labor Turnover Survey," U.S. Bureau of Labor Statistics, May 3, 2022, https://www.bls.gov/news.release/jolts.nr0.htm (accessed May 3, 2022).

[4]Ibid.

his career, opposed to working for a single company throughout his lifetime.

In response to the labor shortage, employers have significantly increased wages and benefits. According to the National Federation of Independent Businesses, 49 percent of employers reporting raising compensation in March and another 28 percent plan to increase compensation over the next three months.

In response to workers' desire for greater flexibility—which was on the rise before COVID-19, and greatly accelerated by it—employers are expanding flexibility and family friendly policies, including a 64 percent increase in workers' access to paid family leave over the past five years.[5]

Strong wage gains (though they have been more than eroded by inflation) and more accommodating workplaces were a feature of the labor market in 2021, even as the percentage of union members has declined, including only 6.1 percent of private-sector workers.

One of the reasons why union membership is in decline is because unions have not adapted to the changing labor market and economy. As labor laws and a competitive global economy provide many of the advances and developments that unions remain stuck in their old ways. Unions thrive on adversarial relationships and strong-arm tactics, pitting employees against employers, and preferring the role of bully instead of benevolent mediator. This is counter to the amicable relationships that workers and employers desire, and it is counter to the mutual relationship that is fundamental to employers' and workers' success.

Unions also insist on rigid seniority-based pay scales and one-size-fits all schedules that do not reflect workers' desire to be paid according to their contributions, nor their desire for increasing flexibility and autonomy.

That does not mean that unions have no role today. But instead of trying to force workers into unions that do not provide value to them, unions should respond by providing services that workers want so that they will join voluntarily.

Proposed Policies Will Make the Labor Shortage, Inflation, and Workers' Frustrations Worse

A number of proposed policies, including the pro-union Protecting the Right to Organize (PRO) Act, would exacerbate existing labor market struggles, add to inflation, fail to meet workers' needs and desires, and ultimately lead to a smaller labor force and lower incomes.

The PRO Act attempts to recreate the workplace of yesteryear—a workplace dominated by unions, manufacturing, men, and decades-long jobs with a single company. In doing so, the PRO Act would erase decades' worth of labor market progress and opportunity—particularly for women—leaving workers with less autonomy, less flexibility, and fewer earnings opportunities.

Some of the rights that workers could lose under the PRO Act include their right to a secret-ballot union election, the privacy of their personal information, the option to join and pay dues to a union in 27 right-to-work states, the ability to be their own boss, and the ability to own their own franchise business.[6]

[5]News release, "Union Members—2021," U.S. Bureau of Labor Statistics, January 20, 2022, https://www.bls.gov/news.release/pdf/union2.pdf (accessed May 3, 2022).

[6]Rachel Greszler, "6 Ways a Union-Backed Bill Will Upend the Job Market," The Daily Signal, February 6, 2020, https://www.dailysignal.com/2020/02/05/6-ways-

The PRO Act's attack on independent workers would especially hurt women. According to FreshBooks' Women in the Independent Workforce Annual Report, women's share of self-employed work and small business ownership jumped from about 25 percent in 2012 to 34 percent in 2019.[7] The Census Bureau reports 1.1 million female-owned businesses and another 10.6 million self-employed.[8]

An additional 24 million women do freelance. These freelancers aren't just Uber drivers and parttime Instacart shoppers. These are yoga instructors, language interpreters, artists and musicians, product consultants, journalists and editors, and Etsy shop owners.

California's mini version of the PRO Act's independent contractor test—the state's AB5 law—has left many women chasing work.[9] Even with 100 exemptions—and counting—Monica Wyman has been unable to hire help for her floral business, including when she underwent cancer surgery.[10]

The overwhelming majority of women who moved from traditional employment to independent work say they have a better work-life balance (73 percent) and earn as much or more as when they were formally employed (68 percent). Moreover, most say that the greater flexibility and autonomy has resulted in less stress (59 percent) and better health (57 percent).[11] But the PRO Act would take away independent work options in order to push workers into jobs that can be more easily unionized.

In another attempt to increase unionization, the PRO Act also attacks the franchise business model, which includes 750,000 franchise establishments in the U.S.—everything from Dunkin' Donuts to Orangetheory Fitness. By making the parent companies of franchises legally liable for the employees hired by independent franchise owners, the PRO Act would upend a model without which 39 percent of female franchise owners say they would not have been able to own their businesses.[12]

Forcing unionization on workers could lead to further price hikes even as Americans are facing 40-year high inflation. Unions drive up employer costs by an estimated 30 percent and also reduce worker output.[13] The excessive unemployment insurance benefits that forced employers to increase workers' compensation is proof that higher costs for employers translate into higher prices for consumers.

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a-union-backed-bill-will-upend-the-jobs-market/ (accessed May 3, 2022).

[7]FreshBooks, "Women in the Independent Workforce—2nd Annual Report, 2019," https://www.freshbooks.com/press/data-research/women-in-the-workforce-2019 (accessed May 3, 2022).

[8]Andrew W. Haite, "Number of Women-Owned Employer Firms Increased 0.6% From 2017 to 2018," U.S. Census Bureau, March 29, 2021, https://www.census.gov/library/stories/2021/03/women-business-ownership-in-america-on-rise.html (accessed May 4, 2022).

[9]Independent Women's Forum, "Chasing Work," https://www.iwf.org/chasing-work/ (accessed May 3, 2022).

[10]Independent Women's Forum, "Chasing Work: A Florists Business Survived Breast Cancer, But AB5 Might Kill It," YouTube, https://www.youtube.com/watch?v=zritOQtO070 (accessed May 3, 2022).

[11]FreshBooks, "Women in the Independent Workforce—2nd Annual Report, 2019."

[12]Raghav Patel, "IFA Publishes 'The Value of Franchising Report' from Oxford Economics," September 30, 2021, https://www.global-franchise.com/insight/ifa-publishes-the-value-of-franchising-report-from-oxford-economics (accessed May 3, 2022).

[13]Projections, "The Cost of Unionization," https://projectionsinc.com/unionproof/the-cost-of-unionization-2/#:~:text=What%20is%20the%20cost%20of,30%25%20increase%20in%20operating%20expenses. (accessed May 3, 2022).

Moreover, unions' use of strikes to get what they want also contributes to shortages of goods and services—including children's education and individuals' health care.

Restricting job opportunities, driving up costs, and limiting the supply of goods and services will exacerbate Americans' greatest struggles. Moreover, enforcing rigid union workplace environments will restrict work and income opportunities, and prevent workers from achieving the flexibility and autonomy they increasingly desire or need.

Modernized Labor Policies to Promote More Work, More Income Opportunities

Even before the pandemic, growing numbers of workers had wanted greater flexibility and autonomy. That caused an increase in the number of individuals working independently—as self-employed, freelancers, gig-workers, or contractors. Worker desire for more flexibility and autonomy also led to a rise in more accommodating workplace policies and compensation packages.

The pandemic strengthened these trends. According to an annual Upwork Report, 59 million (36 percent of all workers) performed independent work in 2021, and another 59 million said they were likely to freelance in the future.[14]

Whether the result of necessity—such as caring for children or coping with a family member's health condition—or simply preference, independent work provides the autonomy and flexibility that many workers want and need in order to participate in the labor force. In fact, over half of independent workers—32 million—say that they are unable to work for a traditional employer because of personal circumstances, such as health issues or child care needs.[15]

Even as the labor market has undergone vast changes and will continue to evolve, today's labor laws have not been updated for nearly eight decades. To encourage a thriving and adaptable labor market that allows more people to earn incomes by producing good and offering services that are of value to others, policymakers should:

- **Protect flexible and autonomous independent work** by codifying in law the common-law definition of "employee" to be consistent with federal and state laws and Supreme Court decisions, based on the level of control an individual maintains over his or her work.
- **Protect the franchising pathway to entrepreneurship** by codifying in law the longstanding precedent, and practical reality, that an individual's employer is the one who hires, oversees, and pays her: the franchise owner.
- **Prioritize workers' choices in unionization** by simultaneously getting rid of forced unionization laws and "exclusive representation" laws (which require unions to represent non-union workers) so that workers do not have to pay for representation they do not want and unions do not have to use their resources representing workers who do not pay union dues.
- **End welfare-without-work subsidies** and re-orient the welfare system to promote work, independence, and autonomy.

[14]Dr. Adam Ozimek, "Freelance Forward Economists Report," Commissioned by Upwork, 2021, https://www.upwork.com/research/freelance-forward-2021#:~:text=Upwork%E2%80%99s%202021%20Freelance%20Forward%20survey%20confirms%20the%20finding,the%20eight%20years%20that%20we%20have%20been%20surveying.?msclkid=af38e75aa94311eca0aa2072597d624b (accessed May 3, 2022).

[15]Ibid.

- **Eliminate higher education subsidies** that drive up college costs, promote impractical degrees, and contribute to dismal graduation rates.
- **Allow effective and efficient education alternatives,** such as Industry-Recognized Apprenticeship Programs (IRAPs).[16]
- **Remove barriers to work and flexibility,** such as by enacting the Working Families Flexibility Act, thereby removing an unintentional barrier to employer-provided childcare; [17] and by eliminating Social Security's retirement earnings test.

The Employee Rights Act—which includes some of these policies—would modernize labor laws in ways that prioritize workers' rights and choices.[18]

Summary

Regardless of its intents, central planning—whether by the federal government or by organized labor—is not the solution to today's labor market challenges.

If policymakers seek to increase the consequences for violating certain laws, they should do so through the legal process instead of by using federal contracts as a bully pulpit while subjecting taxpayers to higher costs and hampered government functions.

Government actions to restrict eligibility for government contracts would only be exacerbated by the anti-worker policies in the PRO Act.

Amid an unprecedented labor shortage and four-decade-high inflation, business owners, workers, and consumers are all struggling. The liberal labor agenda will add insult to injury by failing to recognize workers' rights and desires, imposing rigid workplaces, driving up costs, restricting growth, and impeding innovation.

Empowering workers through choices, increased autonomy, expanded opportunities, flexible work environments, and lower-cost educational alternatives would allow more people to gain the skills they need, for the jobs they want, in the employment arrangements that work best for them, while earning rising incomes that allow them to pay for what they need and pursue what they desire.

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[16]U.S. Department of Labor, "Industry-Recognized Apprenticeship Program," https://www.apprenticeship.gov/employers/industry-recognized-apprenticeship-program (accessed May 3, 2022).

[17]Under the Fair Labor Standards Act (FLSA), employers who provide any kind of onsite childcare or childcare subsidies must include the value of those benefits in employees' "regular rate" of pay calculations. This complicates and increases costs when workers who receive hourly wages work overtime because, instead of just paying the worker 1.5 times the wage, employers also have to add on 1.5 times the hourly value of any childcare subsidy, even though those subsidies are usually fixed benefits. Policymakers should exclude childcare benefits from the "regular rate" of pay calculations, just as the law already excludes similar benefits, such as retirement contributions, and accident, health, and life insurance benefits. This would particularly benefit lower-income to middle-income workers who are more likely to receive hourly wages.

[18]Rachel Greszler, "The Pandemic Changed How We Work. It's Time for Labor Laws to Change, Too," The Daily Signal, March 22, 2022, https://www.dailysignal.com/2022/03/22/the-pandemic-changed-how-we-work-its-time-for-labor-laws-to-change-too/ (accessed May 3, 2022).

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Testimony of Glenn Spencer,
Senior Vice President of Employment Policy at the U.S. Chamber of Commerce

United States Senate
Committee on the Budget
Should Taxpayer Dollars Go to Companies that Violate Labor Laws
May 5, 2022

Chairman Sanders, Ranking Member Graham, and Members of the Committee, I appreciate the opportunity to speak to you today.

The U.S. Chamber of Commerce directly represents 300,000 businesses and represents approximately 3 million more through our federation partners. These businesses take seriously their obligations to follow all laws, including those involving labor and employment matters. These businesses devote considerable time, talent, and resources towards achieving compliance.

The unfortunate truth, however, is that some laws are less than clear and can be extremely complex. The same applies to regulations implementing those laws. In addition these laws and regulations sometimes overlap, and there are additional laws and regulations at the state level.

Take, for example, independent contracting. There are multiple standards just at the federal level. The IRS uses a multi-factor test focusing around three elements of control.[1] The Department of Labor uses a different multi-factor test focused on economic realities.[2] The National Labor Relations Board uses a common-law test with an emphasis on entrepreneurial opportunity.[3] In addition, there are state tests, and some states use different tests for Wage and Hour, Workers' Compensation, and unemployment insurance. The result is a confusing patchwork of laws and regulations that can be challenging to understand.

This type of complexity, which occurs across numerous areas, is why we see so much litigation around labor and employment issues. Two people can look at the same factual situation and draw two different conclusions about whether a particular workplace policy is compliant. This is why it's important not to jump to conculusions about whether a company has actually violated the law. Upon further review by agency officials or a court, allegations can be found to be without merit.

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[1] "Independent Contractor (Self-Employed) or Employee?, IRS website at https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee.
[2] "Misclassification of Employees as Independent Contractors," Wage and Hour Division website at https://www.dol.gov/agencies/whd/flsa/misclassification. Note that due to a ruling by the Eastern District of Texas, the Trump administration IC test is now in effect.
[3] https://news.bloomberglaw.com/daily-labor-report/companies-using-contract-labor-get-boost-from-new-nlrb-test-1

All of this leads to the question of whether an additional penalty structure for contractors, up to and including debarment, is an appropriate policy. As a general matter, Congress has concluded that it is not. Statutes like the National Labor Relations Act, for example, articulate a specific penalty structure that does not include restrictions on contracting, or debarment.[4] Moreover, Congress has declined to pass numerous proposals to amend the penalties in the NLRA, including labor law reform legislation in 1978,[5] the Employee Free Choice Act from 2003-2010,[6] and most recently the Protecting the Right to Organize Act.[7]

Where Congress has affirmatively spoken on the question of contracting and additional penalties beyond those in underlying statutes, it has rejected that concept. In 2017, Congress used the Congressional Review Act to overturn the so-called Fair Pay and Safe Workplaces regulation, which sought, in part, to require contractors to report violations of federal labor and employment laws — as well as equivalent state laws — to their contracting agencies with the ultimate threat of the loss of federal contracts as a penalty.[8]

While there are undoubtedly many reasons Congress has chosen this course of action, one factor might be that while many businesses participate in federal contracting—by some estimates as many as 25 percent of employers—these businesses specialize in different services.[9] Preventing a company from participating in federal contracting would limit the ability of the federal government to seek out the most efficient and effective provider of a particular service. In some cases, that service might no longer be available at all. For example, some national defense products are produced by just one lead supplier, an issue of particular salience as we look at our policy in Ukraine.

Administrations of both parties have often used the federal contracting process to impose policies that they could not get through Congress. For example, the Biden administration used Executive Order 14026 to require contractors to pay a minimum wage of $15 an hour. The Trump administration attempted to use Executive Order 13950 to block contractors from certain types of diversity training. The Obama administration used Executive Order 13706 to require contractors to provide paid leave. And the Bush administration used Executive Order 13201 to require contractors to post notices about union rights.

Without commenting on the wisdom of any of these policies, the unifying theme is that these were issues that did not receive Congressional approval. The justification claimed was the authority of the Federal Property and Administrative Services Act (the Act).

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[4] https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act
[5] S. 2467, 95th Congress.
[6] "One Bridge Too Far: Why the Employee Free Choice Act Has, And Should, Fail (sic), Richard A. Epstein, U of Chicago Law and Economics, Olin Working Paper No 528, 12/17/10.
[7] "Democrats Can't Pass the PRO Act, so it's Buried In the Reconciliation Bill, *The Hill*, 10/9/21.
[8] H.J. Res. 37, 115th Congress.
[9] Economic Policy Institute, 1/30/17.

But, courts are starting to question the limits of the Act with cases in numerous courts of appeals.[10] So as the committee contemplates the question of restrictions on contracting or debarment as an enhanced penalty, it should be mindful of these limits.

One additional challenge confronts the idea of imposing such enhanced penalties via regulation. And that is the very CRA resolution that was passed in 2017. Under the CRA, a rule that is struck down "may not be reissued in substantially the same form…"[11] This is a significant barrier.

In conclusion, Congress has enacted numerous labor and employment statutes. Each of those statutes contains specific penalty provisions. If the consensus in Congress is to change those penalty structures, Congress is free to do so. However, attempts to do so administratively with relation to federal contracting are likely to run into the barrier of the CRA, and may also face greater scrutiny by the courts.

Again, thank you for the opportunity to speak to the Committee today.

[10] Currently in the fifth, sixth, eighth, ninth, and 11th circuits.
[11] 5 U.S. Code, Chapter 8.

United States Government Accountability Office

Testimony

Before the Committee on the Budget, U.S. Senate

For Release on Delivery
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FEDERAL CONTRACTING

Opportunities Remain for Department of Labor to Improve Enforcement of Service Worker Wage Protections

Statement of Thomas M. Costa, Director, Education, Workforce, and Income Security

GAO-22-106013

GAO Highlights

Highlights of GAO-22-106013, a testimony before the Committee on the Budget, United States Senate

Why GAO Did This Study

The SCA ensures that service workers on certain federal contracts receive pay and benefits that reflect current employment conditions in their locality. From fiscal years 2014 through 2019, the U.S. government obligated over $720 billion on service contracts covered under the SCA.

This testimony describes (1) what available data reveal about past SCA cases, (2) challenges DOL reports facing in enforcing the SCA, and (3) SCA implementation challenges. For the October 2020 report on which this testimony is based (GAO-21-11), GAO used a variety of methods including analyzing SCA enforcement data; reviewing relevant federal laws, policy, and guidance; reviewing key agency documents, such as DOL's fiscal year 2018-2022 strategic plan; and interviewing DOL officials.

What GAO Recommends

In its October 2020 report, GAO made six recommendations to improve DOL's oversight and information sharing with contracting agencies, including USPS. GAO recommended that DOL analyze its use of enforcement tools; that DOL and USPS implement written protocols to improve communication with each other; and that DOL improve its information sharing with contracting agencies on SCA debarments and investigation outcomes. DOL and USPS generally concurred with the recommendations. This statement describes progress toward implementing our recommendations as of April 2022..

View GAO-22-106013. For more information, contact Thomas M. Costa at (202) 512-4769 or costat@gao.gov.

May 5, 2022

FEDERAL CONTRACTING

Opportunities Remain for Department of Labor to Improve Enforcement of Service Worker Wage Protections

What GAO Found

The Department of Labor (DOL) completed over 5,000 Service Contract Act (SCA) cases in fiscal years 2014 through 2019 according to available data. For many, this resulted in awarding of back wages to federally contracted security guards, janitors, and other service workers. DOL enforces the SCA, which was enacted to protect workers on certain types of federal service contracts. DOL found SCA violations—primarily of wage and benefit protections—in 68 percent of cases. Employers across a range of service industries agreed to pay around $224 million in back wages. Sixty cases resulted in debarment—a decision to prevent an employer from being awarded new federal contracts generally for 3 years. DOL's strategic plan emphasizes optimizing resources for resolving cases using all available enforcement tools. However, GAO found that DOL did not analyze its use of enforcement tools, such as debarment or employer compliance agreements. Therefore, DOL may have lacked a complete picture of the effectiveness of these enforcement strategies. GAO recommended that DOL analyze information on its enforcement actions, including SCA debarment processes and outcomes. In April 2022, DOL reported that it had developed a revised internal tracking system to provide a year-end summary of information on agency debarment actions. DOL has taken the first step, but DOL would still need to analyze this information.

DOL reported various challenges to enforcing the SCA, including difficulty communicating with contracting agencies. For example, DOL officials told GAO that poor communication with contracting agencies—particularly with the U.S. Postal Service (USPS)—can affect and delay cases, though USPS officials told GAO they were unaware of any communication gaps. Without addressing communication issues between USPS and DOL, USPS's implementation and DOL's enforcement of the SCA may be weakened. In April 2022, the two agencies reported that they had developed a draft Memorandum of Understanding (MOU) that outlines protocols and procedures to increase collaboration and SCA compliance. However, the agencies also noted that they had not been able to finalize the MOU because of communication challenges.

GAO found that contracting agencies may face SCA implementation challenges, including not having key information about SCA debarments and violations from DOL. When recording SCA debarments, DOL did not always include the unique identifier for an employer so that contracting agencies could accurately identify debarred firms. DOL also did not have a process that consistently or reliably informed contracting agencies about SCA violations by employers. Without improved information sharing by DOL, an agency may award a contract to an employer without being aware of or considering its past SCA violations. In April 2022, DOL reported that it had developed a tool that allows its SCA enforcement team to easily retrieve the former unique identifier for government contractors, and that they have advised regional staff to include this identifier with the debarment recommendations they submit to the national office. DOL also reported that it was developing, but had not completed, written guidance for its investigators and other field staff that will help ensure that contracting agencies are kept abreast of ongoing SCA investigations.

May 5, 2022

Chairman Sanders, Ranking Member Graham, and Members of the Committee:

Thank you for the opportunity to discuss GAO's prior work on Service Contract Act implementation and enforcement.[1] The McNamara-O'Hara Service Contract Act (SCA) of 1965, as amended, was enacted to provide labor protections for workers on certain federal service contracts.[2] These protections include wage rates, fringe benefits, and other standards to ensure workers on these contracts generally receive pay and benefits that have been found by the Department of Labor to be prevailing in the locality where the contract work is performed.[3]

The Department of Labor (DOL), through its Wage and Hour Division (WHD), enforces the SCA. Federal agencies that work with contractors also have important responsibilities for implementing the SCA. For example, contracting agencies are responsible for including certain clauses in SCA solicitations and contracts, and in certain cases, required to evaluate a prospective contractor's past performance, which may include consideration of any past SCA violations.[4]

As SCA violations may result in workers not receiving earned wages and benefits, we reviewed various aspects of SCA enforcement and implementation. This statement is based on our October 2020 report that included (1) what available data reveal about past SCA cases, (2) challenges DOL reported facing in enforcing the SCA, and (3) SCA

[1]GAO, *Federal Contracting: Actions Needed to Improve Department of Labor's Enforcement of Service Worker Wage Protections*, GAO-21-11 (Washington, D.C.: Oct. 29, 2020).

[2]See Pub. L. No. 89-286, 79 Stat. 1034 (codified as amended at 41 U.S.C. §§ 6701-6707).

[3]For purposes of this statement, the term "worker" is used interchangeably with "service employee," the term used in the SCA.

[4]The Federal Acquisition Regulation (FAR) requires, among other things, that contracting officers include clauses containing the SCA requirements in solicitations and contracts to which the SCA applies. See 48 C.F.R. § 22.1006. In addition, requests for proposals that are expected to exceed a certain threshold (generally $250,000 as of August 31, 2020) are generally required by the FAR to include an evaluation of a prospective contractor's past performance. See 48 C.F.R. §§ 2.101, 9.104-6(a)(1), and 15.304(c)(3)(i) and subpt. 42.15.

implementation challenges. In the October 2020 report, we made several recommendations to improve DOL's oversight and information sharing with contracting agencies, including the U.S. Postal Service (USPS).[5] This statement also describes DOL and USPS's progress toward implementing our recommendations as of April 2022.

For the October 2020 report, we analyzed SCA enforcement data from DOL's Wage and Hour Investigative Support and Reporting Database (WHISARD) and from the General Service Administration (GSA) for fiscal years 2014 through 2019, the most recent data available at the time of our analysis. We also reviewed relevant federal laws, policy, and guidance; analyzed a nongeneralizable sample of SCA case narratives; reviewed key agency documents, such as DOL's strategic plan; interviewed DOL officials; and reviewed agency documents and interviewed officials at USPS and three other selected contracting agencies.[6]

We performed the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The SCA was enacted to provide labor protections for employees of contractors and subcontractors on federal service contracts.[7] SCA requires that, for contracts exceeding $2,500, contractors pay their

[5]GAO-21-11.

[6]The agencies were the Army Materiel Command, the National Institutes of Health, and the Pension Benefit Guaranty Corporation.

[7]The SCA applies to any contract or solicitation for a contract involving an amount exceeding $2,500 made by the federal government or the District of Columbia, the principal purpose of which is to provide services in the United States through the use of service employees. See 41 U.S.C. § 6702(a). The SCA does not apply to certain types of contracts; for example, contracts for public utility services are exempt from the SCA. See 41 U.S.C. § 6702(b). The definition of "service employee" includes any individual engaged in performing services on a covered contract other than a bona fide executive, administrative, or professional employee as defined in 29 C.F.R pt. 541. See 41 U.S.C. § 6701(3). Employee coverage under the SCA depends on whether the employee's work on a covered contract is that of a service employee and not on the alleged form of employment contract between the contractor and the employee. See 29 C.F.R. § 4.155.

employees, at a minimum, the wage rates and fringe benefits—such as vacation benefits—that have been determined by DOL to be prevailing in the locality where the contracted work is performed.[8] The types of service jobs covered by the SCA include, among others, security guards, food service workers, maintenance workers, janitors, clerical workers, and certain health and technical occupations.

DOL Enforcement of the SCA

DOL has enforcement authority under the SCA; workers do not have a private right of action against an employer for any alleged SCA violations.[9] WHD has authority to conduct SCA investigations in response to complaints from service contract employees, federal contracting agencies, unions, and other interested parties, and through directed investigations of its own initiative.

WHD enforces and administers several laws pertaining to labor standards, in addition to the SCA. From fiscal years 2014 through 2019, SCA cases represented about 3 percent of WHD's overall caseload. WHD tracks information on SCA investigations, violations, and findings in its investigations database—WHISARD.

Contracting Agency Responsibilities

While DOL has enforcement authority over the SCA, contracting agencies also play a role in administering the SCA's requirements. The Federal Acquisition Regulation (FAR) outlines responsibilities for contracting agencies, including requirements related to implementing the SCA.[10] Principally, contracting agencies must determine whether the SCA applies (subject to DOL's ultimate interpretative authority) and, if so,

[8]The prevailing wage rates determined by WHD are location-specific for different types of occupations. For some SCA contracts, the required wages and fringe benefits are those that were contained in a collective bargaining agreement applicable to work under a predecessor contract. For most SCA contracts, however, prevailing wage rates and fringe benefits are set forth by WHD in area-wide wage determinations. In addition to the prevailing wage requirements for service employees, the SCA also provides that a contractor or subcontractor may not pay less than the minimum wage specified under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 206(a)), to any employee engaged in performing on or in connection with the contract. See 41 U.S.C. § 6704.

[9]The term "employer" is used interchangeably with the term "contractor" in this statement. See 29 C.F.R. § 4.1a(f).

[10]One of the agencies in our scope, USPS, is required to follow the SCA, but it is exempt from certain laws that are generally applicable to other federal agencies. For example, USPS is not subject to most federal laws and regulations applicable to most federal purchasing, including the FAR.

incorporate specific appropriate clauses into solicitations and contracts.[11] The contracting agency must also include a wage determination in the final contract, which is obtained from WHD.[12]

Consequences for Violating the SCA

When WHD finds that workers covered by SCA contracts have been underpaid, it may request that a contracting agency withhold contract funds. WHD generally calculates the unpaid wages and benefits owed by contractors. A contractor found to be in violation of the SCA is liable for the amount of any underpayment of wages or benefits.[13]

In addition to these actions, the SCA provides for a 3-year debarment period during which a contractor found to have violated the SCA is ineligible to receive future federal contracts, unless the Secretary of Labor recommends otherwise because of unusual circumstances.[14] Alternatively, DOL may use compliance agreements to prevent future violations. These agreements between DOL and a contractor may include monitoring by DOL.

Federal Contracting Information

The GSA maintains data systems that include information related to federal contracting.

- **System for Award Management (SAM).** Companies are generally required to register in SAM in order to submit a bid or an offer on solicitations for federal contracts. SAM also includes records identifying contractors that are excluded from doing business with the federal government, such as those debarred by DOL under the SCA. Agencies taking debarment actions are required by the FAR to include a unique company identifier when entering debarment information in SAM, if it is available. As of April 2022, the unique identifier required for doing business with the government is a government-owned, non-

[11]See 48 C.F.R. § 22.1006. The SCA clauses include FAR § 52.222-41. See 48 C.F.R. § 52.222-41.

[12]Wage determinations generally are linked to the geographical area where the work will be performed.

[13]See 41 U.S.C. § 6705(a).

[14]The statutory debarment provided for under the SCA differs from administrative debarment provisions under the FAR. A debarment under the FAR is for a period generally not exceeding 3 years, and the FAR also provides for a suspension, which is a temporary exclusion pending the completion of an investigation or legal proceeding. In contrast, the SCA does not provide for debarment periods of less than 3 years, nor does it include a suspension provision.

proprietary unique entity identifier. Previously, the unique identifier was the Data Universal Numbering System (DUNS) number.

- **Contractor Performance Assessment Reporting System (CPARS).** Performance evaluations of work performed under covered contracts are entered into CPARS. The FAR requires contracting agencies to prepare performance evaluations in CPARS for their contracts at least annually.[15]

Available Data Provide Information on SCA Case Characteristics and Enforcement Actions, but Have Limitations

Available data provide information on SCA cases such as the number of cases completed and the contracting agencies and industries involved.

The majority of SCA cases originated from complaints. From fiscal years 2014 through 2019, WHD completed 5,261 SCA cases, an average of 877 per year.[16] The majority (59 percent, or 3,109) of these cases originated as complaints. The remaining 41 percent (2,152) were initiated by WHD.

Most SCA cases focused on contractors at a small number of contracting agencies. For example, just over one-half of all SCA cases completed from fiscal years 2014 through 2019 concerned contractors of two agencies: the Department of Defense (DOD) and the USPS (see table 1).[17]

[15]See 48 C.F.R. § 42.1502.

[16]We defined an SCA case as any WHD case that included an SCA component. Some of the cases were originally registered—i.e., designated—as SCA cases by WHD, and others were initiated under other labor statutes—such as the Fair Labor Standards Act of 1938, as amended—and added an SCA component during the course of the case. Of the cases registered under the SCA from fiscal years 2014 through 2019, 819 remained open at the end of this period.

[17]DOD ranks first among federal agencies in contract spending, generally, and cases that focused on DOD contractors made up about 35 percent (1,843) of WHD's completed SCA cases during this timeframe. Cases focusing on contractors of USPS made up the next-largest portion—about 16 percent (834) of completed SCA cases for the 6-year period we reviewed. Other contracting agencies that had a relatively high number of contractors as the subject of SCA cases included the Department of Homeland Security (428 or 8 percent of cases) and the Department of Veterans Affairs (422 or 8 percent of cases). For 502 out of 5,261 cases, we were not able to identify any associated agencies due to missing or unclear information in DOL's database. According to DOL officials, this field became mandatory at the end of fiscal year 2016.

Table 1: Service Contract Act (SCA) Cases and Debarments by Selected Contracting Agency, Fiscal Years (FY) 2014 through 2019

	Contracting Agency	Number of SCA cases, FY14-FY19	Overall agency contract obligations (FY19 dollars in billions), FY14-FY19	Number of SCA debarments, FY14-FY19
1	Department of Defense	1,843	$2,000	17
2	U.S. Postal Service	834	$71	30
3	Department of Homeland Security	428	$96	3
4	Department of Veterans Affairs	422	$148	4
5	General Services Administration	278	$74	0
6	Department of Agriculture	182	$39	3
7	Department of Transportation	146	$41	1
8	Department of Justice	134	$48	1
9	Department of Energy	98	$181	0
10	Department of Health and Human Services	81	$149	0
11	Department of the Interior	81	$27	0

Source: GAO analysis of data from the U.S. Department of Labor and the Federal Procurement Data System – Next Generation, and information provided by the U.S. Postal Service. | GAO-22-106013

Note: The same case may be associated with multiple agencies. For 502 cases, we were not able to identify any associated agencies due to missing or unclear information in the Department of Labor's database. The U.S. Postal Service provided estimates of its contracting obligations. Obligations are rounded to the nearest billion. Values are adjusted for inflation and expressed in fiscal year 2019 dollars using the Gross Domestic Product Price Index from the U.S. Department of Commerce, Bureau of Economic Analysis. One debarment included in the table was associated with two agencies—the Department of Defense and the Department of Homeland Security. The Environmental Protection Agency and the Smithsonian Institution, which had lower numbers of SCA cases than the agencies included in the table, each had one debarment under the SCA during FY 2014 through 2019.

Industry sectors with the most SCA cases included Administrative Support and Waste Management and Remediation Services; Transportation and Warehousing; and Professional, Scientific, and Technical Services (see table 2).[18]

[18]WHD investigators categorize employers by industry using the North American Industry Classification System.

Table 2: Top 5 Sectors for Service Contract Act (SCA) Cases, Fiscal Years (FY) 2014 through 2019

Sector	Number of SCA Cases, FY14-FY19	Federal Contracting Obligations, FY14-FY19	Examples of Industries
Administrative Support and Waste Management and Remediation Services	1,943	$279 billion	• Office Administrative Services • Security Services • Janitorial Services • Call Centers
Transportation and Warehousing	1,207	$112 billion	• Specialized Freight Trucking • Mail Haul[a]
Professional, Scientific, and Technical Services	525	$927 billion	• Management, Scientific, and Technical Consulting Services • Computer Systems Design and Related Services
Health Care and Social Assistance	320	$53 billion	• Vocational Rehabilitation Services • Individual and Family Services
Construction[b]	248	$209 billion	• Building Equipment Contractors • Residential Building Construction

Source: GAO analysis of U.S. Department of Labor data and federal procurement data. | GAO-22-106013

Note: Values are adjusted for inflation and expressed in fiscal year 2019 dollars using the Gross Domestic Product Price Index from the U.S. Department of Commerce, Bureau of Economic Analysis.

[a]Federal contracting obligation data do not include U.S. Postal Service contracting, which includes mail haul (surface mail transportation) contracts.

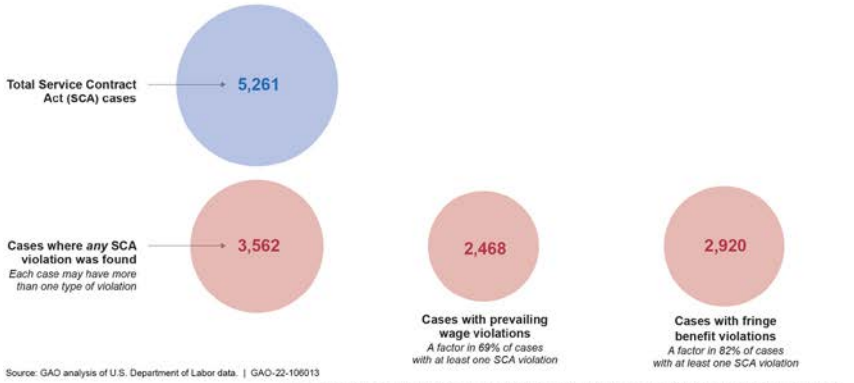
[b]According to a DOL official, even though federal construction contracts are covered separately by the Davis-Bacon Act, as amended, the North American Industry Classification System code for "construction" may appear in SCA cases because these contracts might include non-construction work, such as SCA-covered maintenance.

Available data also provide information on violations and enforcement actions. For example:

- WHD found SCA violations in 68 percent (3,562 of 5,261) of completed SCA cases. Across cases that resulted in one or more SCA violations from fiscal years 2014 through 2019, the most common type of SCA violation identified by WHD was fringe benefit violations, found in 82 percent (2,920) of cases with violations,

followed by prevailing wage violations, which were found in 69 percent (2,468) of cases with violations (see fig. 1).[19]

Figure 1: Types of SCA Violations Identified by the Department of Labor's Wage and Hour Division (WHD), Fiscal Years 2014 through 2019



Source: GAO analysis of U.S. Department of Labor data. | GAO-22-106013

Note: Recordkeeping violations are not included in this figure. WHD did not begin compiling data for recordkeeping violations in its enforcement database until fiscal year 2019, for which it identified 226 cases with recordkeeping violations. Percentages were rounded to the nearest unit.

- WHD found that employers with violations complied with WHD's findings in 94 percent (3,339) of cases.[20] From fiscal years 2014

[19]Cases may identify multiple violations and more than one type of violation.

[20]We determined compliance based on the data in the "compliance status" field in WHISARD. Specifically, we categorized any case that had violations in "refuse to remedy" or "refuse to comply" status as a "refuse to comply" case. We categorized the remaining cases, which had statuses that included "agree to comply" and "agree to remedy," as "agree to comply" cases. We did not analyze the reasons for lack of compliance.

through 2019, employers agreed to pay approximately $224 million in back wages for SCA violations.[21]

- Available data indicate that WHD made 204 withholding requests to contracting agencies, which fulfilled 90 of them.[22] These requests made from fiscal years 2014 through 2019 totaled some $23 million, and agencies withheld $4 million of that amount.[23]
- There were a total of 5,261 SCA cases and 60 SCA debarments from fiscal years 2014 through 2019. This included cases having prior violations as well as those without prior violations. USPS contractors were associated with 30 (50 percent) of all SCA debarments during the period we reviewed. DOD contractors had the second-highest number of debarments, with 17 (28 percent) of all SCA debarments.[24]

DOL's efforts to assess its enforcement actions have been hindered by inconsistent data and by its lack of analysis of certain available enforcement information. We found inconsistencies in the data DOL collected on the names of contracting agencies associated with SCA cases because WHD staff had entered information on this field into the database in different ways. For example, in the DOL data we analyzed, there were at least 21 different variations for GSA, 27 for the Department of Veterans Affairs, and 37 for USPS. WHD had not provided any guidance to its regional and district offices on how to standardize data entry. Variations among agency names may have made it difficult for DOL to use these data to identify potential issues.

Consistent with federal internal control standards, which emphasize the importance of obtaining relevant data from reliable sources, we recommended that WHD provide guidance to staff on how to make these data more consistent. In April 2022, WHD reported that it had updated its enforcement database to include a list of federal agencies to designate in

[21]We use the term "back wages" to include both prevailing wage and fringe benefit violations. The term "agreed to pay" comes from WHD's WHISARD database.

[22]WHD may request that contracting agencies withhold funds from SCA contracts when an employer for which WHD has identified SCA violations cannot or will not pay back wages owed to workers.

[23]We did not analyze the reasons some of these requests were not fulfilled, but we did speak to DOL officials about withholding challenges, discussed below.

[24]DOL contract enforcement staff manually maintain a list of debarment cases. Officials told us the number of debarments is very small and modifying the software to collect debarment data would be too resource intensive, so they do not maintain these data in WHISARD.

government contracts investigations. Based on this information, we consider this recommendation implemented.

In addition, although DOL officials emphasized the importance of debarments and compliance agreements that may be pursued in lieu of debarment, we found that WHD does not routinely analyze the effectiveness or use of these SCA enforcement actions, such as by comparing different types of enforcement actions it uses. DOL's fiscal year 2018-2022 strategic plan called for using strategies to optimize resources and resolve cases by appropriately using all available enforcement tools, including litigation. Without analyzing information on the use of available enforcement tools such as debarment and compliance agreements, WHD may lack a complete picture of how it uses its resources on different strategies for resolving SCA cases, as well as the effectiveness of these enforcement strategies.

We recommended that WHD analyze information on its enforcement actions, including compliance agreements used by WHD's regional offices and SCA debarment processes and outcomes. In April 2022, WHD reported that it had developed a revised internal tracking system that contains additional information on SCA debarments. According to WHD, the revised system will be used to provide a year-end summary of debarment information that the agency has collected on debarments. We will continue to monitor DOL's progress in implementing this recommendation.

DOL Faces Challenges Related to Communicating with Contracting Agencies about Enforcement and Carrying Out Some Enforcement Activities

Communication Challenges

WHD officials told us that communication challenges with contracting agencies can make carrying out certain enforcement activities difficult. For example, officials said that gaps in communication can cause delays in paying back wages owed to workers and create challenges to withholding contract payments. Our review of selected SCA case narratives identified illustrative examples of communication challenges, including cases where contracting agencies—such as DOD, the Department of Veterans Affairs, and USPS—failed or took months to provide WHD with requested documents or respond to communications from WHD.

DOL officials from 10 out of 15 DOL offices we met with specifically noted challenges to communicating and collaborating with USPS on SCA-related issues. DOL and USPS established verbal communication protocols to assist with matters like obtaining contract documents, verifying withholding requests, and transferring funds for back wage payments, which some DOL officials said have helped improve communication. However, most DOL officials we interviewed cited challenges to working with USPS on SCA cases, indicating that some communication challenges with USPS persist. Without addressing communication gaps between USPS and WHD, USPS's implementation and WHD's enforcement of the SCA may be weakened.

Federal internal control standards emphasize the importance of reliable communication for effective oversight. As such, we recommended that DOL and USPS develop and implement written protocols to improve communication and collaboration between the two agencies to support SCA enforcement and implementation. In April 2022, the two agencies

reported that they had developed a draft Memorandum of Understanding (MOU) that outlines protocols and procedures to increase collaboration and SCA compliance. However, the agencies also noted that they have not yet been able to finalize the MOU because of communication challenges.

Challenges Using Enforcement Tools

DOL officials we interviewed reported challenges to implementing enforcement actions such as withholding contract payments and debarring contractors, which they said are important actions for bringing contractors into compliance with the SCA.

- DOL officials noted several challenges associated with withholding contract funds to address noncompliance, including limited funds left to withhold at the end of a contract, a contractor's inability to meet ongoing payroll, contractor insolvency, and the absence of payment bonds to help ensure contract payment obligations.
- DOL officials also reported several challenges to debarring contractors for violating the SCA. For example, officials said that the debarment process can be lengthy and resource-intensive; debarring contractors can be challenging when they hold multiple year contracts with the federal government. In addition, debarment may be less effective if the debarred contractor starts a new business under a different name or under a family member's name and obtains new federal contracts during the debarment period.

DOL officials noted that alternatives to debarment, such as using compliance agreements, can sometimes resolve cases faster and without litigation. According to officials, compliance agreements can help contractors stay in business, protect workers' jobs, and ensure workers receive back wages more quickly. Officials told us that such agreements often include terms to help ensure future compliance, such as monitoring. Under the terms of compliance agreements, contractors might agree to stop bidding or submitting offers on solicitations for new contracts for a period of time or pay back wages on an installment plan.

Contracting Agencies Face SCA Implementation Challenges

Agencies May Face Challenges Obtaining Complete Information on Past SCA Violations When Awarding New Contracts

Although contracting agencies are charged with excluding debarred contractors from receipt of awards, contracting officials may have difficulty identifying some SCA debarments because WHD does not consistently enter complete debarment information into SAM. Contracting officers use SAM to check records, known as exclusion records, on whether prospective contractors are currently excluded from receiving federal contracts.[25]

According to the FAR, exclusion records in SAM, such as SCA debarments, shall include a unique company identifier, among other things.[26] In the absence of the unique company identifier in the exclusion record, contracting officers may not easily be able to determine whether prospective SCA contractors are currently debarred from receiving federal contracts. Based on our analysis, we found that a contracting officer using the unique company identifier to search might find there are no active suspensions or debarments, even though there may be an active exclusion record for that company in the system. WHD officials told us that they do not consistently include the unique company identifier—the DUNS number at the time of our analysis—when entering SCA debarment information into SAM. For example, only two of the seven SCA debarments entered for non-USPS contractors in fiscal years 2018 and 2019 included the unique company identifier.[27]

[25]SAM includes entity registration records that contain general information about a company, and exclusion records that document a suspension or debarment, including an SCA debarment. Companies are generally required to register in SAM in order to receive federal contracts.

[26]See 48 C.F.R. § 9.404. At the time of our analysis, the DUNS number was the unique identifier used in SAM. As noted above, as of April 2022, the unique identifier required for doing business with the government is a government-owned, non-proprietary unique entity identifier.

[27]USPS contractors are less likely to have a unique company identifier because the requirement for contractors to register in SAM is contained in the FAR, which does not apply to USPS contracting.

According to WHD, staff regularly entered information about companies that had been debarred under the SCA into SAM, but they did not always enter the unique company identifier because officials said they did not see it as relevant to the debarment process. In addition, not all entities debarred under the SCA will have a unique company identifier.[28] For companies that do have a unique company identifier, it may be unnecessarily difficult for contracting officers to find SCA debarment records if the exclusion records lack the required identifier. This creates a risk that contracts may inadvertently be awarded to companies that are ineligible to receive federal contracts because of an active SCA debarment.

Federal internal control standards require agencies to externally communicate quality information to achieve their objectives. We recommended that WHD take steps to ensure that the unique company identifier designated by the FAR is included in SCA debarment records in SAM whenever appropriate and available. In April 2022, WHD reported that it had developed a tool that allows its SCA enforcement team to easily retrieve DUNS numbers for any government contractor. They further noted that the SCA branch had advised regional staff to include the DUNS number with the debarment recommendations they submitted to the national office, and explained that this would ensure inclusion of SCA debarment records in SAM. We will continue to monitor DOL's progress in implementing this recommendation, including how WHD will ensure its process incorporates the unique company identifier that is now required instead of the DUNS number.

Learning of SCA Case Outcomes

We also found that contracting agencies may not have complete information about past SCA violations by prospective contractors, because WHD lacks a process that ensures information about SCA case outcomes is consistently and reliably shared with these agencies. Information on past violations may assist contracting officers in determining whether prospective contractors have a satisfactory performance record. Contracting officers need relevant information from WHD to add information about SCA violations into performance

[28]A unique company identifier may not always be available for SCA debarments because DOL can debar companies other than the prime contractor, such as subcontractors.

evaluations in CPARS.[29] Based on our analysis of a sample of CPARS assessments for contracts with SCA violations, chosen based on high amounts of back wages assessed, we found that 93 of 100 CPARS assessments did not include any information about the SCA violations.

According to officials, WHD's internal policy directs its investigators to communicate with agency contracting officers, and WHD officials also told us that investigators invite contracting officers to the final conference with the contractor at the end of an investigation. According to WHD officials, investigators will contact the agency by telephone if the contracting officer does not attend the final conference. Officials we spoke with at one contracting agency described this as an informal process. Such contacts with contracting officers may not ensure that contracting agencies have consistent access to quality information about SCA violations on their contracts.

WHD also provides information about SCA violations through DOL's Enforcement Data website. However, these records may not be timely. A senior WHD official told us that publishing this information is not always a priority and that it can take 4 to 6 weeks after the end of a quarter to publish information on that quarter's concluded cases.

Federal internal control standards state that management should use quality information—which is current, complete, and timely—and communicate quality information externally to achieve the agency's objectives. As such, we recommended that WHD develop written procedures for consistently and reliably informing the relevant contracting agency about WHD's findings in SCA investigations that identify violations. In April 2022, WHD reported that it was developing written guidance for its investigators and other field staff that will ensure that contracting agencies are kept abreast of ongoing WHD investigations. We will review the written guidance once it is completed.

In conclusion, DOL has taken steps to improve its oversight of the SCA and communication with contracting agencies—for example, by strengthening its ability to track debarments. Nevertheless, certain challenges persist. These challenges hinder its ability to effectively and

[29]Contracting officers are not specifically required to include SCA violations when entering performance evaluation information into CPARS, nor are agencies required to consider past SCA violations that did not result in debarment when making award decisions. Contracting officials we spoke with said that they check CPARS for information on SCA violations.

efficiently enforce the SCA, increasing the chance that workers will not receive pay and benefits to which they are entitled. We will continue to monitor DOL and USPS' actions in response to our recommendations.

Chairman Sanders, Ranking Member Graham, and Members of the Committee, this concludes my prepared statement. I would be happy to respond to any questions you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this statement, please contact me at (202) 512-4769 or costat@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Betty Ward-Zukerman (Assistant Director), Eve Weisberg (Analyst-In-Charge), Daniel Dye, and Meredith Moore. Also contributing to this testimony were James Bennett, Kathryn O'Dea Lamas, Joy Solmonson, Adam Wendel, and Tatiana Winger.

Other staff who made contributions to the report that this testimony is based on are identified in the source product.

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Responses to Written Questions of Senator Graham from Rachel Greszler

Question 1: Can you explain how the Protecting the Right to Organize (PRO) Act actually threatens the rights of workers, including that to a secret ballot?

Answer: The Protecting the Right to Organize (PRO) Act threatens many of workers' current rights, including:

- **Taking Away the Right to A Secret Ballot Union Election.** The PRO Act allows a process for signed authorization cards collected in union drives to be used to negate secret ballot election results against unionization and instead certify the union as workers' representative. When attempting to form a union, union organizers will collect authorization cards with employees' signatures (the PRO Act does not specify what those cards must say). Workers may be told that the card indicate support for an election, support for the union, or support to receive more information. Unions must obtain cards from at least 30 percent of workers in order to petition the NLRB for an election, but they usually try to obtain well over 50 percent before petitioning for an election. Workers have reported union organizers using intimidation, coercion, and misinformation to get them to sign authorization cards.[1,2] If, after losing a secret ballot election, the union alleges that the employer acted in bad faith or violated laws, the PRO Act would apply a guilty unless proven innocent standard such that if the employer cannot prove that the union's allegations are false, the union would be certified to represent all employees in the collective bargaining unit. A fundamental component of our democracy is the right to vote in secret and free from fear and intimidation, and the PRO Act would negate that right for certain workers.

- **Violating Workers' Privacy.** The PRO Act would force employers to provide employees' private information—without their consent and without even the chance to opt out—including their home address, personal email address, and mobile and home phone numbers to unions. This is more personal information about their workers than employers have to provide to any government entity, including the IRS. There is no basis for granting union bosses greater access to individuals' personal information than federal, state, or local lawmakers, especially when union organizers have been known to use such information to threaten and intimidate workers at their homes or to sign them up for thousands of dollars of unwanted subscriptions and products.[3,4]

- **Subjecting Neutral Third Parties to Strikes and Boycotts**. The law protects neutral businesses and their employees from becoming victim to economic harm and long-term reputational damage caused by strikes and boycotts against them through no fault of their own. For example, in a 2014 case, a hotel workers' union pressured outside companies that had booked events at the hotel with which the union had a dispute to cancel those reservations using tactics—including trespassing, threatening to go to the neutral affiliates' homes, attending meetings and shouting at customers, and incessantly following and calling neutral parties until they gave into the union's demands.[5] The PRO Act would make secondary boycotts legal, allowing unions to strike, boycott, and otherwise harass neutral third parties that are not involved in labor disputes, but that simply do business with a company involved in a dispute.

- **Invalidating 27 States' Right-To-Work Laws**. Currently, 27 states have laws that allow workers the right to choose whether or not to join a union and to pay fees to unions as a condition of their employment. The PRO Act would upend these laws of the land, restricting state lawmakers from their rights to enact worker freedoms and establish an economic and business climate that they

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[1]UnionFacts.com, "Card Check Intimidation, Coercion, and Confusion," https://www.unionfacts.com/article/the- problem/card-check-intimidation-coercion-and-confusion/ (accessed May 10, 2022).

[2]Sean Higgins, "Fraud Alleged in Auto Plant 'Card Check' Union Organizing Bid," The Washington Examiner, September 26, 2013, https://www.washingtonexaminer.com/fraud-alleged-in-auto-plant-card-check-union-organizing-bid (accessed May 10, 2022).

believe is most conducive to growth and opportunity. For workers in unionized workplaces, this could force them to choose between losing their jobs or giving up hundreds of dollars in wages each year to pay for a service they do not want and may actively oppose. Forced union fees are particularly troubling in light of union corruption. Recently, federal prosecutors revealed a United Auto Workers unit "riddled with corruption" as top UAW officials used millions of dollars from workers' dues for lavish personal expenses even as striking workers went without paychecks and only minimal strike pay.[6] As some workers would lose wages to union fees, others could lose their jobs as unions significantly drive up employers' costs.[7] Unions have a credible argument against representing so-called free-riders who do not pay union dues or fees, but the solution is not to force them to pay for representation they do not want, but to end exclusive union representation and instead have workers who do not pay the union obtain their own representation, if they desire it.[8]

- **Restricting the Right to Be One's Own Boss**. Lots of people like working for themselves. In fact, the Freelancers Union estimates that more than one in three workers in the U.S. participates in independent work. For the majority of independent workers, it is the only way they can work, as they say they are unable to work for a traditional employer because of a personal health condition or because of their need to care for family members or children. By changing the definition of an employee, the PRO Act would require that almost everyone answer to a boss instead of having the option to work independently—including when, where, and for whom they want. Yet, the Bureau of Labor Statistics reports that fewer than 1 in 10 independent contractors would prefer a traditional work arrangement. A watered down version of the PRO Act's ABC test— California's AB5 law which includes dozen of exemptions, has killed jobs left and right in California and made it harder for people to find flexible and autonomous work that meets their needs.[9]

These are some of the biggest rights and opportunities workers could lost under the PRO Act, but this is not a comprehensive list of the PRO Act's likely harms for workers.

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[3]F. Vincent Vernuccio, "Intimidation," The Mackinac Center, October 22, 2019, https://www.mackinac.org/26958 (accessed May 10, 2022).
[4]Trey Kovacs, "PRO Act Undermines Employee Choice," Competitive Enterprise Institute, August 19, 2019, https://cei.org/blog/pro-act-undermines-employee-choice/ (accessed May 10, 2022).
[5]Holland & Knight, LLP, "Court Draws Line Against Union Hotel Boycotts: National Labor Relations Act Bans 'Secondary Boycotts,'" August 22, 2014, https://www.jdsupra.com/legalnews/court-draws-line-against-union-hotel-boy-92594/ (accessed May 10, 2022).
[6]Noam Scheiber and Neal E. Boudette, "Behind a U.A.W. Crisis: Lavis Meals and Luxury Villas," The New York Times, December 26, 2019, https://www.nytimes.com/2019/12/26/business/uaw-gary-jones-investigation.html
(accessed May 10, 2022).
[7]Projections, "The Cost of Unionization," https://projectionsinc.com/unionproof/the-cost-of-unionization-2/#:~:text=What%20is%20the%20cost%20of,30%25%20increase%20in%20operating%20expenses (accessed May 3, 2022)
[8]Rachel Greszler, "How Voluntary Labor Organizations Can Help Employees and Employers," Heritage Foundation *Issue Brief* No. 6011, September 14, 2020, https://www.heritage.org/sites/default/files/2020-09/IB6011.pdf.
[9] Rachel Greszler, "California's "Pro-Worker" Law Is Killing Jobs Left and Right," The Daily Signal, January 8, 2020, https://www.heritage.org/jobs-and-labor/commentary/californias-pro-worker-law-killing-jobs-left-and-right

Responses to Written Questions of Senator Graham from Thomas Costa

Question 1: The Government Accountability Office's (GAO) report found violations of the Service Contract Act, resulting in over $220 million in back wages for workers and 60 contractors debarred from receiving federal contracts for three years. Do you have information on how many of these violations were brought into compliance?

Answer: According to data from the Department of Labor's (DOL) Wage and Hour Division (WHD), WHD found that employers with violations complied with WHD's findings in 94 percent of cases from fiscal years 2014 through 2019. We did not analyze the reasons for lack of compliance in the remaining cases.

Question 2: What is the standard for debarment of a contractor from future awards? Are violators generally repeat offenders or willfully breaking the law?

Answer: The Service Contract Act (SCA) provides for a 3-year debarment period during which a contractor found to have violated the SCA is ineligible to receive future federal contracts, unless the Secretary of Labor recommends otherwise because of unusual circumstances. The term "unusual circumstances" is not defined in the SCA, but DOL has developed criteria for evaluating whether such circumstances exist in its regulations and guidance, and courts have interpreted the term through judicial decisions in individual cases. These criteria, which are generally prerequisites to relief from debarment, include factors such as having a good compliance history, cooperating with the investigation, repayment of moneys due, and providing sufficient assurances of future compliance. See 29 C.F.R. § 4.188(b)(3)(ii). According to DOL's SCA regulations, relief from debarment cannot be provided in certain circumstances, including when a contractor's conduct in violating the SCA is willful, deliberate, or of an aggravated nature. See 29 C.F.R. § 4.188(b)(3)(i).

Statutory debarment under the SCA differs from administrative debarment provisions under the Federal Acquisition Regulation (FAR). A debarment under the FAR is for a period generally not exceeding 3 years, and the FAR also provides for a suspension, which is a temporary exclusion pending the completion of an investigation or legal proceeding. In contrast, the SCA does not provide for debarment periods of less than 3 years, nor does it include a suspension provision.

In terms of repeat violations, from fiscal years 2014 through 2019, WHD identified at least 379 cases with SCA violations as having prior SCA or non-SCA violations based on past investigations.

We also reported on defense contractors' willful or repeated violations of safety, health, and fair labor standards in July 2020 (GAO-20-587R). That report found that for fiscal years 2015 through 2019, about 114,000 companies had contracts with the Department of Defense (DOD), totaling approximately $1.7 trillion in obligations. Of those companies, at least 727 (about 1 percent) had been cited for willful or repeated violations under the Occupational Safety and Health Act or the Fair Labor Standards Act over this time frame. Available data generally do not indicate whether the violations occurred while the employees were performing work related to a DOD contract.

Question 3: GAO made six recommendations, five of which remain open. The one recommendation that the Department of Labor (DOL) has implemented focused on ensuring that the Wage and Hour Division standardize data entry on contracting agencies database. However, this recommendation was only recently finalized - two years after being made. Can you discuss for us how the use of standardized data can ensure current law is being enforced?

Answer: DOL's efforts to assess its enforcement actions may have been hindered by inconsistent data, such as variation in recording agency names. For example, in the DOL data we analyzed, there were at least 21 different variations for the General Services Administration, 27 for the Department of Veterans Affairs, and 37 for the U.S. Postal Service (USPS). DOL and WHD strategic planning documents emphasize the importance of using data to inform enforcement efforts. Standardization of agency names

may make it easier for DOL to use these data to identify and address potentially problematic issues on an agency-by-agency basis.

Question #4:
GAO essentially called on the United States Postal Service (USPS) and DOL to develop a Memorandum of Understanding regarding the sharing of information pertaining to the Service Contract Act's provisions. Has progress been made on those efforts?

GAO Response:
In April 2022, DOL and USPS reported that they had developed a draft Memorandum of Understanding (MOU) that outlines protocols and procedures to increase collaboration and SCA compliance. However, the agencies also noted that they have not yet been able to finalize the MOU because of communication challenges. Specifically, each agency reported to us that it is waiting on the other to provide a revised draft of the MOU.

Responses to Written Questions of Senator Padilla from Thomas Costa

Question: The State of California recently passed a law mandating that companies like Amazon disclose their workplace production quotas and set limitations to prevent unsafe work environments. These aggressive quotas set by companies have been shown to create hostile work environments, significantly increase workplace injuries, and negatively impact the mental health of employees.

While many warehouses monitor employees, Amazon differs because its algorithms, fed by data collected from scanners and computers, track in real time how many orders a worker packs. Amazon has also come up with a way to "game-ify" warehouse work, pitting workers against each other in a race to pack products. And research has found a connection between these practices and injuries. A report by the Strategic Organizing Center showed that Amazon's serious-injury rate nationally was nearly double that of the rest of the warehousing industry last year. California's law is novel in its attempts to regulate warehouse quotas that are tracked by algorithms and make them transparent.

Mr. Costa, you have led two GAO reports on violations of labor laws by government contractors and you oversee worker protection, safety, employment, and training issues at GAO. In your opinion, how would workplace quota transparency and limitations affect workers at companies such as Amazon? How could access to the data and algorithms behind the quotas help determine the impact they are having on workers, compliance with labor law, and considerations for how they should be adjusted to improve worker safety?

Answer: GAO has not conducted work in this area, but would be happy to work with the committee and you, if that would be of interest.

While access to the data and algorithms used to monitor workplace quotas might provide transparency into what companies are doing, this access may not identify the impact on worker safety and health. Knowing the rates of injuries is key to understanding the effect of warehouse procedures. However, we are concerned with employer reporting of injury and illnesses. Last year, we estimated that employers did not report any summary injury and illness data on more than one-half of their establishments for which they were required to do so for calendar years 2016 through 2018, and that OSHA has limited procedures for encouraging compliance with this reporting requirement and penalizing non-compliance.[1]

[1]See GAO, *Workplace Safety and Health: Actions Needed to Improve Reporting of Summary Injury and Illness Data*, GAO-21-122 (Washington, D.C.: Jan. 27, 2021).