

March 2, 2022

On behalf of the undersigned organizations, representing millions of taxpayers, we write today to urge support for the Employee Rights Act (ERA) of 2022, a vital piece of legislation that will empower American workers and protect their freedom of choice in the workplace.

Over the past several decades, America's workers have innovated to meet the demands of our changing economy. But America's labor laws haven't significantly changed since 1947. First introduced in 2011, the ERA will update our labor code to better protect workers' rights, while also reflecting major changes to our economy in recent generations. According to polling from the Center for Union Facts, the legislation is [overwhelmingly popular](#) with workers, as well as the American public more broadly.

The ERA will soon be introduced by Senator Tim Scott, with support from Leader McConnell and other key Republicans. While retaining many of its original provisions, the bill also includes key updates meant to address modern-day concerns such as new protections for gig workers, franchise small businesses, and more.

The legislation's key provisions are highlighted below:

- **Secret Ballot Elections.** The ERA will ensure that any vote to organize a workplace or hold a strike is done via private ballot. Today, unions can bypass private votes in favor of a public "card check" election – a means by which unions organize by collecting signatures or "cards." Without a private ballot, workers can be subject to harassment or intimidation to sign a card authorizing the union to represent them. The union boss-backed Protecting the Right to Organize (PRO) Act would essentially eliminate the secret ballot vote and replace it with a card check system. But a secret ballot ensures that workers always have a private, protected vote that reflects their true preference for unionization in their workplace.
- **Criminalized Union Threats.** The ERA has provisions to federally prohibit and criminalize coercion or threats by union officials while establishing privacy protections for employees to limit calls and other election activities outside the workplace.
- **Political Protection.** Many workers join a union in hopes that their dues will help improve their workplace. But hundreds of millions of dollars in union dues are spent each year supporting political candidates and causes, rather than collective bargaining issues. The ERA would require workers to consent to their union dues being used for anything other than collective bargaining efforts.

· **Union Decertification.** This section would codify the Johnson Controls 2019 NLRB ruling. The new standard overrules prior precedent that permitted a union to defeat an employer's announced intent to withdraw recognition in an unfair labor practice proceeding, by presenting evidence that the union reacquired majority status in the period between the employer's anticipatory notice of withdrawal and actual withdrawal. Under this provision, evidence of a union's actual loss of majority support, if received by an employer within 90 days prior to contract expiration, conclusively rebuts a union's presumptive continuing majority status when the contract expires.

· **Gig Worker Benefits.** Gig workers enjoy the flexibility of being independent contractors, however, employers are limited in which benefits they can extend to non-employees. The ERA allows employers to extend benefits to independent contractors without the workers having to abandon their flexibility. The ERA also includes the Modern Worker Empowerment Act, a subsection that updates the law to keep the definition of an "employee" in line with the common-law definition used by numerous state statutes and in recent Supreme Court rulings.

· **Protection for Local Businesses.** The ERA includes the Save Local Business Act, which clarifies the joint employer standard to provide clarity and certainty for small business owners and workers. It would allow more franchisees to own their own businesses, giving more Americans the opportunity to realize their dream of starting their own business.

· **NLRB and NLRA Reform.** The Employee Rights Acts includes many other structural reforms to address issues that have long been ignored by our unchanging labor code. This includes the National Labor Relations Reform Act, an amendment to add an additional member to the NLRB to avoid major political swings between administrations. It also includes the Truth in Employment Act, which protects small businesses and employees from the coercive union tactic known as "salting." The ERA also codifies a 2020 rule requiring unions to adhere to enhanced reporting under the Labor-Management Reporting and Disclosure Act of 1959 on T-1 trusts offering workers further transparency into their union's operations.

As technology advances and more industries seek to navigate a post-pandemic economy, it is common sense that our labor laws – which haven't been meaningfully updated in decades – adapt to today's diverse economy and provide the best protection possible for America's workers.

We hope you'll consider signing on to support this legislation and help bring America's labor law into the 21st century. For more information on the Employee Rights Act, or to join as a co-

sponsor, please contact Kunal Parikh, Legislative Assistant in the Office of U.S. Senator Tim Scott (Kunal_Parikh@scott.senate.gov).

Sincerely,

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