

1 And if they should be fired in the interim, that they would
2 be protected. We would have a backup document. And I tell
3 you, my experience by doing that has protected them from
4 being fired in most of my campaigns. Whereas you don't
5 identify the particular organizer, you know, and then all of
6 the sudden they're fired for one reason or another, and then
7 you have to prove that it was because of the union activity.

8 MEMBER PEARCE: So, these organizers are identified
9 before the petition is even filed?

10 MR. MARITAS: That's correct. Once we get started, we
11 will send a letter to management identifying the organizing
12 committee, letting them know what their rights are as an
13 employee, and not to retaliate against them. And if they do,
14 then we'll take the appropriate action.

15 MEMBER PEARCE: Do you do all the representation
16 procedures yourself, or do you hire attorneys?

17 MR. MARITAS: Well, we have an attorney, but I work very
18 closely with my attorney, and we both strategize if we have a
19 hearing and so forth, so depending on the issues.

20 MEMBER PEARCE: Thank you.

21 MR. MARITAS: Thank you.

22 CHAIRMAN LIEBMAN: Thank you very much for your
23 testimony here today.

24 Next is William Messenger, and up next will be Joseph
25 Paller.

1 Good afternoon.

2 **MR. MESSENGER:** Thank you, Chairman, Board Members for
3 the opportunity to speak before you today. My name is
4 William Messenger, and I'm with the National Right to Work
5 Legal Defense Foundation. And also with me today is our
6 legal director, Ray LaJeunesse.

7 Now, the Foundation is somewhat unique in that we don't
8 represent employers or unions. But rather, since 1968, we've
9 been providing free legal representation solely to individual
10 employees, and this includes in decertification and
11 organizing campaigns. And, of course, the very purpose of
12 the National Labor Relations Act is to effectuate and protect
13 the rights of employees and not to effectuate the self-
14 interests of unions or employers. And the Foundation largely
15 opposes the proposed rules today because they invert the
16 Act's purposes by putting a union's interest in obtaining
17 certification before the interest of employees in learning
18 about the pros and cons of unionization before being required
19 to vote on it and before their interests in privacy.

20 Now, foremost, the Supreme Court in Chamber v. Brown
21 recently recognized that employees enjoy an implicit right to
22 receive information opposing unionization. The proposal to
23 shorten the timeframe for elections will impair the ability
24 of employees who may not even have an opinion on unionization
25 to learn about the pros and cons before being required to

1 vote on it. And, moreover, it will also impair the ability
2 of employees who are opposed to unionization to exercise
3 their Section 7 rights to engage in concerted activity in
4 opposition to the union. Obviously, a union will be fully
5 prepared to campaign before an election occurs, as the union
6 controls when a representation election will happen. By
7 contrast, employees could be caught flatfooted and unable to
8 organize themselves before the vote actually occurs. And for
9 this reason, the shortened timeframe tilts the playing field
10 against employees and in favor of unions.

11 And, second, the proposed rules contemplate a serious
12 invasion of employees' personal privacy, namely, of course,
13 the disclosure of their personal phone numbers, e-mail
14 addresses, and work times to unions and thus to union
15 supporters. The 93 percent of private sector workers who
16 have chosen not to associate with the union, or the tens of
17 millions of people who sign up for the FTC's no-call
18 solicitation list would likely be appalled to learn that a
19 government agency is contemplating handing out their personal
20 information to a third-party special interest group without
21 their consent, or even potentially over their objection.

22 And perhaps even worse, the contemplated disclosures
23 place employees in danger from what union supporters may do
24 with the information. Unions will inevitably share the
25 personal information they've been given about employees with

1 their supporters, to include some of the employees' own
2 coworkers for the purposes of supporting their campaign.
3 And, in fact, that's the very purpose for the disclosures.

4 Once this information is given to a union supporter, it
5 is quite foreseeable that union supporters can and will
6 misuse this information in a variety of manners, including
7 potentially without the knowledge of the union. For example,
8 a union supporter could use the information not only to
9 harass an individual who opposes the union, such as by late
10 night phone calls or signing them up for spam, but it could
11 also do the same to someone against whom they have a personal
12 grudge.

13 The information could be used by an individual to make
14 unwanted contact and sexual advances on coworkers. I believe
15 that many women in the workplace would not be comfortable
16 with knowing that any of their coworkers who happen to
17 support the union campaign could potentially learn her e-mail
18 address, her phone number, where she lives, and what time she
19 gets off work.

20 The disclosure of the information will naturally
21 facilitate identity theft. A recent and prime example is
22 that of Patricia Pelletier, whom CWA supporters signed up for
23 hundreds of unwanted magazine subscriptions and other
24 advertisements in retaliation for her leading a
25 decertification campaign against the union after obtaining

1 her personal information.

2 And, finally, disclosures could even lead to home
3 burglary and theft of property because they reveal exactly
4 when people work. If someone knows when you're at work, they
5 obviously know when you're not at home. And the problem is
6 there's no rule or restriction this Board can impose upon a
7 union to alleviate these harms or fully protect against them
8 rather because they're the inevitable consequence of unions
9 sharing this information with their supporters. And once a
10 union or anyone else shares information with someone, it
11 can't fully control how it will be used. It can't fully
12 control who they may share that information with, and it can
13 never actually retrieve that information back, as it can
14 obviously be easily copied. The cat is out of the proverbial
15 bag. And for this reason, to protect employees' privacy and
16 to protect them from threats of harm by union supporters, I
17 urge the Board to not enact the contemplated disclosure rule.
18 Thank you.

19 **CHAIRMAN LIEBMAN:** Thank you for being here and sharing
20 your thoughts.

21 Are there questions?

22 **MEMBER PEARCE:** You recited one example of an employee
23 who was subjected to unwanted subscriptions because she led a
24 decertification campaign. Do you have any kind of statistics
25 on how prevalent union abuse of employees through information

1 is?

2 **MR. MESSENGER:** No, Your Honor. I'm sorry, force of
3 habit. No, Board Member. I do not at least at my
4 fingertips. The Foundation will be submitting much more
5 detail and written comments before the August 22nd cutoff,
6 and so those might have more details. But again here, one of
7 the bigger fears isn't necessarily what the union does with
8 it, but once it gets out.

9 **MEMBER PEARCE:** I see. Now, I've got another question.
10 You realize that those petitioners who file decertification
11 petitions would be privy to this same information under the
12 proposed rule. So, an individual filing a decertification
13 petition who wants access to information regarding the other
14 employees would be entitled to get phone numbers and
15 addresses and e-mails as well.

16 **MR. MESSENGER:** Yes.

17 **MEMBER PEARCE:** Would you have an objection to that?

18 **MR. MESSENGER:** Yes, the same objection. Once that
19 information is given, and here it's just to an individual.
20 What rule or restriction can be imposed upon an individual
21 employee who does a decertification election to safeguard
22 that information? If that employee gives it to some of his
23 supporters who also want decertification, the information can
24 spread. And eventually, that information can find its way
25 into the hands of someone who will misuse it. For example,

1 one of the supporters of the campaign may be a fine man, but
2 his son might not be. And all of a sudden, he has a list of
3 everyone's phone numbers, e-mail addresses, when they're not
4 at home. There's a lot of damage that can be done with that.

5 **MEMBER PEARCE:** Now, there's been prior testimony with
6 regard to the insufficiency of certain Excelsior list
7 information that petitioners have experienced, you know,
8 outdated addresses, inability to contact people just by
9 virtue of what is currently supplied in the Excelsior
10 requirements. Do you think that those are valid
11 considerations?

12 **MR. MESSENGER:** Only representing employees, I can't
13 necessarily say of how accurate Excelsior list information is
14 based on my own experience. Obviously, if there is outdated
15 information on the Excelsior list, requiring more information
16 won't solve that. Arguably, you'll just get more invalid
17 e-mail addresses. People change them all the time. Cellular
18 phone numbers are also changed with probably more frequency
19 than a home address. So, as far as Excelsior lists being
20 inadequate because they're inaccurate or outdated, the
21 contemplated additional disclosures don't solve that.

22 **MEMBER PEARCE:** But you would agree that all parties,
23 all the stakeholders should have equal access to each other
24 relative to an election campaign, wouldn't you?

25 **MR. MESSENGER:** Not necessarily. I believe that

1 employees' personal privacy should trump over the ability of
2 a union to contact them.

3 **MEMBER PEARCE:** Okay, now, employees usually have to
4 supply this personal information to the employer. Wouldn't
5 that give the employer the decided advantage in terms of
6 communication?

7 **MR. MESSENGER:** Well, not necessarily because, first,
8 how can the employer actually use it? For example, it's my
9 understanding employers cannot conduct home visits. So,
10 having their personal address isn't an advantage there. How
11 much can they actually use employees' personal e-mail
12 addresses to do things, even if it was allowed? But even
13 more importantly, the interest of the Act is not balancing
14 the rights of employers against the rights of unions. It's
15 all about what is best for the rights and interests of
16 employees, and I believe the threat to employees' personal
17 privacy outweighs any kind of attempt to balance the
18 electoral campaign between unions and employers.

19 **MEMBER PEARCE:** So, in that regard, you would -- it
20 would be your position that unions should not have access to
21 employee e-mail addresses?

22 **MR. MESSENGER:** Yes.

23 **MEMBER PEARCE:** And by the same token, you would not
24 want employers to have access to employees' e-mail addresses
25 as well?

1 **MR. MESSENGER:** No, I didn't -- for an employer, as I
2 said, they may already have it. They can use that realm of
3 communication. And the fact that an employer can use certain
4 communications or have certain information the union doesn't
5 strike me as being particularly problematic.

6 **MEMBER PEARCE:** I see. Thank you.

7 **MEMBER BECKER:** Just following up, if the Board were to
8 conclude, for some of the reasons that Member Pearce was
9 describing, that it's important to have equal access to
10 voters for purposes of communication, we invited comments on
11 exactly the concern that you have, that is what would be an
12 appropriate sanction. The proposed rules bar the misuse you
13 describe. That is, they require that the information only be
14 used for the representation case proceeding, and we invited
15 comments on what might be an appropriate sanction. Do you
16 have any thoughts about that?

17 **MR. MESSENGER:** My concern is that since the purpose of
18 the information is to allow union supporters to contact their
19 coworkers, or in the case of non-coworkers, people in the
20 bargaining unit, and the problem is once the information is
21 given out, what kind of control can the union have? So, even
22 if you have a union that intends to do nothing wrong, once
23 the information is given, it's out there. And then,
24 therefore, it can be misused.

25 Now, of course, one could restrict the union so tightly

1 on how it could use the information, but then that defeats
2 the purpose. If the union has to keep it in lock and key in
3 the union president's office, there's no point in the
4 disclosures anyways. The only point of the disclosure, at
5 least under the contemplated rules, is for the union to give
6 it to their supporters to contact others. Once they do that,
7 the union doesn't control it. It's out there.

8 **MEMBER BECKER:** Well, one could imagine a range of
9 potential sanctions which would at least create an incentive
10 to impose controls which would address your concerns. For
11 example, if there was such a misuse, you could bar disclosure
12 in a subsequent petition.

13 **MR. MESSENGER:** But even with that, let's say the union
14 in that example though didn't do anything wrong. Say the
15 union, you know, if there's four campaign supporters that
16 said we want to volunteer to help, and the union hands them
17 the list, and then without the union's knowledge, one of them
18 misuses it, or their son uses it or whatever happens. It's
19 out there. And once it's out there, you can't control the
20 spread, and that's the problem. I don't see an appropriate
21 sanction to alleviate that problem, other than not allowing
22 the union to give it out to anybody. But in that case, it's
23 useless.

24 **MEMBER BECKER:** Thank you.

25 **CHAIRMAN LIEBMAN:** I'm curious, just sitting here

1 listening. This is not part of this proposal, but I guess
2 our last speaker ran off a list of proposals that he thought
3 we should be considering, and one of them was equal access
4 into the workplace. I mean, as I said, it's not part of this
5 proposal, but I listened to you, and you seem to be
6 interested in employees hearing both sides. Is that a way of
7 avoiding these problems of giving out employees' phone
8 numbers and e-mail addresses and raising privacy concerns, to
9 have a forum in the workplace where the employer and the
10 union both can talk to employees? Is that a better solution?

11 **MR. MESSENGER:** It potentially could be, but, of course,
12 it would require an amendment of the Act under Lechmere due
13 to employer, you know, property rights. And it also creates
14 the problem of the impression created of an employer
15 conducting a meeting, you know, with the union. You know, is
16 this an employer sanction? How do you -- how does the Board
17 even run such a thing, even if it was given statutory
18 authority. It would be very troublesome.

19 **CHAIRMAN LIEBMAN:** Thank you for your comments.

20 **MR. MESSENGER:** Thank you.

21 **CHAIRMAN LIEBMAN:** Next speaker is Joseph Paller, and
22 after that will be Mr. Russ Brown.

23 **MR. PALLER:** Thank you, Chairman Liebman, and thank you
24 members of the committee. My name is Joe Paller. I work for
25 Gilbert & Sackman in Los Angeles where I represent labor