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Dear Senator,

On behalf of NFIB, the nation's leading small business advocacy organization, I write in strong opposition to the renomination of Lauren McFerran to the National Labor Relations Board (NLRB). In her time serving as Chair of the NLRB, Ms. McFerran has failed to be an impartial arbiter of labor disputes as required under federal law. Instead, she has consistently tipped the scales in favor of organized labor over the interests of small business owners. **This vote will be considered an NFIB Key Vote for the 118th Congress.**

During the Biden Administration, the NLRB under Ms. McFerran's leadership has shown a strong bias against employers and has finalized many decisions and regulations that increase red tape, compliance costs, and uncertainty for small business owners. In doing so, Ms. McFerran and the NLRB have disregarded decades of precedent and the input of small businesses to pursue the wishes of large labor unions.

For example, according to a recent NFIB member ballot, 89% of NFIB members believe that a business should not be responsible for the hiring practices of a subcontractor.¹ Yet, Ms. McFerran's NLRB finalized their 2023 Joint Employer Rule that rescinds a 2020 simplified joint employer standard and strips autonomy from franchisees, opening small business owners up to litigation based on their subcontractor's labor practices.² Fortunately, a federal court struck down the NLRB's Joint Employer Rule citing that it is "arbitrary and capricious," and "contrary to law."³

Additionally, 95% of NFIB members believe that businesses should be able to hire independent contractors to perform tasks essential to their businesses⁴. Unfortunately, Ms. McFerran supported

¹ *Mandate*, vol. 567, August 2015, NFIB Member Ballot, "Should a contractor be responsible for a subcontractor's hiring practices? (Yes: 7% No: 89% Undecided: 5%)

² Elizabeth Milito, *NFIB Statement on NLRB's New Standard for Determining Joint-Employer Status*, October 26, 2023, <https://www.nfib.com/content/press-release/homepage/nfib-statement-on-nlrbs-new-standard-for-determining-joint-employer-status/>.

³ Charles T. Jeremiah & Nathaniel J. Higgins, *What Court Striking Down Labor Board's New Joint-Employer Rule Means for Construction Employers*, April 3, 2024, <https://www.jacksonlewis.com/insights/what-court-striking-down-labor-boards-new-joint-employer-rule-means-construction-employers>.

⁴ *Mandate*, vol. 576, March 2020, NFIB Member Ballot, *Should businesses be able to hire independent contractors to perform tasks essential to their business?* (Yes: 95% No: 2% Undecided: 3%)

the NLRB's 2022 *The Atlanta Opera, Inc.* decision that implements an arbitrary and complicated independent contractor test. This new standard complicates the worker classification process and makes it harder for small businesses to hire and classify workers as independent contractors.⁵

Lastly, 79% of NFIB members believe employers should not be required to recognize unions by the way of signed authorization cards.⁶ Unfortunately, Ms. McFerran supported the NLRB's 2024 decision in *Cemex Construction Materials Pacific, LLC v. NLRB* that erodes the process for secret ballot elections in unionization proceedings and makes it easier for the NLRB to order an employer to recognize and bargain with a union through signed authorization cards even if the union lost a NLRB-supervised secret ballot election. In issuing the *Cemex* decision, Ms. McFerran's NLRB disregarded 50 years of precedent and the U.S. Supreme Court's decision in *NLRB v. Gissel Packing Co., Inc.*, all to pursue a priority of large labor unions at the expense of workers' rights and small businesses. NFIB opposed this decision.⁷

Unfortunately, these examples are only the tip of the iceberg as the NLRB under Ms. McFerran's leadership has issued many other concerning decisions that are detrimental to workers and small businesses alike, some of which could create hostile and unsafe workplaces for those who do not participate in unionization efforts.⁸

For these reasons, NFIB strongly opposes Lauren McFerran's renomination to the National Labor Relations Board and it will be considered an NFIB Key Vote for the 118th Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Temple". The signature is stylized and cursive.

Adam Temple
Senior Vice President for Advocacy
NFIB

⁵ Karen Harned, *NFIB Files Amicus Brief on NLRB Effort to Change Independent Contractor Rules*, February 11, 2022, <https://www.nfib.com/content/press-release/homepage/nfib-files-amicus-brief-on-nlr-effort-to-change-independent-contractor-rules/>.

⁶ *Mandate*, vol. 554, August 2007, NFIB Member Ballot, *Should employers be required to recognize unions by way of signed authorization cards?* (Yes: 6% No: 79% Undecided: 15%)

⁷ Elizabeth Milito, *NFIB Disputes New NLRB Ballot Election Standard at Ninth Circuit Court of Appeals*, February 9, 2024, <https://www.nfib.com/content/press-release/homepage/nfib-disputes-new-nlr-ballot-election-standard-at-ninth-circuit-court-of-appeals/>.

⁸ National Labor Relations Board, *Lion Elastomers LLC*, <https://www.nlr.gov/case/16-CA-190681>.