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October 16, 2018

Lamar Alexander, Chairman
United States Senate Committee on Health,
Education, Labor and Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

Patty Murray, Ranking Member
United States Senate Committee on Health,
Education, Labor and Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

The undersigned organizations strongly oppose the nomination of Mark Pearce to serve on the five-member National Labor Relations Board. Pearce's legacy as Chairman of the Board is one of partisanship, overreaching the agency's authority, and policies that harm worker freedom and job creation.

During Pearce's tenure at the Board, he failed to represent the public interest in labor disputes and demonstrated extreme pro-union leanings. Worse, during his time as Chairman, the NLRB issued decisions that overturned over 4,000 years of precedent. The upheaval of labor rules that American businesses had relied upon for years created immense uncertainty for job creators and weakened workers' freedom to choose.

For example, under Pearce's leadership, the NLRB made drastic changes to union election procedures. Commonly known as the "ambush election" rule, the regulation drastically shortened the time period for union organizing elections, possibly to as little as 11 days after a union files a petition. That gives employees little time to educate themselves on the pros and cons of unionizing. In addition, the ambush election rule puts workers' private information at risk.

Pearce also spearheaded the effort to upend the definition of joint employment. In its *Browning-Ferris* decision, the NLRB exposed thousands of employers to liability for other companies they do not control and employees they do not manage.

Federal judges have frequently and strongly criticized decisions made by the NLRB in which Pearce participated. In one case, a Board majority that included Mark Pearce issued a decision that the United States D.C. Circuit concluded was "more disingenuous than dispositive" and evidenced "a complete failure to reasonably reflect upon the information contained in the record and grapple with contrary evidence—disregarding entirely the need for reasoned decision making." The Board "totally ignore[d] facts in the record."

Another decision Pearce took part in involved several employees in Hawaii who were sent threatening letters from UNITE HERE Local 5. These non-union employees received these letters saying UNITE HERE would garnish their wages if they refused to pay full union

membership dues, just because those workers exercised their legal right to not fund union politics.

The employees rightly filed an unfair labor practice against UNITE HERE with the NLRB. But the Board majority, including Mr. Pearce, ruled that UNITE HERE threatening to garnish the workers' wages to pay for union political activity was lawful. Again, a D.C. Circuit panel reversed the NLRB decision, criticizing it as “legally unsupportable” and “contorted.”

Pearce played a part in the weaponization of ethics rules at the NLRB – using ethics rules on conflicts of interest to wrongfully pressure certain Board members into recusing themselves from important cases. Those misdeeds by Pearce and his allies have improperly cast doubt on the agency and frustrated the Board from administering the National Labor Relations Act.

Congress should not re-appoint Pearce to another term. All stakeholders governed by the NLRB—workers, employers, and unions—deserve better than an NLRB member who ignores facts and issues decisions that are legally unsupportable and economically harmful.

We call on the Senate to not confirm Mark Pearce to the NLRB.

Sincerely,

Trey Kovacs
Labor Policy Analyst
Competitive Enterprise Institute

Phil Kerpen
President
American Commitment

Norman Singleton
President
Campaign for Liberty

Matthew Kandrach
President
Consumer Action for a Strong Economy

Andrew F. Quinlan
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Center for Freedom and Prosperity

Timothy Lee
Senior Vice President of Legal and Public
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Center for Individual Freedom

David McIntosh
President
Club for Growth

Jason Pye
Vice President of Legislative Affairs
FreedomWorks

Tim Chapman
Executive Director
Heritage Action