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including human-resources classifications and DEI trainings that promote critical race theory.

- **Eliminate EEO-1 data collection.** The Equal Employment Opportunity Commission collects EEO-1 data on employment statistics based on race/ethnicity, which data can then be used to support a charge of discrimination under a disparate impact theory. This could lead to racial quotas to remedy alleged race discrimination. (The Office of Federal Contract Compliance Programs (OFCCP) also has a right to the data EEOC collects.) Crudely categorizing employees by race or ethnicity fails to recognize the diversity of the American workforce and forces individuals into categories that do not fully reflect their racial and ethnic heritage.

- **Amend Title VII.** The next Administration should work with Congress to amend Title VII to prohibit the Equal Employment Opportunity Commission from collecting EEO-1 data and any other racial classifications in employment for both private and public workplaces.

- **Eliminate disparate impact liability.** With interracial marriages in America increasing, many Americans do not fit neatly into crude racial categories.[1] Under disparate impact theory, moreover, discriminatory motive or intent is irrelevant; the outcome is what matters. But *all* workplaces have disparities.

Congress should:

- **Eliminate disparate impact as a valid theory of discrimination for race and other bases under Title VII and other laws.** Disparities do not (and should not legally) imply discrimination per se.

The President should:

- **Sign an executive order explicitly forbidding OFCCP from using disparate impact in its analysis.**

- **Eliminate OFCCP.** The Office of Federal Contract Compliance Programs (OFCCP) exists to enforce Executive Order (EO) 11246.[2] That order was originally signed in 1965 to require federal contractors (and subcontractors) to commit to nondiscrimination. It gave enforcement authority to the Department of Labor, up to and including debarment from federal contracting. The Equal Employment Opportunity Commission has since

grown, often making OFCCP's authority redundant and imposing a second regulatory agency under whose rules businesses must operate. In addition, under EO 11246, the President and DOL can force a huge swath of American employers to comply with rules and regulations based on novel anti-discrimination theories (such as sexual orientation and gender identity theories) that Congress had never imposed by statute.

- **Rescind EO 11246.** The President should eliminate OFCCP by simply rescinding EO 11246. Federal contractors would still be bound by statutory nondiscrimination law but would no longer work under overlapping regimes. (Contractors' residual obligations under Section 503 of the Rehabilitation Act and Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) could be enforced by EEOC or DOL.) Contractors also would be less subject to the changing political whims of a President that might impose significant new costs or burdens on the contractors.

Sex Discrimination. The Biden Administration, LGBT advocates, and some federal courts have attempted to expand the scope and definition of sex discrimination, based in part on the Supreme Court's decision in *Bostock v. Clayton County*. *Bostock* held that "an employer who fires someone simply for being homosexual or transgender" violates Title VII's prohibition against sex discrimination. The Court explicitly limited its holding to the hiring/firing context in Title VII and did not purport to address other Title VII issues, such as bathrooms, locker rooms, and dress codes, or other laws prohibiting sex discrimination. Notably, the Court focused on the status of the employees and used the term "transgender status" rather than the broader and amorphous term "gender identity."

- **Restrict the application of *Bostock*.** The new Administration should restrict *Bostock*'s application of sex discrimination protections to sexual orientation and transgender status in the context of hiring and firing.

- **Withdraw unlawful "notices" and "guidances."** The President should direct agencies to withdraw unlawful "notices" and "guidances" purporting to apply *Bostock*'s reasoning broadly outside hiring and firing.

- **Rescind regulations prohibiting discrimination on the basis of sexual orientation, gender identity, transgender status, and sex characteristics.** The President should direct agencies to rescind regulations interpreting sex discrimination provisions as prohibiting discrimination on the basis of sexual orientation, gender identity, transgender status, sex characteristics, etc.

about marriage, gender, and sexuality. The new Administration should enact policies with robust respect for religious exercise in the workplace, including under the First Amendment, the Religious Freedom Restoration Act of 1993 (RFRA),[8] Title VII, and federal conscience protection laws.

- **Issue an executive order protecting religious employers and employees.** The President should make clear via executive order that religious employers are free to run their businesses according to their religious beliefs, general nondiscrimination laws notwithstanding, and support participation of religious employees and employers as federal contractors and in federal activities and programs.

- **Clarify Title VII's religious organization exemptions.** Congress should clarify Title VII's religious organization exemptions to make it more explicit that those employers may make employment decisions based on religion regardless of nondiscrimination laws.

- **Provide Robust Accommodations for Religious Employees.** Title VII requires reasonable accommodations for an employee's sincerely held religious beliefs, observances, or practices unless it poses an undue hardship on the employer's business. These accommodation protections also apply to issues related to marriage, gender, and sexuality.

  Unless the Supreme Court overrules its bad precedent, Congress should clarify that undue hardship means "significant difficulty or expenses," not "more than a de minimis cost" as the Court has previously held.

General EEOC Reforms. The Equal Employment Opportunity Commission (EEOC) does not have rulemaking authority under Title VII and other laws it enforces, yet it issues "guidance," "technical assistance," and other documents, including some that push new policy positions. EEOC should disclaim its regulatory pretensions and abide by the guidance reforms discussed below.

- **EEOC should disclaim its regulatory pretensions.**

- **Affirm decision-making via majority vote of Commissioners.** EEOC should affirm as policy the Title VII requirement that it exercise substantive power via majority vote of Commissioners, not by unilateral Chair action or by delegation to staff.

- **Disclaim power to enter into consent decrees.** EEOC should disclaim power to enter into consent decrees that require employer actions that it could not require under the laws it enforces.

- **Reorient enforcement priorities.** EEOC should reorient its enforcement priorities toward claims of failure to accommodate disability, religion, and pregnancy (but not abortion).

Refocusing Labor Regulation on the Good of the Family. The DEI revolution in labor affected not only the administrative state, but it has also targeted much of the private sector. Owing to the combination of regulatory pressure and eager human resources offices in the private sector, much of American labor and employment policy has become institutionally oriented toward "woke" goals. Retracting regulations that support this revolution is a good first step, but more is needed. We must replace "woke" nonsense with a healthy vision of the role of labor policy in our society, starting with the American family.

- **Allow workers to accumulate paid time off.** Lower- and middle-income workers are more likely be in jobs that are subject to overtime laws that require employers to pay time-and-a-half for working more than 40 hours a week.

- **Congress should enact the Working Families Flexibility Act.** The Working Families Flexibility Act would allow employees in the private sector the ability to choose between receiving time-and-a-half pay or accumulating time-and-a-half paid time off (a choice that many public sector workers already have). For example, if an individual worked two hours of overtime every week for a year, he or she could accumulate four weeks of paid time off to use for paid family leave, vacation, or any reason.

- **Congress should incentivize on-site childcare.** Across the spectrum of professionalized childcare options, on-site care puts the least stress on the parent-child bond.

- **Congress should amend the Fair Labor Standards Act (FLSA) to clarify that an employer's expenses in providing on-site childcare are not part of an employee's regular rate of pay.**

- **DOL should commit to honest study of the challenges for women in the world of professional work.** The Women's Bureau at DOL tends towards a politicized research and engagement agenda that puts predetermined conclusions ahead of empirical study.

qualify as an independent contractor or employee under the FLSA and NLRA. The Biden Administration is replacing those rules with vague and expansive definitions that would add uncertainty, increase costs, and reduce options for Americans who want to work independently.

- **NLRB and DOL should return to their 2019 and 2021 independent contractor rules that provided much-needed clarity for workers and employers.**

- **Congress should establish a bright-line test—based on the level of control an individual exercises over his or her work—to determine whether a payee is an employee or an independent contractor, across all relevant laws.** This would prevent continued uncertainty as well as provide continuity across federal laws.

- **Congress should provide a safe harbor from employer-employee status for companies that offer independent workers access to earned benefits.** Doing so would increase access among independent contractors to traditional pooled workplace benefits such as health care and retirement savings accounts.

Protect Small Businesses and Entrepreneurship (Joint Employer). Millions of businesses across America engage in mutually beneficial affiliation arrangements with other businesses. These arrangements include janitorial services, staffing firms, construction contractors and subcontractors, technology support services, and many other vendor and contracting services. They also include the nearly 775,000 independently owned franchise businesses, which employ 8.2 million workers across the United States. The franchise structure offers a proven business model for individuals who want to own and operate their own small business. An Obama-era regulation changed the definition of a joint employer to make corporate franchisors jointly liable for employees of individual franchisee owners, even without the franchisor exercising any direct control over those employees. The Biden Administration is advancing an even more expansive definition of a joint employer that would upend the franchise business model, taking away ownership and income opportunities from small-business entrepreneurs, costing jobs, and raising prices.

- **DOL and NLRB should return to the long-standing approach to defining joint employers based on direct and immediate control.**

- **Congress should enact the Save Local Business Act, which would codify the long-standing definition that has existed outside the Obama-era and Biden-proposed rules.**

Overtime Pay Threshold. Overtime pay is one of the most challenging aspects of the Fair Labor Standards Act rules. "Nonexempt workers" (e.g., workers whose job duties fall within the law's power or whose total pay is low enough) must be paid overtime (150 percent of the "regular rate") for every hour over 40 in a workweek. Overtime requirements may discourage employers from offering certain fringe benefits such as reimbursement for education, childcare, or even free meals because the benefits' value may be included in the "regular rate" that must be paid at 150 percent for all overtime hours. And because some of these fringe benefits may be more valuable (and often come with tax preferences that benefit the worker), the goal should be to set a threshold to ensure lower-income workers have the protections of overtime pay without discouraging employers from offering these benefits.

- **DOL should maintain an overtime threshold that does not punish businesses in lower-cost regions (e.g., the southeast United States).** The Trump-era threshold is high enough to capture most line workers in lower-cost regions. One possibility to consider (likely requiring congressional action) would be to automatically update the thresholds every five years using the Personal Consumption Expenditures (PCE) as an inflation adjustment. This could reduce the likelihood of a future Administration attempting to make significant changes but would also impose more adjustments on businesses as those automatic increases take hold.

- **Congress should clarify that the "regular rate" for overtime pay is based on the salary paid rather than all benefits provided.** This would enable employers to offer additional benefits to employees without fear that those benefits would dramatically increase overtime pay.

- **Congress should provide flexibility to employers and employees to calculate the overtime period over a longer number of weeks.** Specifically, employers and employees should be able to set a two- or four-week period over which to calculate overtime. This would give workers greater flexibility to work more hours in one week and fewer hours in the next and would not require the employer to pay them more for that same total number of hours of work during the entire period.

Compliance-Assistance Programming. Labor agencies are often tempted to encourage "over compliance" by companies subject to regulation by pursuing "regulation through enforcement" strategies. Rather than giving regulated entities clear boundaries for what they can and cannot do under the law, the agencies

rely on the vagueness of the law to bring enforcement activity against businesses that fail to meet an inspector or agency head's personal standard. This is not fair to regulated parties and results in disfavored companies bearing the brunt of the agencies' enforcement efforts even though their behavior may be within the mainstream of employer behavior.

- **Labor agencies should provide compliance assistance to help businesses and workers better understand the agencies' position on their own rules and should do so in a way that makes it easier to follow those rules.** This frees people to focus on their work rather than slogging through an ever-growing body of laws, rules, and guidance documents generated by the agencies.

Clear and Restrictive Rules on Guidance Documents. Federal agencies not only issue regulations to fill in gaps left by legislation, but also supplement those regulations with "guidance" documents that occupy a unique and often confusing area between law and "helpful advice." Unfortunately, wielded by overzealous enforcement agents, such guidance, some of it even hidden from public view, morphs into binding law used against unsuspecting employers. Guidance can be a tricky thing and can be used for good or bad. It should be used to make complicated regulations easier to understand, so that businesses can do their actual jobs and focus on providing jobs to American workers and value to consumers (really, compliance assistance). But guidance is often used to create new rules overnight without following legal requirements—like giving the public an opportunity to provide valuable input. This wrongful use of guidance hurts workers and those who employ them. In October 2019, President Trump signed an executive order ending this abusive practice and created a new, fairer system for American businesses and their employees. In response, DOL published its PRO Good Guidance rule,[10] which expressly limits its use of guidance in enforcement actions and gives the public the opportunity to submit comments to influence the department's decisions on creating, revising, and even rescinding guidance. Under this rule, agencies cannot treat guidance as legally binding and must make all guidance documents readily accessible on their searchable online databases. This rule was immediately rescinded by the Biden Administration.

- **DOL should reinstitute the PRO Good Guidance rule via notice and comment.**

- **Congress should amend the Administrative Procedure Act[11] to explicitly limit the use of guidance documents.**

Exemptions from Regulations for Small Business. Burdensome regulations have anti-competitive effects. In general, larger, higher-margin businesses are better able to absorb the costs of regulatory compliance than are small businesses, and under the Biden Administration, big-business lobbies have affirmatively embraced certain regulations (such as the COVID vaccine mandate for private employers) to reduce competition from smaller businesses. Research suggests that labor regulations may pose the highest aggregate regulatory cost for small businesses.

- **The labor agencies should exercise their available discretion and duties under the Regulatory Flexibility Act[12] to exempt small entities from regulations where possible.**

- **Congress should enact legislation increasing the revenue thresholds at which the National Labor Relations Board asserts jurisdiction over employers to match changes in inflation that have occurred since 1935 and better reflect the definition of "small business" used by the federal government.**

- **Congress (and DOL, in its enforcement discretion) should exempt small business, first-time, non-willful violators from fines issued by the Occupational Health and Safety Administration.**

EDUCATION AND VOCATIONAL TRAINING

Apprenticeships. The next Administration should return to prior policy and implement an industry-recognized apprenticeship program separate from the Registered Apprenticeship Program (RAP) and explore how best to modernize, streamline, and eliminate duplication in the RAP. For roughly 80 years, the RAP—which requires conforming to government standards and includes federal funding, tax credits, and other federal resources—has dominated apprenticeship programs in the U.S. Organizations across the political spectrum have noted that the overly burdensome requirements of RAPs have contributed to limiting them to legacy trades, failing to meet growing industry demands such as in health care and technology. A 2017 study estimated that the number of occupations commonly filled through apprenticeships could nearly triple (from 27 to 74), that the number of job openings filled through apprenticeships could expand eightfold (to 3.2 million), and that the occupations ripe for apprenticeship expansion could offer 20 percent higher wages than traditional apprenticeship occupations.

The Trump Administration expanded apprenticeship options through the creation of the Industry-Recognized Apprenticeship Program (IRAP), and more than 130 IRAPs were created. The Biden Administration rescinded the IRAP regulations.

- **Congress should expand apprenticeship programs outside of the RAP model, re-creating the IRAP system by statute and allowing approved entities such as trade associations and educational institutions to recognize and oversee apprenticeship programs.**

  In addition, religious organizations should be encouraged to participate in apprenticeship programs. America has a long history of religious organizations working to advance the dignity of workers and provide them with greater opportunity, from the many prominent Christian and Jewish voices in the early labor movement to the "labor priests" who would appear on picket lines to support their flocks. Today, the role of religion in helping workers has diminished, but a country committed to strengthening civil society must ask more from religious organizations and make sure that their important role is not impeded by regulatory roadblocks or the bureaucratic status quo.

- **Encourage and enable religious organizations to participate in apprenticeship programs, etc.** Both DOL and NLRB should facilitate religious organizations helping to strengthen working families via apprenticeship programs, worker organizations, vocational training, benefits networks, etc.

Hazard-Order Regulations. Some young adults show an interest in inherently dangerous jobs. Current rules forbid many young people, even if their family is running the business, from working in such jobs. This results in worker shortages in dangerous fields and often discourages otherwise interested young workers from trying the more dangerous job. With parental consent and proper training, certain young adults should be allowed to learn and work in more dangerous occupations. This would give a green light to training programs and build skills in teenagers who may want to work in these fields.

- **DOL should amend its hazard-order regulations to permit teenage workers access to work in regulated jobs with proper training and parental consent.**

Workforce Training Grant Program. The federal government spends more than $100 billion per year subsidizing higher education but close to zero supporting people on non-college pathways.

- **Congress should create an employer grant worth up to $10,000 per year or pro-rated portion thereof for each worker engaged in**

WORKER VOICE AND COLLECTIVE BARGAINING

Non-Union Worker Voice and Representation. American workers lack a meaningful voice in today's workplace. Between 50 percent and 60 percent of workers have less influence than they want on critical workplaces issues beyond pay and benefits. Even managers are twice as likely to say their employees have *too little* influence rather than *too much*. But America's one-size-fits-all approach undermines worker representation. Federal labor law offers no alternatives to labor unions whose politicking and adversarial approach appeals to few, whereas most workers report that they prefer a more cooperative model run jointly with management that focuses solely on workplace issues. The next Administration should make new options available to workers and push Congress to pass labor reforms that create non-union "employee involvement organizations" as well as a mechanism for worker representation on corporate boards.

- **Congress should reintroduce and pass the Teamwork for Employees and Managers (TEAM) Act of 2022.**[18] The TEAM Act:

  1. Reforms the National Labor Relations Act's (NLRA) Section 8(a)(2) prohibition on formal worker–management cooperative organizations like works councils.

  2. Creates an "Employee Involvement Organization" (EIO) to facilitate voluntary cooperation on critical issues like working conditions, benefits, and productivity.

  3. Amends labor law to allow EIOs at large, publicly traded corporations to elect a non-voting, supervisory member of their company's board of directors.

Alternative View. While some conservatives lament that workers lack sufficient voice in today's workplace, others interpret the rise in independent and flexible work opportunities, significant expansion in family-friendly policies like paid family leave, and the decline in private sector unionization as indicators of workers' increasing competency and control. Another way to help expand workers' freedom and voices in traditional workplaces is by allowing them to choose who represents them in negotiations with their employer. The Worker's Choice Act[19] would accomplish this by ending exclusive representation so that unions in right-to-work states are no longer forced to represent workers who do not want to join them.

Union Transparency. Private-sector unions must file detailed financial information with DOL—on matters including union spending, income, loans, assets, membership information, and employee salary—but unions composed entirely

The NLRB has issued extreme interpretations of these activities, such as determining that a business's requiring its employees to be courteous to customers and one another is an unlawful infringement on the free speech rights implicit in the protected concerted activity protections in the NLRA.

- **Reverse unreasonable interpretations of "protected concerted activity."** The NLRB should return to the 2019 *Alstate Maintenance* interpretation of what does and does not constitute protected concerted activity, including listing eight instances of lawful actions by employers.

Injunctive Relief and Worker Organizing Activities. Within the confines of the more reasonable definition of protected concerted activity described above, the NLRB should increase its pursuit of reinstatement injunctions. Firing workers engaged in concerted activity has an immediate chilling effect on organizing, but remedies under the NLRA typically come only much later and amount only to backpay. In NLRA section 10(j), Congress empowered the NLRB to obtain temporary injunctions that immediately reinstate workers to their jobs in these circumstances. This provides a more meaningful remedy to the worker and creates a significant deterrent to unfair labor practices, because prompt reinstatement will tend to reinforce the legitimacy of the organizing effort. The NLRB overwhelmingly prevails when pursuing an injunction, succeeding 100 percent of the time in 2020 and 91 percent of the time in 2021.

- **Increase the use of 10(j) injunctive relief.** The NLRB should increase its use of 10(j) and should articulate guidelines for situations in which it intends to seek injunctive relief; the board should delegate authority to pursue such injunctions to the general counsel and the general counsel should establish a policy of considering them expeditiously in all retaliation cases identified by regional offices.

Dues-Funded Worker Centers. Under current law, both labor unions and unionized employers must file financial disclosures with DOL on an annual basis to ward off potential fraud and corruption of the sort that has been seen recently within the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). However, worker centers, which have grown in number and influence enormously over the past decade, are not required to file these disclosures.

- **Investigate worker centers and require financial disclosures.** DOL should investigate worker centers that look and act like unions and bring enforcement actions to require them to file the same financial disclosures.

Office of Labor-Management Standards Initiative. Currently, the Office of Labor-Management Standards (OLMS) may investigate potential employer malfeasance with regard to union funds in the absence of any complaint by a worker or union but may not do the same with regard to potential union malfeasance. If OLMS has evidence that a union may be violating the law based on information available to the agency (such as annual financial disclosure reports, information developed during an audit of a union's books and records, or information obtained from other government agencies) it should be permitted to open an investigation. It should have the same enforcement tools available for both employers and unions.

- **Revise investigation standards.** The Office of Labor-Management Standards should revise its investigation standards to authorize investigations without receiving a formal complaint.

Persuader Rule. During the Obama Administration, DOL created significant regulatory burdens for employers with respect to the advice that employers receive about union activity. As a general matter, employers who hire lawyers or other consultants to advise employees about union issues must file disclosure forms with the department, as must the lawyers and consultants themselves. Prior to the Obama Administration, advice provided solely to the employer required no disclosure. The Obama Administration attempted to eliminate this "advice exemption" with a directive known as the "persuader rule," which was successfully challenged in court. In 2018, the Trump Administration formally rescinded the persuader rule.

- **DOL should rescind the persuader rule once again should the Biden Administration revive it.**

Unionizing the Workplace: Card Check vs. Secret Ballot. Under the NLRA, instead of having a secret ballot election about the decision to unionize a workplace, a union may instead collect signed pro-union cards from a majority of the employees it wishes to represent and then ask the employer and National Labor Relations Board for voluntary union recognition. That request gives the employer the option to hold a secret-ballot election or to recognize the union without any such election. This "card check" procedure is likely to induce employees to provide their signed cards in ways that do not accurately reflect their true preferences—ranging from a desire not to offend the signature requestor to a wish to avoid intimidation and coercion to signing based on false information provided by union organizers. In short, the card check procedure sidesteps many aspects of democratic decision-making that free and fair elections conducted by secret ballot are supposed to accomplish. Notably, the general counsel of the National Labor Relations Board has recently proposed an esoteric legal theory that card-check

decision-making is required under the law, basing this theory on an old NLRB case, *Joy Silk*, even though the Supreme Court has repeatedly rejected mandatory card-check recognition.

- **Discard "card check."** Congress should discard "card check" as the basis of union recognition and mandate the secret ballot exclusively.

Contract Bar Rule. Although current labor law allows a union to establish itself at a workplace at more or less any time, the calendar for any attempt to decertify a union is considerably more constrained. If a union is recognized as a collective bargaining agent, then employees may not decertify it or substitute another union for it for at least one year under federal law (the "certification bar"). Similarly, when a union reaches a collective bargaining agreement with an employer, it is immune from a decertification election for up to three years (the "contract bar"). A typical consequence of these rules is that employees must often wait four years before they are allowed a chance at decertification. Employees then have only a 45-day window to file a decertification petition; if the employer and union sign a successor contract, then the contract bar comes into play once again—meaning employees with an interest in decertification must wait another three years.

- **Eliminate the contract bar rule.** NLRB should eliminate the contract bar rule so that employees with an interest in decertification have a reasonable chance to achieve their goal.

Tailoring National Employment Rules. National employment laws like the Fair Labor Standards Act (FLSA)[21] and the Occupational Safety and Health (OSH) Act[22] set out one-size-fits-all "floors" regulating the employment relationship. These substantive worker protections often do not mesh well with the procedural worker protections offered through the NLRA's collective bargaining process. Unions could play a powerful role in tailoring national employment rules to the needs of a particular workplace if, in unionized workplaces, national rules were treated as negotiable defaults rather than non-negotiable floors.

- **Congress should amend the NLRA to authorize collective bargaining to treat national employment laws and regulations as negotiable defaults.** For example, this reform would allow a union to bless a relaxed overtime trigger (e.g., 45 hours a week, or 80 hours over two weeks) in exchange for firm employer commitments on predictable scheduling.

Alternative Policy. While some conservatives (including the author of this chapter) believe that it would be a mistake to antagonize unions' core interests, others

argue that the next Administration should end Project Labor Agreement requirements and repeal the Davis–Bacon Act. And while some conservatives have chosen not to address massive federal subsidies for unionized labor, others believe that current laws and regulations that pick winners and losers to the detriment of the majority of construction workers and to all taxpayers should not be ignored.

Project Labor Agreements (PLAs) are short-term collective bargaining agreements that apply to construction projects. There are a few reasons that construction projects may benefit from a PLA, and there are many reasons that even when actively encouraged to do so public construction projects have declined to use PLAs. Among the consequences: The majority of construction firms and construction workers are not unionized and their temporary forced unionization results in large-scale wage theft; construction companies are significantly less likely to bid on projects with PLAs; and PLAs consistently drive up construction costs by 10 percent to 30 percent.

The Davis–Bacon Act[23] requires federally financed construction projects to pay "prevailing wages." In theory, these wages should reflect going market rates for construction labor in the relevant area. However, both the Government Accountability Office and the Department of Labor's Inspector General have repeatedly criticized the Labor Department for using self-selected, statistically unrepresentative samples to calculate the prevailing-wage rates that drive up the cost of federal construction by about 10 percent. The Davis–Bacon Act redistributes wealth from hardworking Americans to those that benefit from government-funded construction projects. Repealing the Davis–Bacon Act would increase worker freedom and end a longstanding effective tax on American families.

- **End PLA requirements.** Agencies should end all mandatory Project Labor Agreement requirements and base federal procurement decisions on the contractors that can deliver the best product at the lowest cost.

- **Repeal Davis–Bacon.** Congress should enact the Davis–Bacon Repeal Act and allow markets to determine market wages.

THE STATES

Worker-led Benefits Experimentation. Workers depend on unemployment benefits to navigate inevitable market frictions and seek new employment opportunities. But existing unemployment insurance (UI) is bureaucratic, ineffective, and unaccountable. The outdated system's myriad failures during the COVID-19 pandemic highlighted the need for innovations that respond to recipients' needs.

The most promising avenue for innovation is to involve workers and private-sector organizations more directly, freed from unnecessary bureaucratic strictures. Americans take for granted that unemployment benefits must be administered by

government agencies, but other Western market democracies feature effective and popular benefits administered by non-public worker organizations.

The next conservative Administration should encourage UI innovation by capitalizing on a key feature of the system and principle of conservative policymaking: federalism. State governments already administer unemployment benefits and have broad discretion over their programs. Existing statutory language in the Social Security Act[24] does not prohibit non-public organizations from administering the program, nor does it specifically authorize states to do so. Further, the Administration can replicate state-level experiments in welfare programs and empower state officials to adapt UI to local conditions and needs.

- **Approve non-public worker organizations as UI administrators.** DOL should approve, pursuant to § 303(a)(2) of the Social Security Act, non-public worker organizations as administrators.

- **Offer waivers for suitable alternatives.** DOL should offer waivers from the standard requirements imposed on unemployment compensation by § 303(a) and § 303(d) of the Social Security Act to states that propose suitable alternatives.

- **Require organizations to comply with restrictions on political spending.** DOL should establish as a precondition for receiving any public funds a requirement that an organization comply with restrictions on political spending as applied to 501(c)(3) charitable organizations.

Labor Law. The federal laws governing labor-management relations have barely changed in generations, and reforms on the federal level have been almost impossible to get through Congress. To modernize labor law, the Congress should:

- **Pass legislation allowing waivers for states and local governments.** To encourage experimentation and reform efforts at the state and local levels, Congress should pass legislation allowing waivers from federal labor laws like the NLRA and FLSA under certain conditions. State and local governments seeking waivers would be required to demonstrate that their reforms would accomplish the purpose of the underlying law, and not take away any current rights held by workers or employers. In addition, waivers would be limited to a five-year period, after which time they could be modified, canceled, or renewed.

Excessive Occupational Regulation. Excessive occupational regulation—most typically encountered as occupational licensing—creates underemployment

and wasted resources, and artificially increases consumer prices. It is a significant problem that is difficult to address at the federal level.

- **Congress should ensure that interstate compacts for occupational license recognition that are federally funded do not require new or additional qualifications (that is, qualifications that do not originate from state governments themselves) for licensed professionals to participate.**

- **Congress should ensure that well-qualified licensees are not locked out of the job market by restrictive government programs funded by the federal government.** (For instance, medical doctors must complete residency training to practice, and because Medicare provides funding for significantly fewer residencies than there are doctors, sizable numbers of MDs are locked out of the job market every year.)

Wagner–Peyser Staffing Flexibility. State agencies that administer unemployment benefits and workforce development programs should be able to hire the best people to do the job and should not be required to use state employees if a contractor can do the job better. Further, the federal government should not force a state to use non-union labor or union labor for these positions.

- **DOL should repromulgate the Trump-era staffing flexibility rule, and Congress should codify it.**

WORKER RETIREMENT SAVINGS, ESG, AND PENSION REFORMS

- **Remove ESG considerations from ERISA.** Environmental, Social, Governance (ESG) investing is a relatively recent strategy promoted by large asset managers that focuses not only on a company's bottom line, but also on the company's compliance with liberal political views on climate change, racial quotas, abortion, and other issues. The ESG movement has focused especially on reducing greenhouse gas emissions. For example, ESG proponents advocate for divestment from oil and gas companies or the exercise of investor influence to reduce oil and gas production.

  ESG considerations unrelated to investor risks and returns necessarily sacrifice trust law's traditional sole focus on investment returns for collateral interests. And while individual investors may prefer to invest in "green" companies, "woke" companies, or companies with greater board diversity, and may even be willing to sacrifice some financial gains to do

so, the question relevant to DOL is whether, and under what conditions, fiduciaries should be permitted to follow this path as well.

While Americans are free to invest their own savings however they wish, in ERISA, Congress imposed strict duties on employer-sponsored worker retirement plans as a prophylactic protection of workers' retirement security in general. Recognizing the unique status of employer-managed retirement savings, in ERISA, Congress required that fiduciaries exclusively seek the best interests of plan beneficiaries. Because ESG investing necessarily puts other considerations before the interests of the beneficiary, ESG investing by plan managers is an inappropriate strategy under ERISA.

- **DOL should prohibit investing in ERISA plans on the basis of any factors that are unrelated to investor risks and returns.**

- **DOL should return to the Trump Administration's approach of permitting only the consideration of pecuniary factors in ERISA.** However, this approach should not preclude the consideration of legitimate non-ESG factors, such as corporate governance, supply chain investment in America, or family-supporting jobs.

- **DOL should consider taking enforcement and/or regulatory action to subject investment in China to greater scrutiny under ERISA.** Many large retirement and pension plans remain invested in China despite its lack of compliance with U.S. accounting standards and state control over all aspects of private capital.

Alternative View. Some conservatives believe that ERISA plan investments should be made solely on a pecuniary basis and the consideration of any non-pecuniary factor, ESG or otherwise, should be prohibited. Additionally, other conservatives believe that even though ESG investing is often not a sound financial strategy, it is not wrong for retirement plans to offer ESG investment options so long as individuals explicitly acknowledge and choose to pursue investment options that do not exclusively maximize pecuniary gains.

Thrift Savings Plan. The Thrift Savings Plan (TSP) is the retirement savings benefit plan for most federal employees and many former employees. The TSP is managed by the Federal Retirement Thrift Investment Board (FRTIB). At over $800 billion in assets under management, the TSP is one of the largest retirement plans in the world.

- **DOL should reverse efforts to politicize the TSP by removing "mutual fund" windows that encourage ESG, and should clarify the fiduciary duties of the TSP.** Recent efforts by congressional Democrats and the Biden Administration to politicize the TSP by offering selective "mutual fund" windows that encourage ESG should be reversed by DOL, and the fiduciary duties of the TSP should be clarified by the department to preclude ESG investments absent individual stock selection by the participant.

  The TSP is managed under contract by private-sector fund managers. Its current managers are BlackRock and State Street Global Advisers. Both of these managers have demonstrated a public commitment to use the funds they manage to advance ESG.

- **The federal government should follow the lead of multiple state governments in removing their pension funds from fund managers such as BlackRock and State Street Global Advisers, and contract with a competitive, private-sector manager that will comply with its fiduciary duties.**

- **DOL should also consider bringing enforcement actions against BlackRock and State Street Global Advisers for their violations of fiduciary duty while managing the TSP.**

- **Congress should enact legislation authorizing the FRTIB to exercise its independent business judgment in exercising the proxy votes for its holdings of the TSP and provide clear proxy voting guidelines for the FRTIB to follow.** The current proxy adviser market is dominated by two firms, Institutional Shareholder Services and Glass Lewis, which use heavily weighted ESG criteria in directing the proxy votes of pension plans. If feasible, the new legislation should also offer a streamlined process for other proxy advisers to compete for the TSP's business.

  As the principal retirement savings plan of America's servicemen and women, part of the FRTIB's fiduciary duties in managing the TSP is a duty not to invest in governments that are enemies of the United States. Yet the FRTIB has repeatedly approved the investment of TSP funds in Chinese military companies and state-owned enterprises. Under the Trump Administration, DOL ordered the FRTIB to cease investments in China. However, under the Biden Administration, the TSP has made available a wide range of investments in China.

- **DOL should exercise its oversight of the FRTIB to prohibit investments in China.**

- **Congress should enact legislation prohibiting investment of the TSP in China.**

PENSION REFORMS.

Public Pension Plan Disclosure. Residents of states that responsibly manage their public pension plans (pension plans for State and local government employees) should not be responsible for bailing out states that do not do so. Money is ultimately fungible, so federal aid to States can effectively be used to free up other State funds for pension contributions. Although the federal government does not impose funding rules on public pension plans, these plans should be required to disclose the fair market value of plan assets and liabilities (using the Treasury yield curve as the discount rate) on an annual basis. In the aggregate, these plans were underfunded on a market basis by $6.501 trillion as of Fiscal Year (FY) 2021, even though the plans reported underfunding of only $1.076 trillion using overly optimistic assumptions.

- **Disclose the fair market value of plan assets and liabilities.** Congress should require public pension funds to disclose the fair market value of plan assets and liabilities (using the Treasury yield curve as the discount rate) on an annual basis.

Multiemployer Plans. At the request of multiemployer union pension plans, the government has given such plans much more lenient rules and discretion over funding than it has given to single-employer plans. Multiemployer plans have been severely mismanaged, and the plans have abused the discretion and deference given them by federal law and enforcement agencies to make promises that they cannot keep. As a result, these plans are generally severely underfunded, with $757 billion in aggregate underfunding, and a funding level of just 42 percent. The Biden Administration has provided a massive taxpayer bailout to some of these plans, but without any needed reforms. Even worse, it gave out funds in excess of what the law allows.

- **Congress should reform multiemployer pensions to give participants in these plans the same protections as those in single-employer plans.** Liabilities should be measured similarly to single-employer plans. Workers should be able to earn benefits at any employer in the plan, but liabilities should be divided amongst employers, instead of the current illusory joint and several liability under which no one is ultimately responsible for making up underfunding. Troubled plans should be prohibited from

making new pension promises. More timely and detailed reporting should be imposed.

Pension Benefit Guaranty Corporation. The Pension Benefit Guaranty Corporation (PBGC) insures benefits for private sector pension plans, with separate single-employer and multiemployer insurance programs.

- **The PBGC's annual report must be submitted on time, and with timely data that uses fair-market value principles to calculate the PBGC's finances.** The PBGC has been submitting portions of statutorily required annual reports many months late and using out-of-date data. And PBGC's data on plans is almost five years old. These problematic practices make it difficult for Congress to become aware of serious problems in the insurance programs, which received a bailout of over $85 billion in the 2021 American Rescue Plan Act.

  The PBGC should use existing statutory authority to protect workers, retirees, employers, and taxpayers by closely monitoring and taking appropriate remedial action with regard to badly run and underfunded multiemployer union pension plans, including termination where appropriate. The PBGC's refusal to use such authority helped cause its multiemployer program deficit to go from less than $500 million in 2008 to over $65 billion in 2017.

- **Congress should increase the variable rate premium on underfunding and eliminate the per-participant cap in order to appropriately take into account risk and limit the degree to which well-funded pension plans must subsidize underfunded plans.** Reforms should proportionately reduce the fixed per-participant premium to ease the burden on well-funded plans and also increase premiums on multiemployer plans to match single-employer plans.

Improving Access to Employee Stock Ownership Plans. Employee Stock Ownership Plans (ESOPs) are ERISA-covered employee retirement savings plans that allow employees to receive compensation in the form of equity in their employer business. These arrangements enable employees to formally participate as investors in how their employers' businesses are run. And they also align employer–employee incentives by giving employees a greater financial stake in the success of their employers. With over half of small businesses owned by business owners over the age of 55, ESOPs also create advantageous succession opportunities that support the continuity of local businesses and regional economic

development. Finally, ESOPs can enable greater investment returns for employees. However, ESOPs have to date lacked clear rules under ERISA that recognize their unique structure and benefits, and this opacity can serve as a barrier to employers considering adopting ESOPs.

- **Provide clear regulations for ESOP valuation and fiduciary conduct.** DOL should make it easier for employers to offer ESOPs by providing clear regulations for ESOP valuation and fiduciary conduct that encourages the participation of employee beneficiaries in corporate governance, while recognizing the importance of financial diversification for retirement security.

Alternative View. Conservatives believe that it is important for American families to have control over their savings and to be able to hold diversified assets. While ESOPs can be a beneficial part of a worker's and family's savings, some conservatives believe that the government should not favor one form of investment over another or make it harder for families to have a diversified investment portfolio.

PUTTING AMERICAN WORKERS FIRST

A labor agenda focused on the strength of American families must put American workers first. As the family necessarily puts the interests of its members first, so too the United States must put the interests of American workers first.

Immigration. The H-2A visa, meant to allow temporary agricultural workers into the United States, also suffers frequent employer abuse. The low cost of H-2A workers undercuts American workers in agricultural employment. The H-2A program is not subject to any statutory numerical cap and has been expanding in recent years, surpassing 200,000 visa issuances for the first time in 2019.

- **Cap and phase down the H-2A visa program.** Congress should immediately cap this program at its current levels and establish a schedule for its gradual and predictable phasedown over the subsequent 10 to 20 years, producing the necessary incentives for the industry to invest in raising productivity, including through capital investment in agricultural equipment, and increasing employment for Americans in the agricultural sector.

- **Encourage the establishment of an industry consortium and match funding.** Congress should also encourage the establishment of an industry consortium of agricultural equipment producers and other automation and robotics firms interested in entering the sector and match funding invested by the industry, with intellectual property developed within the consortium freely available to all participants.

Alternative View. Some conservatives believe that temporary worker programs help to fill jobs that Americans will not fill, prevent illegal immigration by giving farmers and others who hire low-skilled labor access to workers, and keep down the prices of food and other products and services produced by the temporary workers. Some credibly argue that, absent the H-2A program, many farmers would have to drastically increase wages, raising the price of food for all Americans, and that even such wage increases may not be sufficient to attract enough temporary American workers to complete the necessary farm tasks to get food products to market since those jobs are, by their nature, seasonal. Those who share this view argue that any plan to phase out the program should weigh the program's current costs (relatively low) and the program's current benefits (makes American farming more profitable and sustainable while keeping down food costs).

- **Phase out the H-2B visa program.** The H-2B visa, for nonagricultural seasonal workers, suffers from many of the same harms and abuses as H-2A, albeit of lesser scope because of its cap and distribution across many sectors. Congress should immediately cap this program at its current levels and establish a schedule for its gradual and predictable phasedown over no more than 10 years.

Alternative View. As with the H-2A program, some conservatives see the H-2B program as a valuable program that provides low-cost temporary workers in jobs that American companies, by and large, cannot find enough American workers to fill (e.g., tourist season childcare providers at ski resorts, swimming instructors at summer camps, housekeepers and groundskeepers at amusement parks, and extra summer cooks at restaurants that serve national park patrons).These seasonal jobs are less desirable to Americans who predominantly prefer year-round work. Labor shortages after the pandemic support this belief. Absent the H-2B program, many of these seasonal businesses would be forced to cut their hours or even close altogether. Any plan to phase out the program should weigh the program's current costs (relatively low) and the program's current benefits (makes seasonal business more feasible).

Hire American Requirements. When government purchases goods or services, if at all possible, not only should the company be an American company and the products be manufactured in America, but the companies should also be encouraged to hire American workers. Likewise, private employers should be free to prefer our own countrymen.

- **Congress should mandate that all new federal contracts require at least 70 percent of the contractor's employees to be U.S. citizens, with the percentage increasing to at least 95 percent over a 10-year period.**

commutes from urban buses to rideshare or electric scooter, the use of public transit decreases. A better definition for public transit (which also would require congressional legislation) would be transit provided for the public rather than transit provided by a public municipality.

The COVID-19 pandemic caused a substantial decline in usage for all forms of transportation. Mass transit has been the slowest mode to recover, with October 2022 ridership reaching only 64 percent of the level seen in October 2019. The sustained increase in remote work has caused changes in commuting patterns. Since facilitating travel for workers is one of the core functions of mass transit systems, a permanent reduction in commuting raises questions about the viability of fixed-route mass transit, especially considering that transit systems required substantial subsidization before the pandemic.

Regrettably, the 2021 Infrastructure Investment and Jobs Act[13] authorized tens of billions of dollars for the expansion of transit systems even as Americans were moving away from them and into personal vehicles. Lower revenue from reduced ridership is already driving transit agencies to a budgetary breaking point, and added operational costs from system expansions will make this problem worse.

The Capital Investment Grants (CIG) program is another example of Washington's tendency to fund transit expansion rather than maintaining or improving current facilities. The CIG program, which began in 1991, funds only novel transit projects. These can include new rail lines (regardless of the demand for preexisting rail in the area) and costly operations such as streetcars.

Because Americans have demonstrated a strong preference for alternative means of transportation, rather than throwing good money after bad by continuing federal subsidies for transit expansion, there should be a focus on reducing costs that make transit uneconomical. The Trump Administration urged Congress to eliminate the CIG program, but the program has strong support on Capitol Hill. At a minimum, a new conservative Administration should ensure that each CIG project meets sound economic standards and a rigorous cost-benefit analysis.

The largest expense in transit operational budgets is labor. Compensation costs for transit workers exceed both regional and sector compensation averages. This is driven by generous pension and health benefits rather than by exorbitant wages. Since workers value wages more than they value fringe benefits, this has led to a perverse situation in which transit agencies have high compensation costs yet are struggling to attract workers.

The next Administration can remove the largest obstacle to reforming labor costs. Section 10(c) of the Urban Mass Transportation Act of 1964[14] was initially intended to protect bargaining rights for workers in privately owned transit systems that were being absorbed by government-operated agencies. The provision has mutated into a requirement that any transit agency receiving federal funds cannot reduce compensation, an interpretation that far exceeds the original statute.

time for any purpose. This would allow the vast majority of American families to save and invest without facing a punitive double layer of taxation.

Entrepreneurship. To encourage entrepreneurship, the business loss limitation should be increased to at least $500,000. Businesses should also be allowed to fully carry forward net operating losses. Extra layers of taxes on investment and capital should also be eliminated or reduced. The net investment income surtax and the base erosion anti-abuse tax should be eliminated. The estate and gift tax should be reduced to no higher than 20 percent, and the 2017 tax bill's temporary increase in the exemption amount from $5.5 million to $12.9 million (adjusted for inflation) should be made permanent.[21] The tax on global intangible low-taxed income should be reduced to no higher than 12.5 percent, with the 20 percent haircut on related foreign tax credits reduced or eliminated.[22]

All non-business tax deductions and exemptions that were temporarily suspended by the 2017 tax bill should be permanently repealed, including the bicycle commuting expense exclusion, non-military moving expense deductions, and the miscellaneous itemized deductions.[23] The individual state and local tax deduction, which was temporarily capped at $10,000, should be fully repealed. Deductions related to educational expenses should be repealed. Special business tax preferences, such as a special deduction for energy-efficient commercial building properties, should be eliminated.[24]

Wages vs. Benefits. The current tax code has a strong bias that incentivizes businesses to offer employees more generous benefits and lower wages. This limits the freedom of workers and their families to spend their compensation as they see fit—and it can trap workers in their current jobs due to the jobs' benefit packages. Wage income is taxed under the individual income tax and under the payroll tax. However, most forms of non-wage benefits are wholly exempt from both of these taxes.

To reduce this tax bias against wages (as opposed to employee benefits), the next Administration should set a meaningful cap (no higher than $12,000 per year per full-time equivalent employee—and preferably lower) on untaxed benefits that employers can claim as deductions. Employee benefit expenses other than *tax-deferred* retirement account contributions should count toward the limitation, whether offered to specific employees or whether the costs relate to a shared benefit like building gym facilities for employees.[25] *Tax-deferred* retirement contributions by employers should not count toward this limitation insofar as they are fully taxable upon distribution. Only a percentage of Health Savings Accounts (HSA) contributions (which are not taxed upon withdrawal) should count toward the limitation.[26] The limitation on benefit deductions should not be indexed to increase with inflation.[27] Employers should also be denied deductions for health insurance and other benefits provided to employee dependents if the dependents are aged 23 or older.

humanity from our policies, and can contribute to societal ills like depression, addiction, and isolation.

Trade adjustment could be made easier by regulatory reforms to remove its attendant friction. These include:

- Less restrictive zoning and permit rules;
- Occupational licensing reform;
- Automatic sunsets for new regulations; and
- A presidentially appointed Regulatory Reduction Commission that would examine the Code of Federal Regulations each year and send repeal packages to Congress that include old, obsolete, redundant, and harmful regulations.[67]

People who need help should be able to get it. Progressive trade policies help only special interests while harming the very people they are supposedly intended to help.

Trade Adjustment Assistance. Trade adjustment assistance is a popular policy for aiding displaced workers. Though flawed, it is a bargaining tool that can potentially help to get sound trade policy adopted. A conservative Administration should approach trade adjustment assistance with caution and use it as a last-resort political bargaining tool and not as a first-resort policy. Funding for job training programs and the like will typically find its way to labor union slush funds, left-leaning nonprofits, and other progressive causes that will not necessarily help displaced workers.

A better approach to trade adjustment assistance, if it must be expanded, is direct cash transfers. Not only would this prevent progressive hijacking of programs and their funding, but cash is the most flexible type of aid. It treats people as adults and lets them make their own choices about their next steps. Major life decisions should be made by individuals for themselves, not for them in Washington.

Trade adjustment assistance should treat workers who lose their jobs to international trade the same as workers who lose their jobs for any other reason are treated. While that will not likely come to pass in the near future, steps in that direction are possible. Technological change displaces six times as many workers as trade displaces, yet workers displaced by technology get no special treatment. Nor should they. Unemployment remains low because it grows alongside population, and real wages continue to rise over time. Trade-displaced workers should be eligible for the same benefits for which anyone else is eligible, no more and no less.