

Lauren McFerran's Tenure as Chair of the NLRB *Condemnations, Rebukes, & Disapproval*

President Biden has renominated Lauren McFerran to serve another term as Chair of the National Labor Relations Board in an effort to hijack the NLRB for nearly half of the next administration - regardless of who wins the 2024 presidential election. McFerran's tenure on the Board, however, has been riddled with condemnations by federal courts, rebukes by the Office of the Inspector General, and disapproval from bipartisan members of Congress.

FEDERAL COURTS

U.S. Supreme Court

- “Deference to what is ‘nothing more than an agency’s convenient litigating position’ is **‘entirely inappropriate.’**” (*Starbucks v McKinney*)

U.S. Court of Appeals for the D.C. Circuit

- NLRB “**ground its decisions in a skewed or ‘clipped view’ of the record**” (*Absolute Healthcare v NLRB*)
- NLRB “rest[ed] on **erroneous legal foundations**” (*Tesla v NLRB*)

U.S. Court of Appeals for the 5th Circuit

- NLRB’s decision was “the **epitome of arbitrary**” (*Thryv, Inc.*)
- NLRB’s decision was “**nonsense**” and “**cannot be squared with any reasonable understanding**” of the National Labor Relations Act (*Stern Produce*)

U.S. District Court for the Eastern District of Texas

NLRB’s joint employer rule:

- would “**likely promote labor strife rather than peace**”
- is “**arbitrary and capricious**”
- “**exceeds the bounds of the common law** and is thus **contrary to law**” (*Chamber of Commerce v NLRB*)

OFFICE OF THE INSPECTOR GENERAL

OIG reports on the NLRB’s mail ballot elections processes ([July 2023](#), [June 2024](#)):

- NLRB engaged in “**gross mismanagement**” of mail ballot election process



COALITION FOR A DEMOCRATIC WORKPLACE

- The mismanagement “created the **risk of great reputational harm** that could negatively impact the ability of the Agency to carry out that mission.”
- NLRB “**lacked candor** when communicating with the Employer’s representative”

CONGRESS

On the bipartisan Congressional Review Act resolution to nullify the NLRB’s joint employer final rule:

Senator Manchin (I-WV):

- The rule “**would shut the door for thousands of citizens** who want to start a business and fulfill the American Dream when we should be focused on bolstering our economic growth and empowering Main Street America.”

Senator Cassidy (R-LA):

- The rule “**undermines the American franchise model** that has empowered those underrepresented in the business community, such as women and people of color, to live the American dream, becoming successful small business owners as they help create jobs.”

Representative Foxx (R-NC):

- “working families and small businesses are up against a **confusing and damaging** new rule from Biden’s NLRB, which **will sow confusion and destabilize the economy** in a time where persistently high prices are crushing hardworking Americans... Congress must stand with franchisees, small and large business owners, and millions of workers by voting with a bipartisan mandate to rescind the Biden NLRB’s joint employer rule.”

If confirmed, McFerran would guarantee a Democratic majority on the NLRB until August 2026, a year and a half into the next administration, regardless of who wins the 2024 presidential election. This nomination, issued six months before expiration of McFerran’s current term on the Board, is a blatant attempt by President Biden and union allies to control federal labor law throughout a potential Trump administration. Considering her track record of condemnations, rebukes, and disapproval from every branch of government and the inappropriateness of this power grab, the Senate should unequivocally reject Lauren McFerran’s nomination.