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116TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
116–392

PROVIDING FOR CONSIDERATION OF THE RESOLUTION (H. RES. 826) EXPRESSING DISAPPROVAL OF THE TRUMP ADMINISTRATION'S HARMFUL ACTIONS TOWARDS MEDICAID; PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2474) TO AMEND THE NATIONAL LABOR RELATIONS ACT, THE LABOR MANAGEMENT RELATIONS ACT, 1947, AND THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AND FOR OTHER PURPOSES; AND PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 5687) MAKING EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2020, AND FOR OTHER PURPOSES

FEBRUARY 5, 2020.—Referred to the House Calendar and ordered to be printed

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Mr. DESAULNIER, from the Committee on Rules, submitted the following

R E P O R T

[To accompany H. Res. 833]

The Committee on Rules, having had under consideration House Resolution 833, by a record vote of 9 to 4, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H. Res. 826, Expressing disapproval of the Trump administration's harmful actions towards Medicaid, under a closed rule. The resolution provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. The resolution waives all points of order against consideration of H. Res. 826. The resolution provides that H. Res. 826 shall be considered as read. Section 2 of the resolution provides for consideration of H.R. 2474, the Protecting the Right to Organize Act of 2019, under a structured rule. The resolution provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Education and Labor. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill, modified by the amendment printed in part A of this report, shall be considered as adopted and the bill, as amended, shall be considered as read. The resolution waives all points of order against provisions in the bill, as amended. The resolution makes in order only those amendments printed in part B of

this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question. The resolution waives all points of order against the amendments printed in Part B of this report. The resolution provides one motion to recommit with or without instructions. The resolution provides for consideration of H.R. 5687, the Emergency Supplemental Appropriations for Disaster Relief and Puerto Rico Disaster Tax Relief Act, 2020, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Appropriations. The resolution waives all points of order against consideration of the bill. The resolution provides that the bill shall be considered as read. The resolution waives all points of order against provisions in the bill. The resolution provides that clause 2(e) of rule XXI shall not apply during consideration of the bill. The resolution makes in order only those amendments printed in Part C of this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question. All points of order against the amendments printed in Part C of this report are waived. The resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of H. Res. 826, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

The waiver of all points of order against consideration of H.R. 2474 includes a waiver of the following:

- Clause 12(b) of rule XXI, which prohibits consideration of a bill unless there is a searchable electronic comparative print that shows how the text of the bill as proposed to be considered differs from the text of the bill as reported.

Although the resolution waives all points of order against provisions in H.R. 2474, as amended, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments to H.R. 2474 printed in this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

The waiver of all points of order against consideration of H.R. 5687 includes waivers of the following:

- Section 302(f) of the Congressional Budget Act, which prohibits consideration of legislation providing new budget authority in excess of a 302(a) allocation of such authority.
- Section 311 of the Congressional Budget Act, which prohibits consideration of legislation that would cause the level of total new budget authority for the first fiscal year to be exceeded, or would

cause revenues to be less than the level of total revenues for the first fiscal year or for the total of that first fiscal year and the ensuing fiscal years for which allocations are provided, except when a declaration of war by the Congress is in effect.

- Clause 10 of rule XXI, which prohibits consideration of a measure that has a net effect of increasing the deficit or reducing the surplus over the five- or 10-year period.
- Clause 12(a)(1) of rule XXI, which prohibits consideration of a bill unless there is a searchable electronic comparative print that shows how the bill proposes to change current law.

Although the resolution waives all points of order against provisions in H.R. 5687, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments to H.R. 5687 printed in this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 239

Motion by Mr. Cole to report an open rule for H.R. 5687, H.R. 2474, and H. Res. 826. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 240

Motion by Mr. Burgess to amend the rule to H.R. 2474 to make in order amendment #11, offered by Rep. Stefanik (NY), which strikes a provision that significantly narrows independent-contractor status by defining a worker as an "employee" unless he or she is "free from control and direction in connection with the performance of the service, both under the contract for the performance of the service and in fact;" "the service is performed outside the usual course of business of the employer;" and "the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.". Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		

Majority Members	Vote	Minority Members	Vote
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 241

Motion by Mrs. Lesko to amend the rule to H.R. 2474 to make in order amendment #15, offered by Rep. Rooney (FL), which amends the National Labor Relations Act to protect religious organizations. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 242

Motion by Mrs. Lesko to amend the rule to H.R. 2474 to make in order amendment #19, offered by Rep. Smucker (PA), which requires unions to receive express consent from a worker before using his or her union dues for purposes other than collective bargaining. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 243

Motion by Mr. DeSaulnier to report the rule. Adopted: 9–4

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Yea	Mr. Cole	Nay
Mrs. Torres	Yea	Mr. Woodall	Nay
Mr. Perlmutter	Yea	Mr. Burgess	Nay
Mr. Raskin	Yea	Mrs. Lesko	Nay
Ms. Scanlon	Yea		
Mr. Morelle	Yea		
Ms. Shalala	Yea		
Mr. DeSaulnier	Yea		
Mr. McGovern, Chairman	Yea		

SUMMARY OF THE AMENDMENT TO H.R. 2474 IN PART A CONSIDERED AS ADOPTED

1. Scott, Bobby (VA): States that amendments under this Act shall not be construed to amend section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a).

SUMMARY OF THE AMENDMENTS TO H.R. 2474 IN PART B MADE IN ORDER

1. Morelle (NY): Clarifies that the ABC test included in the PRO Act does not preempt any State laws governing the wages, work hours, workers' compensation, or unemployment insurance of employees. (10 minutes)

2. Foxx (NC): Strikes provision requiring that employers turn over employees' personal information to a labor union within two days of the National Labor Relations Board ordering a representation election. (10 minutes)

3. Norcross (NJ): Requires that pre-election hearings before the National Labor Relations Board (NLRB) are conducted on a day-to-day basis. (10 minutes)

4. Roe (TN): Strikes provision allowing unions to be certified without winning a secret ballot election under certain circumstances and replaces with a requirement that all unions win a secret-ballot election in order to be certified. (10 minutes)

5. Wild (PA): Clarifies that this bill shall not be construed to affect the privacy of employees with respect to voters' lists provided to labor organizations by employers pursuant to elections directed by the Board. (10 minutes)

6. Allen (GA): Strikes provision overturning state right-to-work laws. (10 minutes)

7. Hayes (CT): Codifies the current precedent of the National Labor Relations Board governing voluntary recognition of a union by an employer which ensures collective bargaining between the union and employer can proceed for a reasonable period of time (one year) without requiring an intervening election. (10 minutes)

8. Keller (PA): Strikes provisions of H.R. 2474 that allow intermittent strikes and that makes it illegal for employers to replace striking workers permanently. (10 minutes)

9. Stevens (MI): Directs the GAO to conduct a report on sectoral bargaining in other countries. (10 minutes)

10. Meadows (NC), Norman (SC), Budd (NC), Wright (TX), Lamborn (CO), Yoho (FL), Kustoff (TN), Weber (TX), Gohmert (TX), Spano (FL), Bucshon (IN): Strikes provisions that impair States' ability to enact right-to-work laws. (10 minutes)

11. Jackson Lee (TX): Provides whistleblower protections to employees who report violations of the Labor Management Reporting and Disclosure Act (LMRDA). This amendment covers employees of employers as well as employees of labor unions. (10 minutes)

12. Rooney (FL): Allows employees to petition for a union certification election when fewer than 50% of current 'unit members' were members during the last election. (10 minutes)

13. Vargas (CA): Requires regional directors to transmit the Notice of Election at the same time as the Direction of Election. Both the Notice and the Direction must be transmitted electronically—

including by email or fax—and if neither are possible, must be transmitted by over-night mail. (10 minutes)

14. Tlaib (MI): Requires employers to post a Notice of a Petition for Election within two days after the NLRB notifies an employer and union about a pre-election hearing, thereby restoring the 2014 Election Rule. (10 minutes)

15. Lawrence (MI): Eliminates the waiting period for union elections and returns the requirement that NLRB's regional directors schedule elections as "early as practicable." The amendment ensures that the election will happen no later than 20 days after it's directed, unless extraordinary circumstances warrant otherwise. (10 minutes)

16. Rouda (CA): Clarifies that nothing in this Act shall be construed to affect the jurisdictional standards of the NLRB with respect to small businesses. (10 minutes)

SUMMARY OF THE AMENDMENTS TO H.R. 5687 IN PART C MADE IN ORDER

1. Shalala (FL), González-Colón, Jenniffer (PR), Hastings (FL), McGovern (MA), Murphy, Stephanie (FL): Increases funding to conduct a study on the impacts on educational attainment, long-term economic opportunities and well-being of students from Puerto Rico who have had to disrupt or change their educational path due to a natural disaster. (10 minutes)

2. González-Colón, Jenniffer (PR), DeLauro (CT), Soto (FL), Velázquez (NY), Serrano (NY): Increases the amount for Puerto Rico disaster nutrition assistance to $210,000,000. (10 minutes)

3. Plaskett (VI): Increases Department of Energy technical assistance for the post-disaster recovery of electrical grids in U.S. territories by $3 million. (10 minutes)

4. Crenshaw (TX), Fletcher (TX): Appropriates an additional $45,000,000 for the implementation of revised duplication of benefits rules for those impacted by Hurricane Harvey. (10 minutes)

5. Tlaib (MI), Velázquez (NY), Ocasio-Cortez (NY): Ensures meaningful access to individuals with limited English proficiency to the public information maintained by grantees of the Department of Housing and Urban Development's Community Development Fund. (10 minutes)

6. Levin, Andy (MI): Increases and decreases amount for Community Development Fund by $1,000,000 to prioritize funding for renewable energy projects that will enhance the long-term resiliency of Puerto Rico's infrastructure. (10 minutes)

PART A—TEXT OF AMENDMENT TO H.R. 2474 CONSIDERED AS ADOPTED

Page 32, line 8, redesignate section 5 as section 6.

Page 32, after line 7, insert the following:

SEC. 5. RULE OF CONSTRUCTION.

The amendments made under this Act shall not be construed to amend section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a).

PART B—TEXT OF AMENDMENTS TO H.R. 2474 MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MORELLE OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

On page 32, line 8, redesignate section 5 as section 6.

On page 32, after line 7, insert the following:

SEC. 5. RULE OF CONSTRUCTION.

The amendments made under this Act shall not be construed to affect the definitions of "employer" or "employee" under the laws of any State that govern the wages, work hours, workers' compensation, or unemployment insurance of employees.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FOXX OF NORTH CAROLINA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Beginning on page 14, line 25, strike "the names of all employees" and all that follows through "personal email addresses" on page 15, line 4, and insert "the names of all employees in the bargaining unit and not more than one additional form of personal contact information for the employee, (such as a telephone number, an email address, or a mailing address) chosen by the employee in writing".

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE NORCROSS OF NEW JERSEY OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

On page 19, line 15, insert "and shall continue from day to day until completed" after "organization".

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ROE OF TENNESSEE OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 7, line 22, strike "and".

Page 8, line 14, strike "and".

Page 8, line 18, strike the period and insert "; and".

Page 8, after line 18, insert the following:

"(7) to recognize or bargain collectively with a labor organization that has not been selected by a majority of such employees in a secret ballot conducted by the board in accordance with section 9.".

Page 9, beginning line 1, amend subparagraph (D) to read as follows:

(D) by adding at the end the following:

"(6) to cause or attempt to cause an employer to recognize or bargain collectively with a representative of a labor organization that has not been selected by a majority of such employees in a secret ballot election conducted by the Board in accordance with section 9.".

Page 18, line 3, strike "(A) If the Board" and insert "If the Board".

Strike page 18, line 9, and all that follows through page 19, line 9.

Add at the end the following new section:

SEC. __. SECRET BALLOT ELECTIONS.

(a) SECRET BALLOT ELECTION.—Section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)) is amended by inserting after "designated or selected" the following: "by a secret ballot election conducted in accordance with this section".

(b) APPLICABILITY OF CERTAIN AMENDMENTS.—

(1) IN GENERAL.—The amendments described in paragraph (2) shall not apply to collective bargaining relationships in which a labor organization with majority support was lawfully recognized before the date of the enactment of this Act.

(2) AMENDMENTS LISTED.—The amendments described under this paragraph are the amendments—

(A) made under subsection (a) of this section;

(B) to subsection (a)(7) of section 8 of the National Labor Relations Act (29 U.S.C. 158); and

(C) to subsection (b)(6) of such section of such Act.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WILD OF PENNSYLVANIA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

On page 32, line 8, redesignate section 5 as section 6.

On page 32, after line 7, insert the following:

SEC. 5. RULE OF CONSTRUCTION.

The amendments made under this Act shall not be construed to affect the privacy of employees with respect to voter lists provided to labor organizations by employers pursuant to elections directed by the Board.

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6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ALLEN OF GEORGIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike subsection (k) of section 2.

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7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HAYES OF CONNECTICUT OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 19, line 18, strike "and" after the semicolon.

Page 19, line 20, striking the period at the end and insert "; and".

Page 19, after line 20, insert the following:

(3) by adding at the end the following new subsection:

"(f) The Board shall dismiss any petition for an election with respect to a bargaining unit or any subdivision if, during the preceding 12-month period, the employer has recognized a labor organization without an election and in accordance with this Act.".

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8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KELLER OF PENNSYLVANIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 30, strike line 11 and all that follows through line 16.

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9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE STEVENS OF MICHIGAN OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Redesignate section 5 as section 6, and insert after section 4 the following:

SEC. 5. GAO REPORT ON SECTORAL BARGAINING.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Comptroller General, in consultation with the persons described in subsection (b), shall prepare and submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report, that—

(1) identifies and analyzes the laws, policies, and procedures in countries outside the United States governing collective bargaining at the level of an industry sector, including the laws, policies, and procedures involved in—

(A) the administrative system facilitating such bargaining;

(B) how collective bargaining agreements are rendered binding on all firms in an industry sector;

(C) defining an industry sector;

(D) the relationship between collective bargaining at the level of an individual employer or group of employers and at the level of an industry sector;

(E) the designation of representatives for collective bargaining at the level of an industry sector;

(F) the scope of collective bargaining and impasses at the level of an industry sector; and

(G) the provision or administration of benefits by labor organizations (such as unemployment insurance), or union security at the firm level or the level of an industry sector, to cover the costs of collective bargaining at the level of an industry sector;

(2) conducts a comparative analysis of the laws, policies, and procedures specified in paragraph (1) that have been enacted in countries outside the United States;

(3) to the extent practicable, identifies the effects of such laws, policies, and procedures on—

(A) the wages and compensation of employees;

(B) the number of employees, disaggregated by full-time and part-time employees;

(C) prices, sales, and revenues;

(D) employee turnover and retention;

(E) hiring and training costs;

(F) productivity and absenteeism; and

(G) the development of emerging industries, including those that engage their workforces through technology; and

(4) describes the methodology used to generate the information in the report.

(b) EXPERT CONSULTATION.—The persons described in this subsection are—

(1) workers and the labor organizations representing such workers;

(2) representatives of businesses;

(3) the National Labor Relations Board;
(4) the International Labor Organization; and
(5) the International Labor Affairs Bureau of the Department of Labor.

(c) CONGRESSIONAL ASSESSMENT AND RECOMMENDATIONS.—Not later than 60 days after the date on which the report is submitted under subsection (a), the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate shall—

(1) assess the findings of such report; and
(2) make recommendations with respect to actions of Congress to address the findings of such report.

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10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MEADOWS OF NORTH CAROLINA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike page 30, line 17, and all that follows through page 31, line 2.

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11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON LEE OF TEXAS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

On page 31, line 18, strike "Section 203(c)" and insert "(a) IN GENERAL.—Section 203(c)".

On page 32, after line 7, insert the following:

(b) WHISTLEBLOWER PROTECTIONS.—The Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 et seq.) is further amended—

(1) by redesignating section 611 (29 U.S.C. 531) as section 612; and
(2) by inserting after section 610 (29 U.S.C. 530), the following new section:

"WHISTLEBLOWER PROTECTIONS

"SEC. 611.

"(a) IN GENERAL.—No employer or labor organization shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any applicant, covered employee, or former covered employee, of the employer or the labor organization by reason of the fact that such applicant, covered employee, or former covered employee does, or the employer or labor organization perceives the employee to do, any of the following:

"(1) Provide, cause to be provided, or is about to provide or cause to be provided, information to the labor organization, the Department of Labor, or any other State, local, or Federal Government authority or law enforcement agency relating to any violation of, or any act or omission that such employee reasonably believes to be a violation of, any provision of this Act.

"(2) Testify or plan to testify or otherwise participate in any proceeding resulting from the administration or enforcement of any provision of this Act.

"(3) File, institute, or cause to be filed or instituted, any proceeding under this Act.

"(4) Assist in any activity described in paragraphs (1) through (3).

"(5) Object to, or refuse to participate in, any activity, policy, practice, or assigned task that such covered employee reasonably believes to be in violation of any provision of this Act.

"(b) DEFINITION OF COVERED EMPLOYEE.—For the purposes of this section, the term 'covered employee' means any employee or agent of an employer or labor organization, including any person with management responsibilities on behalf of the employer or labor organization.

"(c) PROCEDURES AND TIMETABLES.—

"(1) COMPLAINT.—

"(A) IN GENERAL.—An applicant, covered employee, or former covered employee who believes that he or she has been terminated or in any other way discriminated against by any person in violation of subsection (a) may file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such violation. Such a complaint must be filed not later than either—

"(i) 180 days after the date on which such alleged violation occurs; or

"(ii) 180 days after the date upon which the employee knows or should reasonably have known that such alleged violation in subsection (a) occurred.

"(B) ACTIONS OF SECRETARY OF LABOR.—Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of—

"(i) the filing of the complaint;

"(ii) the allegations contained in the complaint;

"(iii) the substance of evidence supporting the complaint; and

"(iv) opportunities that will be afforded to such person under paragraph (2).

"(2) INVESTIGATION BY SECRETARY OF LABOR.—

"(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1), and after affording the complainant and the person named in the complaint who is alleged to have committed the violation that is the basis for the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall—

"(i) initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit; and

"(ii) notify the complainant and the person alleged to have committed the violation of subsection (a), in writing, of such determination.

"(B) GROUNDS FOR DETERMINATION OF COMPLAINTS.—The Secretary of Labor shall dismiss a complaint filed under this subsection, and shall not conduct an investigation otherwise required under paragraph (2), unless the complainant makes a prima facie showing that any behavior de-

scribed in paragraphs (1) through (5) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

"(3) BURDENS OF PROOF.—

"(A) CRITERIA FOR DETERMINATION.—In making a determination or adjudicating a complaint pursuant to this subsection, the Secretary, an administrative law judge or a court may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any conduct described in subsection (a) with respect to the complainant was a contributing factor in the adverse action alleged in the complaint.

"(B) PROHIBITION.—Notwithstanding subparagraph (A), a decision or order that is favorable to the complainant shall not be issued in any administrative or judicial action pursuant to this subsection if the respondent demonstrates by clear and convincing evidence that the respondent would have taken the same adverse action in the absence of such conduct.

"(C) NOTICE OF RELIEF AVAILABLE.—If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall, together with the notice under subparagraph (A)(ii), issue a preliminary order providing the relief prescribed by paragraph (4)(B).

"(D) REQUEST FOR HEARING.—Not later than 30 days after the date of receipt of notification of a determination of the Secretary of Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

"(E) PROCEDURES.—

"(i) IN GENERAL.—A hearing requested under this paragraph shall be conducted expeditiously and in accordance with rules established by the Secretary for hearings conducted by administrative law judges.

"(ii) SUBPOENAS; PRODUCTION OF EVIDENCE.— In conducting any such hearing, the administrative law judge may issue subpoenas. The respondent or complainant may request the issuance of subpoenas that require the deposition of, or the attendance and testimony of, witnesses and the production of any evidence (including any books, papers, documents, or recordings) relating to the matter under consideration.

"(4) ISSUANCE OF FINAL ORDERS; REVIEW PROCEDURES.—

"(A) TIMING.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At

any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

"(B) AVAILABLE RELIEF.—

"(i) ORDER OF SECRETARY OF LABOR.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation—

"(I) to take affirmative action to abate the violation;

"(II) to reinstate the complainant to his or her former position, together with compensation (including back pay with interest) and restore the terms, conditions, and privileges associated with his or her employment;

"(III) to provide compensatory damages to the complainant; and

"(IV) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant's direction, transmission of a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information.

"(ii) COSTS AND EXPENSES.—If an order is issued under clause (i), the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued, a sum equal to the aggregate amount of all costs and expenses (including attorney fees and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

"(C) FRIVOLOUS CLAIMS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer or labor organization a reasonable attorney fee, not exceeding $1,000, to be paid by the complainant.

"(D) DE NOVO REVIEW.—

"(i) FAILURE OF THE SECRETARY TO ACT.—If the Secretary of Labor has not issued a final order within 270 days after the date of filing of a complaint under this subsection, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States having jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy,

and which action shall, at the request of either party to such action, be tried by the court with a jury.

"(ii) PROCEDURES.—A proceeding under clause (i) shall be governed by the same legal burdens of proof specified in paragraph (3). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

"(I) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

"(II) the amount of back pay, with interest;

"(III) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney fees; and

"(IV) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant's direction, transmission of a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information.

"(E) OTHER APPEALS.—Unless the complainant brings an action under subparagraph (D), any person adversely affected or aggrieved by a final order issued under subparagraph (A) may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation, not later than 60 days after the date of the issuance of the final order of the Secretary of Labor under subparagraph (A). Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. An order of the Secretary of Labor with respect to which review could have been obtained under this subparagraph shall not be subject to judicial review in any criminal or other civil proceeding.

"(5) FAILURE TO COMPLY WITH ORDER.—

"(A) ACTIONS BY THE SECRETARY.—If any person has failed to comply with a final order issued under paragraph (4), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to have occurred, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief, compensatory and punitive damages.

"(B) CIVIL ACTIONS TO COMPEL COMPLIANCE.—A person on whose behalf an order was issued under paragraph (4)

may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

"(C) AWARD OF COSTS AUTHORIZED.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

"(D) MANDAMUS PROCEEDINGS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

"(d) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—Notwithstanding any other provision of law, the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

"(e) SAVINGS.—Nothing in this subsection shall be construed to diminish the rights, privileges, or remedies of any employee who exercises rights under any Federal or State law or common law, or under any collective bargaining agreement.".

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12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ROONEY OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 16, beginning line 1, strike subparagraph (A) and insert the following:

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "or" at the end;

(ii) in subparagraph (B), by adding "or" at the end; and

(iii) by inserting after subparagraph (B) the following new subparagraph:

"(C) by an employee or a group of employees or any individual or labor organization acting in their behalf, or an employer, alleging that the labor organization that has been certified or is currently recognized by the employer as the bargaining representative is no longer a representative as defined in subsection (a), if—

"(i) fewer than 50 percent of the members of the bargaining unit in question had an opportunity to vote in the certification election that resulted in certifying the labor organization then recognized as the bargaining representative for such unit; or

"(ii) no certification election was conducted regarding such unit;";

Page 17, after line 8, insert the following:

(B) in paragraph (2), by adding at the end the following: "When a petition is filed under paragraph (1)(C), a question of representation affecting commerce exists if the peti-

tioner establishes the existence of the circumstances described in paragraph (1)(C)(i) or paragraph (1)(C)(ii).";

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13. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE VARGAS OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

On page 19, line 15, strike "and".
On page 19, after line 15, insert the following:

"(B) a regional director shall transmit the notice of election at the same time as the direction of election, and shall transmit such notice and such direction electronically (including transmission by email or facsimile) or by overnight mail if electronic transmission is unavailable; and".

On page 19, line 16, strike "(B)" and insert "(C)".

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14. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TLAIB OF MICHIGAN OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

On page 19, line 15, strike "and".
On page 19, after line 15, insert the following:

"(B) not later than 2 days after the service of the notice of hearing, the employer shall—

"(i) post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted;

"(ii) if the employer customarily communicates with employees electronically, distribute such Notice electronically; and

"(iii) maintain such posting until the petition is dismissed or withdrawn or the Notice of Petition for Election is replaced by the Notice of Election; and".

On page 19, line 16, strike "(B)" and insert "(C)".

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15. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LAWRENCE OF MICHIGAN OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

On page 19, line 15, strike "and".
On page 19, after line 15, insert the following:

"(B) regional directors shall schedule elections for the earliest date practicable, but not later than the 20th business day after the direction of election; and".

On page 19, line 16, strike "(B)" and insert "(C)".

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16. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ROUDA OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Redesignate section 5 as section 6.
After section 4, insert the following:

SEC. 5. RULE OF CONSTRUCTION.

The amendments made by this Act shall not be construed to affect the jurisdictional standards of the National Labor Relations Board, including any standards that measure the size of a business with respect to revenues, that are used to determine whether an

industry is affecting commerce for purposes of determining coverage under the National Labor Relations Act (29 U.S.C. 151 et seq.).

PART C—TEXT OF AMENDMENTS TO H.R. 5687 MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SHALALA OF FLORIDA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, line 25, after the dollar amount, insert "(increased by $1,000,000)".

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GONZÁLEZ–COLÓN OF PUERTO RICO OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 27, line 7, after the dollar amount, insert "(increased by $170,000,000)".

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PLASKETT OF VIRGIN ISLANDS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, line 5, after the dollar amount, insert "(increased by $3,000,000)".

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CRENSHAW OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 20, line 7, after the dollar amount, insert "(increased by $45,000,000)".

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TLAIB OF MICHIGAN OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 16, line 11, insert after "information" the following: ", ensuring meaningful access for individuals with limited English proficiency in accordance with the Final Guidance issued by the Department of Housing and Urban Development on January 22, 2007 (72 Fed. Reg. 2732),".

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6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LEVIN OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 12, line 18, after the dollar amount, insert "(reduced by $1,000,000)(increased by $1,000,000)".

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