THE FUTURE OF UNION TRANSPARENCY AND ACCOUNTABILITY

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH,
EMPLOYMENT, LABOR AND PENSIONS

COMMITTEE ON EDUCATION
AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

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THE FUTURE OF UNION TRANSPARENCY AND ACCOUNTABILITY

Thursday, March 31, 2011
U.S. House of Representatives
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and the Workforce
Washington, DC

The subcommittee met, pursuant to call, at 10:04 a.m., in room 2175, Rayburn House Office Building, Hon. David P. Roe [chairman of the subcommittee] presiding.

Present: Representatives Roe, Walberg, DesJarlais, Rokita, Bucshon, Barletta, Heck, Andrews, Loebsack, Kildee, Hinojosa, McCarthy, Tierney, Wu, Holt, and Scott.

Staff present: Katherine Bathgate, Press Assistant/New Media Coordinator; Kirk Boyle, General Counsel; Casey Buboltz, Coalitions and Member Services Coordinator; Ed Gilroy, Director of Workforce Policy; Marvin Kaplan, Professional Staff Member; Barrett Karr, Staff Director; Ryan Kearney, Legislative Assistant; Donald McIntosh, Professional Staff Member; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Ken Serafin, Workforce Policy Counsel; Alex Sollberger, Communications Director; Linda Stevens, Chief Clerk/Assistant to the General Counsel; Alissa Strawcutter, Deputy Clerk; Aaron Albright, Communications Director for Labor; Tylease Alli, Hearing Clerk; Daniel Brown, Staff Assistant; Jody Calemine, Staff Director; Brian Levin, New Media Press Assistant; Jerrica Mathis, Legislative Fellow, Labor; Megan O'Reilly, General Counsel; and Michele Varnhagen, Chief Policy Advisor and Labor Policy Director.

Chairman ROE [presiding]. A quorum being present, the subcommittee will come to order.

Good morning, everyone.

Welcome to our witnesses, and thank you for joining us today. We appreciate your views and expertise on how we can best ensure union transparency and accountability.

It has been almost 2 years since the recession that struck our economy in late 2007 officially ended. However, as we are reminded with the release of virtually every set of updated economic data, many Americans continue to struggle.

More than 13 million workers are unemployed, and food and energy prices continue to rise. Budgets are stretched thin as families try to make ends meet.

On payday, at the grocery store and at the gas pump, Americans recognize the value of every hour worked and every dollar earned. Whether it is their tax dollars or union dues, workers deserve to know how their hard-earned money is being spent.

Joining a union is a right reserved by law for the American worker. Today, 6.9 percent of private sector workers have decided to obtain union representation. Congress has a longstanding responsibility to shine a bright light on how the dues of union workers are being spent.

In 2009, unions reported collecting more than $8 billion in workers' dues. This figure alone highlights the importance of union transparency.

In an effort to improve transparency, the Labor Management Reporting and Disclosure Act was enacted in 1959. The act guarantees basic standards of democracy and fiscal responsibility in unions representing private sector workers. Among its protections the act sets out standards for union officer elections and administrative practices, and requires the disclosure of certain financial transactions and the balance of union funds and assets.

The Office of Labor Management Standards, located within the Department of Labor, is charged with enforcing the law. In recent years, important progress has been made in strengthening the law's protections. Starting in 2003, OLMS reformed the enforcement process to better reflect the needs of a 21st century workforce.

More than 40 years after the law's enactment, transparency and accountability were finally enhanced on behalf of union workers.

Unfortunately, this progress is now under assault by the culture of union favoritism that dominates the workforce policies of the current administration. Under President Obama's watch, the Department of Labor has rolled back many of these enhanced protections to benefit bosses at the expense of workers.

One clear example of this trend can be seen in the administration's recent decision to rescind the Form T-1 reporting requirements. After years of work and legal review, the Department of Labor finalized the T-1 form to provide greater transparency of the finances of trusts controlled by union officials.

For the first time, workers would have had access to detailed information about receipts, disbursements and officer compensation for thousands of trusts that receive union dues, such as strike funds and job targeting funds.

Yet, before a single report could be filed, the administration revoked the T-1 requirement. The administration's position is this information is valuable to workers only if the trust is wholly owned by a single union. However, union workers' dues are deposited in a trust controlled by more than one entity are not allowed the same degree of transparency.

Greater protections for some and not for others is a disservice to all workers.

The administration has also weakened reporting requirements on the Form LM-2 and proposed weakening the LM-30 reporting requirements that once provided unprecedented information to union workers. Enhanced reporting of LM-2 would have amounted to just

15 hours of additional administrative work for union officials annually.

The administration has also significantly reduced the number of union audits, undermining a once robust audit program that identified numerous violations of the law.

For more than 7 million private sector union members, the majority of whom are forced to pay union dues in non-right-to-work states, these reporting requirements are the only way to see how their union dues are spent and judge the action of their union officials. Workers should be empowered with the knowledge of how their hard-earned dollars are being spent during the times of both economic turmoil and prosperity.

Today's hearing will help determine whether workers have the tools they need to do just that.

I now yield to Mr. Andrews, the subcommittee's senior Democratic member, for his opening remarks.

[The statement of Dr. Roe follows:]

Prepared Statement of Hon. David P. Roe, Chairman, Subcommittee on Health, Employment, Labor and Pensions

Good morning everyone. Welcome to our witnesses; thank you for joining us today. We appreciate your views and expertise on how we can best ensure union transparency and accountability.

It has been almost two years since the recession that struck our economy in late 2007 officially ended. However, as we are reminded with the release of virtually every set of updated economic data, many Americans continue to struggle. More than 13 million workers are unemployed, and food and energy prices continue to rise. Budgets are stretched thin as families try to make ends meet.

On pay day, at the grocery store, and at the gas pump, Americans recognize the value of every hour worked and every dollar earned. Whether it is their tax dollars or union dues, workers deserve to know how their hard-earned money is being spent.

Joining a union is a right reserved by law for American workers. Today, 6.9 percent of private-sector workers have decided to obtain union representation. Congress has a long-standing responsibility to shine a bright light on how the dues of union workers' are being spent. In 2009, unions reported collecting more than $8 billion in workers' dues. This figure alone highlights the importance of union transparency.

In an effort to improve transparency, the Labor-Management Reporting and Disclosure Act was enacted in 1959. The act guarantees basic standards of democracy and fiscal responsibility in unions representing private sector workers. Among its protections, the act sets out standards for union officer election and administrative practices and requires the disclosure of certain financial transactions and the balance of union funds and assets.

The Office of Labor-Management Standards, located within the Department of Labor, is charged with enforcing the law. In recent years, important progress has been made in strengthening the law's protections. Starting in 2003, OLMS reformed the enforcement process to better reflect the needs of a 21st century workforce. More than 40 years after the law's enactment, transparency and accountability were finally enhanced on behalf of union workers.

Unfortunately, this progress is now under assault by a culture of union favoritism that dominates the workforce policies of the current administration. Under President's Obama watch, the Department of Labor has rolled back many of these enhanced protections to benefit union bosses at the expense of workers.

One clear example of this trend can been seen in the administration's most recent decision to rescind the form T-1 reporting requirements. After years of work and legal review, the Department of Labor finalized the T-1 form to provide greater transparency of the finances of trusts controlled by union officials. For the first time, workers would have had access to detailed information about receipts, disbursements, and officer compensation for thousands of trusts that receive union dues, such as strike funds and job targeting funds.

Yet before a single report could be filed, the administration revoked the T-1 requirement. The administration's position is this information is valuable to workers only if the trust is wholly owned by a single union. However, workers whose dues

are deposited in a trust controlled by more than one entity are not allowed the same degree of transparency. Greater protections for some and not for others do a disservice to all workers.

The administration has also weakened reporting requirements on the form LM-2 and proposed weakening the form LM-30, reporting requirements that once provided unprecedented information to union workers. Enhanced reporting of the LM-2 would have amounted to just 15 hours of additional administrative work for union officials annually. The administration has also significantly reduced the number of union audits, undermining a once robust audit program that identified numerous violations of the law.

For more than seven million private sector union members, the majority of whom are forced to pay union dues in non-right-to-work states, these reporting requirements are the only way to see how their union dues are spent and judge the actions of their union officials.

Workers should be empowered with the knowledge of how their hard-earned dollars are being spent, during times of both economic turmoil and prosperity. Today's hearing will help determine whether workers have the tools they need to do just that. I would like to now yield to Mr. Andrews, the subcommittee's senior Democrat member, for his opening remarks.

Mr. ANDREWS. Senior? That sounds so foreboding.

Thank you, Mr. Chairman, for your courtesy and professionalism, and that of your staff.

We are happy to have the witnesses with us here this morning. We look forward to your testimony and appreciate your participation.

I think the beginning of the chairman's remarks were right on point. We have more than 13 million Americans unemployed as we meet this morning. It is actually about 15 million.

And everywhere I go in my district and, frankly, around the country, what I am hearing is that those Americans and their neighbors want us to find a way to work together to create an environment in which entrepreneurs and small businesses can create jobs in our country. I think that ought to be the principal focus of the Congress' agenda.

Our committee could be finding ways to help make pension assets more available more readily for workers who are late in their careers and cannot find another job. But we are not doing that.

Our committee could be working together to try to find ways to more quickly restrain health care costs for employers and employees to make the business climate more favorable. We are not doing that.

Our committee could be working together to try to find ways to most effectively engage in job training, so people who lost a job or a career in a diminishing industry could find a way to shift to a growing industry. But we are not doing that.

Instead what we are doing is engaging in what I believe is a political exercise to highlight what the chairman referred to as a "culture of union favoritism" at the OLMS.

Let us examine the factual basis for that claim.

If there were a culture of union favoritism, one would expect that three results would obtain. First, one would expect that there would be fewer indictments or actions initiated against improper union conduct than there had been previously.

So, in other words, there would be a drop in the number of indictments from the Bush administration compared to the Obama administration.

In fact, the opposite is the case. The average number of indictments by the OLMS in the Bush years was 122. The average number of indictments in the Obama years has been 126.

The next that that you would assume would obtain, if there was in fact a culture of union favoritism is that the number of convictions for wrongful conduct would have dropped from the Bush years to the Obama years.

In fact, the opposite is true. In the years that the Bush Labor Department was running this operation, the average convictions were 113 per year. The average number of convictions in the Obama administration has been 125 convictions per year.

And then the third claim that one might make is that the administration is not giving the OLMS the resources that it needs to do its job, whether it is conducting audits, filing indictments or winning convictions.

Well, it is interesting to see that, in 1985, the OLMS was spending about $4.01 per worker covered by the OLMS protections in inflation-adjusted dollars. In other words, in 2010 dollars, we are spending $4 per worker covered by this law in America.

You would think, that if there is a culture of union favoritism, that that resource number would have dropped. In fact, in 2010, we are spending $5.82 per covered worker in 2010 dollars.

So, the hypothesis here—because I know the chairman likes the scientific method as a good scientist, and so do I—the hypothesis is there is a culture of union favoritism under this administration at the OLMS.

The fact is that the number of indictments has gone up, not down. The fact is that the number of convictions has gone up, not down. And the fact is, the dollars expended per worker to enforce these protections has gone up, not down.

So, what we expect to engage in with these very fine, competent witnesses today, is their explanation as to why it is, if, given these facts, that in fact there is a culture of union favoritism.

We look forward to the discussion, and I thank the chairman for the time.

Chairman ROE. I thank the ranking member for yielding back.

Pursuant to rule 7c, all members will be permitted to submit written statements to be included in the permanent hearing record.

And without objection, the hearing record will remain open for 14 days to allow questions for the record, statements and extraneous material referenced during the hearing, to be submitted for the official hearing record.

Now, I would like to take this opportunity to thank our witnesses for being here and introduce them. It is my pleasure to introduce our distinguished panel.

Mr. Nathan Mehrens is currently the counsel for Americans for Limited Government. From February 2006 to January 2010, Mr. Mehrens served as a special assistant to the deputy secretary of labor for labor management programs. While at OLMS, he assisted in the drafting of the Form T-1 and the Form LM-2. Mr. Mehrens received his J.D. from Oak Brook College of Law and Government Policy.

And Ms. Diana Furchtgott-Roth is a senior fellow and director of the Center for Employment Policy at the Hudson Institute. Prior

to joining the Hudson Institute, Ms. Furchtgott-Roth was chief economist of the U.S. Department of Labor.

From 2001 to 2002, she served as chief of staff of the President's Council of Economic Advisers under then-President George W. Bush, and also served as deputy executive director of the Domestic Policy Council and associate director of the Office of Policy Planning in the White House from 1991 to 1993. She received her B.A. in economics from Swarthmore College and her master's in philosophy in economics from Oxford University.

Dr. John Logan is associate professor and director of labor studies at San Francisco State University and a senior labor policy specialist with U.C.-Berkeley's Labor Center. Dr. Logan is an expert in U.S. labor law and law policy labor management relations and comparisons between U.S. and other countries' labor law, corporate social responsibility and the union avoidance industry in the United States. Dr. Logan received his Ph.D. in U.S. labor history from the University of California-Davis.

Mr. Arthur Fox is counsel for the Association for Union Democracy. Mr. Fox specializes in labor relations with an emphasis on the internal affairs of unions, the democratic rights of members and the union duty of fair representation.

He has represented numerous victims of union political repression and served as an outside general counsel for the National Postal Mail Handlers Union and the National Association of Air Traffic Specialists and the Fraternal Order of the Police Corrections Unit. Mr. Fox received his B.A. and LL.B. from the University of Virginia.

Mr. Fox will be testifying on behalf of the Association of Union Democracy, the only national pro-labor and non-profit organization dedicated solely to advancing the principles and practices of democratic trade unionism in the North American labor movement.

Now, for the witness testimony. Before I recognize each of you for your testimony, let me briefly explain the lighting system.

Many of you have done this before, but you will have 5 minutes to present your testimony. And when you begin, the light in front of you will turn green, as it will for us. And when 1 minute is left, the light will turn yellow, and when your time has expired, the light will turn red, at which point I would ask you to wrap up your remarks as best you can.

After everyone has testified, each member will have 5 minutes to ask questions of the panel. And the chairman will also gavel himself down at 5 minutes.

Before we start, I would like to ask if any of you have any of your Final Four picks correctly. I do not. I am an "oh-fer" in all that. If anybody up here got any of the Final Four picks right——

Mr. ANDREWS. Shockingly, I had Bucknell going to the Final Four, and they were upset by Connecticut in the first round.

Chairman ROE. Well, if you did, you do not know anything about basketball, if you picked any of them right.

So, thank you.

With that, let us have your opening remarks.

Mr. Mehrens?

STATEMENT OF NATHAN PAUL MEHRENS, COUNSEL, AMERICANS FOR LIMITED GOVERNMENT RESEARCH FOUNDATION

Mr. MEHRENS. Mr. Chairman, Mr. Ranking Member and members of the committee, thank you for the invitation to testify today.

I would like to touch on a few key areas where I believe that the actions of the U.S. Department of Labor and its Office of Labor Management Standards over the last 2 years have damaged the ability of that office to enforce the Labor Management Reporting and Disclosure Act of 1959.

The act, among other things, provides for labor organization financial transparency, and OLMS has been delegated enforcement responsibilities for most of the act's provisions. Pursuant to the act, OLMS has promulgated a number of financial report forms, which are filed by labor organizations, their officers and employees, as well as consultants and outside employers.

Prior to 2001, the main financial report form used by labor organizations—the largest labor organizations—to report their finances, the Form LM-2, was just a very basic form. It only reported the basic information.

However, that changed during the tenure of the previous administration. Under the leadership of Secretary Elaine L. Chao, the Form LM-2 was overhauled. The new Form LM-2 required, among other things, the reporting of functional disbursements in categories such as representational activities, political activities and lobbying, and contributions, gifts and grants.

Labor organizations were no longer able to report millions of dollars on a single line item. But now, individual disbursements in the functional categories were required to be disclosed if they were $5,000 or more.

Part of the overhaul was the creation of a new form, Form T-1, on which unions were to report the finances of trusts in which they are interested. These are trusts such as building funds, strike funds and training funds. They generally have a lower level of disclosure and, in some cases, act like offshore accounts.

In addition, the department also made a few select enhancements to the Form LM-2 in a final rule that was published on January 21, 2009. These enhancements would have required, among other things, the reporting of the full dollar value of the compensation packages paid to officers and employees of labor organizations.

The old Form LM-2 did not adequately disclose this information. And research by the department found that significant amounts of money were disbursed to these officers and employees, but that money was not attributed to them on the form, due to that form's structure. That changed under the January 21, 2009, final rule.

However, even before the Obama administration was sworn in, there were signs that the new administration would work aggressively to reduce the staff and resources of OLMS, as well as to roll back the improvements in transparency that were promulgated during the previous administration.

During the presidential transition period, the AFL-CIO provided a document to the transition team that was a road map that showed how to roll back a lot of the transparency.

After assuming office, the Obama administration first froze the effective date of the January 21, 2009, enhancements to the final

rule and then rescinded that rule altogether. The administration also did the same to the Form T-1. It is now gone.

Additionally, the department has slashed the budget of OLMS. In fiscal year 2006, OLMS had a full-time equivalent allocation of 384. For fiscal year 2012, the department's budget request is for 249.

This represents a 35 percent reduction in staff from the fiscal year 2006 level, and it is only a matter of time before these staff cuts turn into reduced enforcement activities. And indeed, the department's own budget justification numbers bear this out.

As part of its staff reduction, OLMS completely disbanded the Division of International Union Audits, a division that had responsibility for auditing the largest labor organizations in the country, some of which have assets that are huge, have received disbursements of over $600 million in some cases.

On page 21 of its budget justification, OLMS flatly states that it plans to conduct quote,—"zero I-CAP audits in FY 2012,"—end quote.

So, imagine for a moment the outrage that would occur if the Securities and Exchange Commission publicly announced that it was disbanding the only division within it that audited the largest organizations that it had jurisdiction over, and then publicly announced that it would conduct no audits of them in the coming year.

In the same vein of reducing transparency, OLMS enforcement data is notably missing from what is supposed to be a department-wide, online enforcement database. While this database discloses a lot of data from a bunch of different organizations within the department such as OSHA, MSHA, EBSA, OFCCP and the Wage and Hour Division, there is no data from OLMS.

These actions and others, taken together, demonstrate that the administration is working very hard to roll back the clock at least 10 years and to provide less transparency for labor organization members and the public.

Thank you, and happy to answer any questions you may have.

[The statement of Mr. Mehrens follows:]

Prepared Statement of Nathan Paul Mehrens, Counsel, Americans for Limited Government Research Foundation

Mr. Chairman, Mr. Ranking Member, and Members of the Committee, thank you for the invitation to testify today.

I would like to briefly touch on a few key areas where I believe the actions of the

U.S. Department of Labor and its Office of Labor-Management Standards (OLMS) during the last two years have significantly damaged the ability of OLMS to enforce the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).

As you know the LMRDA was passed with wide bi-partisan support. In the Senate the bill passed with 95 votes and the House passed it with 352 votes.[1] Before the Act was passed Congress held hearings over a two year period on 270 days and called over 1,500 witnesses.[2] The Act among other things provides for labor organization financial transparency and OLMS has been delegated the responsibility for enforcing most of the Act's provisions. The Act is an important piece of legislation and requires serious, dedicated attention from OLMS in order work effectively. Pursuant to the Act OLMS has promulgated several financial reports that are required

[1] NATIONAL LABOR REL. BD., LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, 1738, 9 (1985). See also Id., at 1453.

[2] See Michael J. Nelson, Slowing Union Corruption: Reforming the Landrum-Griffin Act to Better Combat Union Embezzlement, 8 GEO MASON L. REV. 527, 33 (2000).

to be filed by labor pieces of major legislation, the LMRDA is only as good as the Secretary who enforces it.

Prior to 2001 the annual financial form used by the largest labor organizations to report their finances, the Form LM-2, reported only basic information.

During Secretary Elaine L. Chao's tenure the Form LM-2 was overhauled. The new Form LM-2 required among other things the reporting of disbursements in functional expense categories such as "Representational Activities," "Political Activities and Lobbying," and "Contributions, Gifts & Grants." Labor organizations were no longer able to report $42 million as a single line item, but now individual disbursements of $5,000 or more in categories such as these were required to be separately disclosed.

Part of that overhaul was the creation of a Form T-1 on which unions would report the finances of "trusts in which a labor organization is interested." These are trusts such as building funds, strike funds, and training funds. These generally have a lower level of disclosure and in some cases act like "offshore accounts" for labor organizations.

In addition to the major overhaul of the Form LM-2 the Department also made a few select enhancements to the form in a final rule that was published on January 21, 2009. These enhancements would have required among other things the reporting of the full dollar value of compensation packages that labor organizations pay to their officers and most employees. The old Form LM-2 did not adequately disclose this were disbursed to labor organization officers and employees and on their behalf, money that was not attributed to them due to the structure of the form. That changed under the January 21, 2009 final rule.

However, even before President Obama was sworn in there were signs that the new Administration would work aggressively to reduce the staff and resources of OLMS as well as to rollback the improvements in transparency that were promulgated under President George W. Bush and Secretary Elaine L. Chao. During the presidential transition period, the AFL-CIO provided the Department with a roadmap of changes to reduce labor organization transparency. It appears that the Department has been using this roadmap as their guide.

After the Obama Administration assumed office OLMS first froze the effective date of the enhancements to the Form LM-2 and then rescinded the January 21, 2009 final rule altogether. The Department also did the same to the Form T-1. Additionally the regulation which set the procedure by which a labor organization would lose the privilege of filing a simplified report, the Form LM-3, pursuant to Sec. 208 of the LMRDA was rescinded as well. The LM-3 regulation was wholly discretionary because Sec. 208 of the LMRDA states in relevant part, "but the Secretary may revoke such provision for simplified forms of any labor organization or employer if he determines, after such investigation as he deems proper and due notice and opportunity for a hearing, that the purposes of this section would be served thereby."[3] As such, if the Secretary believes that the privilege of filing a Form LM-3 should not be revoked for an individual labor organization then that privilege remains intact. Therefore rescinding this regulation was completely unnecessary.

The Administration also refused to enforce the current regulation which requires labor organization officers and employees to report conflicts of interest on the Form LM-30. A "non-enforcement policy" was publicly issued regarding the current regulation so long as officers and employees comply "in some manner." On that point OLMS stated on its website:

Accordingly, OLMS will refrain from initiating enforcement actions against union officers and union employees based solely on the failure to file the report required by section 202, using the new, 2007 form, as long as individuals meet their statutorily-required filing obligation in some manner. OLMS will accept either the old Form LM-30 or the new one for purposes of this non-enforcement policy.[4]

Additionally the Department has aggressively slashed the staff of OLMS. In Fiscal Year 2006 OLMS had a full time equivalent allocation (FTE) of 384.[5] For Fiscal Year 2012 the Department's request is for 249 FTE.[6] This is a 35% reduction in staff from the Fiscal Year 2006 level. It is thus only a matter of time before these staff cuts turn into reduced enforcement activities. Indeed, the Department's Fiscal

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[3] LMRDA Sec. 208, 29 U.S.C. § 438.

[4] Office of Labor-Management Standards, Forms-All Others, undated. Available online at: *http://www.dol.gov/olms/regs/compliance/GPEA—Forms/blanklmforms.htm#FLM30* (accessed March 25, 2011).

[5] FY 2012 Congressional Budget Justification, Office of Labor-Management Standards, at 12.

[6] Id.

Year 2012 investigations, up from its target of 354.[7] For Fiscal Year 2011 OLMS sets a target of only 300 criminal investigations, and the same is true for Fiscal Year 2012.[8] This is a 15% reduction for this target. For Fiscal Year 2012 OLMS sets a target of 200 compliance audits, down from the estimate of 300 for Fiscal Year 2010 and the 541 audits actually conducted that year.[9] Even though the Fiscal Year 2010 target for compliance audits was only 200 the actual result was more than double the target. Further, this target is much lower than the results in Fiscal Year 2009 where OLMS conducted 746 audits, up from its target of 650.[10] Comparing the 746 audits conducted in Fiscal Year 2009 with the Department's desired result of 200 for Fiscal Year 2012, it is clear that the Department is harming the ability of OLMS to do its job.

As part of its reduction in the staff of OLMS, the Department completely disbanded the Division of International Union Audits, a division that had the responsibility of auditing the largest labor organizations in the country, some with receipts and disbursements exceeding $600 million.[11] On page 21 of its Fiscal Year 2012 budget justifications OLMS flatly states that it plans to conduct "zero I-CAP audits in FY 2012." The "I-CAP audits" are audits of the national and international labor organizations. This means no audits of the largest labor organizations will occur in Fiscal Year 2012. Imagine the outrage that would occur if the Securities and Exchange Commission disbanded a division with responsibility for overseeing the largest organizations under its jurisdiction and publicly announced that it would perform no audits of them in the coming year.

In the same vein of reducing transparency, the OLMS enforcement data is notably missing from what is supposed to be a Department wide online enforcement database. While this database discloses enforcement data from OSHA, MSHA, EBSA, OFCCP, and the Wage and Hour Division, there is no data from OLMS. Also, OLMS was almost a year late in publishing its Fiscal Year 2009 annual report and only made that report public after my office filed a Freedom of Information Act request for it.

All of these actions and others demonstrate the Obama Administration is working hard to roll the clock back at least ten years and provide less transparency for labor organization members and the public.

Thank you. I'd be happy to answer any questions you may have.

Chairman ROE. Thank you.

Ms. Furchtgott-Roth?

STATEMENT OF DIANA FURCHTGOTT–ROTH, SENIOR FELLOW, HUDSON INSTITUTE

Ms. FURCHTGOTT-ROTH. Mr. Chairman, ladies and gentlemen, thank you very much for giving me the privilege of testifying today.

I was asked to talk about the compliance burden of these regulations, because one of the arguments is that unions face too high a compliance burden when filling out the LM-2, the LM-30, T-1 forms.

So, I was chief economist at the U.S. Department of Labor while these rules were going into place. And I want to testify that we offered unions free software, free advice, call-in lines to help with the compliance costs, and that any union that had problems filling out the forms could call on us for assistance, which was provided free of charge.

The LM-30 forms were filed on paper. They were not filed electronically, so there was not any free software for that.

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[7] FY 2012 Congressional Budget Justification, Office of Labor-Management Standards, at 20.
[8] Id.
[9] Id.
[10] FY 2011 Congressional Budget Justification, Office of Labor-Management Standards, at 22.
[11] See for instance the Form LM-2 filed by the Electrical Workers IBEW AFL-CIO on September 24, 2010. Available online at *www.unionreports.gov,* under OLMS File 000-016 (accessed March 25, 2011).

But there was compliance assistance in the assistant secretary for policy's office, not just for the union forms, but other compliance areas. There was a big focus on how to make regulations easier to comply with, both in terms of electronic methods and in terms of call-in centers. And this was because we were focused on making it easier for employers to hire workers and lowering the unemployment rate.

I would like to address the issue, the fundamental issue of fairness in this, as well as the compliance burden, because union workers, union members have a right to know where their money goes.

Just as candidates running for election, all of you distinguished members up here have had to comply with federal election laws—minute laws that say where you can put a billboard, how much you can raise, who you can raise money from. So, it is fair for union members to be able to know where officers are spending the money.

And that is one reason that the LM-2 forms had clearly how much money was spent on political activity, how much on representation, how much on gifts and lobbying, how much for administrative costs. So, any rank-and-file union member could go to the website and figure this out.

Now, in the Federal Register, Tuesday, October 13th, an unnamed international union was quoted as saying, "detailed reporting requirements are unnecessary because union members are sophisticated enough to seek information about union financial matters from their unions, as well as seek publicly available information, such as that provided by the IRS."

But if the information is not even required to be collected, then there is no way that even the most sophisticated union member can access it on the Internet. And rolling back these regulations that were put in place by Secretary Chao would mean that some of this information is not available to anyone, not even the most sophisticated union member.

There are many states are right-to-work states, where workers do not have to join a union as a condition of employment. But many other states do not have that. They are forced unionization states where workers have to be a member of the union.

So, on the one hand, if they have to be a member of the union, then it makes sense that they have the right to know where their dues are going. They are forced to be a member of the union. They should also have this information at their fingertips.

And that is as important, I would say, as looking at pensions, health care and job training, because these are people who do not have the choice as to where their money goes.

Furthermore, with the Supreme Court Beck decision, union members have the right to demand back any portion of their dues used for political activity. If the information on what is available for—used for political activity is not even available to them, how can they request the amount back in their dues?

So, with that, I would like to thank you for giving me the privilege of testifying before you, and to say that this is a matter of fairness to the rank-and-file union member, and that he should have the same rights as any shareholder who is allowed to go over corporation's books.

Thank you.

[The statement of Ms. Furchtgott-Roth follows:]

Prepared Statement of Diana Furchtgott-Roth,
Senior Fellow, Hudson Institute

Mr. Chairman, members of the Committee, I am honored to be invited to testify before you today on the subject of union transparency and accountability. I have followed and written about this and related issues for many years. Currently I am a senior fellow at the Hudson Institute. From 2003 until April 2005 I was chief economist at the U.S. Department of Labor. From 2001 until 2002 I served at the Council of Economic Advisers as chief of staff. Previously, I was a resident fellow at the American Enterprise Institute. I have served as Deputy Executive Secretary of the Domestic Policy Council under President George H.W. Bush and as an economist on the staff of President Reagan's Council of Economic Advisers.

Introduction

Financial transparency has assumed a prominent role in most sectors of the economy. Corporations are required by Sarbanes-Oxley to provide extensive disclosure of their financial activities. Candidates for political office have to adhere to Federal Election Commission regulations. The Internal Revenue Service collects taxes from citizens and ensures compliance through audits.

The union sector, however, with assets of over $10 billion, was, until 2005, mostly exempt from any regulation that required detailed financial disclosure.

The first major piece of legislation designed to compel union financial disclosure was the Labor Management Reporting and Disclosure Act, better known as the Landrum-Griffin Act (LMRDA). The law was passed in 1959 and followed more than two years of Senate investigations into widespread corruption in the organized labor movement, particularly in major unions such as the International Brotherhood of Teamsters, United Mine Workers, and International Longshoremen Workers Union. Organized labor's behavior at the time was so egregious that the bill gained overwhelming bipartisan support, passing the Senate by a vote of 95-2 and the House of Representatives by a 352-52 margin. Few pieces of labor law reform since Landrum-Griffin have received this level of approval.[1]

Title II of the LMRDA was written with the intention of requiring greater union transparency. While labor unions were compelled to file financial reports before the Act's passage, these reports were not made public and were of virtually no help in holding unions accountable to their members.[2] Even Robert Kennedy, who was involved in the Senate investigations of organized labor, acknowledged that the union financial forms then in place were ineffective.[3]

The first substantive regulations on union financial reporting requirements were issued by Secretary of Labor James Mitchell in 1960. These required unions with $20,000 or more in total annual receipts to submit to the Department of Labor their financial information on a "Form LM-2." The filing threshold was gradually raised until it reached $200,000 in 1994.

The great hope at the time of LMRDA's passage was that the new financial disclosures would empower rank and file union members and ensure that unions were more accountable to their membership, and, as a result, less corrupt overall.

Unfortunately, the type of reforms that LMRDA envisioned never fully materialized.[4] There were several reasons for this failure.

First, some unions attempted to make sure that the financial information contained in the forms was never disclosed to the rank and file, much less widely disseminated to members. Some even took steps to ensure that their dues-paying members did not have proper notification about the existence of the LM-2 data. For example, the International Association of Machinists was involved in litigation for years over this issue. The union claimed that a one-time notification issued in 1959 was sufficient to comply with the LMRDA's notification requirements. The Fourth Circuit Court of Appeals eventually disagreed with this reasoning, but these types of roadblocks were commonplace in the years after LMRDA's passage.[5]

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[1] Daniel Yager and Phillip B. Wilson "Comments on Notice of Proposed Rulemaking Labor Organization Annual Financial Reports," Labor Policy Association, January 24, 2003. Available at: *http://www.hrpolicy.org/memoranda/2003/03-09_LMRDA_Comments.pdf*

[2] Ibid, 2.

[3] Robert Kennedy, The Enemy Within (1960) 30-31.

[4] Yager and Wilson, 4.

[5] See Thomas v. Grand Lodge, International Association of Machinists & Aerospace Workers, 201 F.3d 517 (4th Cir. 2000)

Furthermore, the old regulations and LM-2 forms did not require detailed information that properly reflected the complex financial world of today's labor unions.[6] Large amounts of funds—in the millions of dollars—were reported by unions on the forms as "other," "expenses," or "miscellaneous." Information was deliberately vague and could be grouped into broad categories, allowing labor unions to escape the type of scrutiny faced by corporate and other non-profit entities.

Secretary of Labor Elaine Chao argued for more detailed LM-2 forms saying that:

> "The forms no longer serve their underlying purpose because they fail to provide union members with sufficient information to reasonably disclose to them the financial condition and operation[s] of labor organizations * * *. [I]t is impossible for union members to evaluate in any meaningful way the operations or management of their unions when the financial disclosure reports filed * * * simply report large expenditures for broad, general categories. The large dollar amount and vague description of such entries make it essentially impossible for anyone to determine with any degree of specificity what union operations their dues are spent on, without which the purposes of the LMRDA are not met."[7]

In order to solve this problem, the Department of Labor proposed new rules to update the Form LM-2, including a requirement that all unions with receipts in excess of $200,000 file their disclosure forms electronically.

Additionally, the new rules required eligible unions to disclose detailed membership status information on the form's Schedule 13. Historically, unions would report inconsistent numbers for their membership totals and not differentiate between the many different classes of union members such as active, associate, retired, agency-fee payers, etc. The new class system mandated by Schedule 13 allowed the rank and file to discern the exact composition of their union.

Arguably the most important addition to the new LM-2 forms was the requirement that unions detail specific expenditures in more narrow categories than before on Schedules 14-19 of the LM-2 forms. Schedules 14-19 demand itemized expenses for all expenditures over $5,000 in these schedules and categories. Specifically, other receipts were detailed in Schedule 14, representational activities in Schedule 15, political activities and lobbying in Schedule 16, contributions, gifts and grants in Schedule 17, general overhead in Schedule 18, and union administration in Schedule 19. These new forms were displayed on the Department of Labor website, thus allowing any rank and file union member instant access to the data in the new forms and compelling union leaders to list both their salaries and the percentage of time spent on various union-related activities.

Union officers are required to complete the LM-30 form, which requires union officials to disclose conflicts of interest. If officials received things value for any reason other than in the course of their regular duties, then they would likely need to disclose the transaction and its reason.

Under 2007 reform of the Form LM-30, stewards receiving leave from an employer to work on union matters—known as "union leave" or "no docking" policy—was reportable if it exceeded 250 hours a year.

The AFL-CIO protested every change, publicly claiming that the LM-2 reforms would impose an impossible burden on the unions. Amongst these burdens, the AFL-CIO cited the supposedly high cost of accounting that would be associated with tracking expenditures as well as an inability to comply with the Department's requested time frame for the new forms. In their legal pleadings against the new rules, the federation also disputed Secretary Chao's authority to issue the broad new regulations that she proposed.[8]

The labor federation won a minor court battle in January 2004 when U.S. District Court Judge Gladys Kessler ruled that the Department of Labor had to give unions more time to comply with the new rules. But Judge Kessler, a Clinton appointee to the bench, eventually said that the new rules themselves were appropriate and legal. The AFL-CIO was still not satisfied and appealed Judge Kessler's decision. In May 2005, the Federal Circuit Court in the District of Columbia upheld the new rules in a 2-1 decision.

In 2009, in an attempt to make it easier for union members to identify corrupt behavior, the Labor Department issued revised and expanded LM-2 forms. Additional information included verification that sales and purchases of assets were per-

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[6] For a general idea of the financial complexity of today's unions, see Marick F. Masters Unions at the Crossroads: Strategic Membership, Financial, and Political Perspectives (1997) Westport, CT: Quorum.

[7] *http://pacer.cadc.uscourts.gov/docs/common/opinions/200505/04-5057a.pdf,* pg 15.

[8] See legal case.

formed without conflicts of interest; the value of benefits and travel reimbursements paid to union officers and employees; and additional details on funds received.

These expenses are listed on Internal Revenue Service tax forms, but not on financial disclosure forms filed with the Labor Department. IRS documents are laborious to find, whereas Labor Department disclosure forms are available electronically.

In addition to the LM-2 form, unions were required for the first time to file a disclosure form, known as T-1, about the finances of union-managed trusts, such as credit unions, strike funds, pension and welfare plans, and building funds. This is because any unions had created networks of trusts that allowed them to shield massive financial transactions from their members, analogous to the recent abuses involving "off-the-books" accounting by some corporations.

All these regulations were of great value to union members. Just as shareholders can see how corporations spend their money, so union members could see how their union dues were being spent.

But now the Labor Department is rolling back the financial disclosure rules. It does not want unions to file the enhanced LM-2 forms, the new LM-30 forms, and the T-1 form. In the Federal Register of October 13, 2009, the Department states that "comments received indicate that the Department may have underestimated the increased burden that the rule would place on reporting organizations."

It also cited an unnamed union: "The union also asserted that detailed reporting requirements are unnecessary because union members are sophisticated enough to seek information about union financial matters from their unions, as well as seek publicly available information, such as that provided by the IRS."

The whole point is that if unions are misusing workers' dues, the union is going to disguise this, and not tell rank-and-file members. Furthermore, the IRS data to which the union refers, the Form 990s, come out with a 2-year delay, are not readily accessible, and disclose payroll and benefits information for only a very limited number of union officials.

Throughout the LM-2 process, the Labor Department provided unions with free software and free training to complete the forms. The only reason that completing the forms would be too burdensome is that the organizations do not want to keep track of the expenses. But it is their duty to tell union members where their hard-earned dues are going.

For comparison's sake, it is worth highlighting the costs of compliance for corporations to comply with one section of the Sarbanes-Oxley Act of 2002. Section 404 of the act requires public companies to issue a management report on the effectiveness of companies' internal controls, and an independent audit report. In 2005, Charles Rivers Associates, an economic consulting firm, estimated that compliance costs averaged $7.8 million in 2004 for the Fortune 1000 companies. Smaller companies had to spend hundreds of thousands of dollars.

If these companies had complained that the compliance costs were too high, and that the SEC should rescind the rules, they would have been mocked in the media and the public eye. Yet unions, who were offered free help and software to fill out the forms, receive a sympathetic hearing.

Conclusion

The criticism of the LM-2, T-1, and LM-30 forms suggests that union financial activity is now an open book. But this is not so. Political activity is not always disclosed. Payments to third parties, often put down as charitable contributions, are in turn used for political activity. Some of this can be observed from the forms, but other activity is still hidden. Some payments are directed to third parties who have conflict of interest with union officials.

Just as Sarbanes-Oxley sets standards for corporate disclosure so that shareholders have full information, the same protection should be extended to union assets and activity so that union members know that their contributions are being wisely used.

Chairman ROE. Thank you.
Dr. Logan?

STATEMENT OF JOHN LOGAN, PH.D., DIRECTOR OF LABOR STUDIES, SAN FRANCISCO STATE UNIVERSITY

Mr. LOGAN. Thank you very much, Chairman Roe and Ranking Member Andrews, members of the committee. It is a great pleasure to come here and testify before you today.

I want to say four very brief things from my testimony, all of which I talk about in much greater length in the written testimony. And as you know, academics tend to be fairly long-winded, so I will start off by telling you what I am going to say, and then try to say it.

First and most important, I want to say that the current OLMS is actually doing a very good job when it comes to enforcement of the LMRDA, that it is enforcing the law and enforcing the law robustly, that its record is, as Ranking Member Andrews said, very, very good in this area.

Second, the revisions introduced by the Bush Department of Labor, which I talk about at length in the written testimony, actually do not achieve their objectives. They do not, and would not, uncover cases of union corruption. And they do not provide greater accountability to ordinary union members and provide them with valuable information in a useable form.

Third, to the extent that anyone has benefited from these revisions, it has actually been self-styled union watchdog groups that report on unions who like to bark on ideological grounds; and to private, so-called union avoidance consultants that charge employers large amounts of money for the information that is taken selectively from these very detailed LM-2 forms.

And finally, the regulations themselves have imposed a significant burden on unions. And the people who have paid for this burden have been the ordinary union members whose dues money have had to pay for the new accounting systems, for the new staff, for the outside expertise that has been needed to comply with these rules. And this has actually taken away from the core functions of the union in providing effective representation.

So, as I said, the most important point that I want to emphasize is that the current Office of Labor Management Standards has an excellent record in this area.

John Lund, the director of OLMS, is someone I have known in a professional capacity for a number of years. When I was a professor at London School of Economics, I knew Professor Lund, who was then at the University of Wisconsin. He is an internationally recognized expert in the area of union transparency and accountability.

He has tremendous experience in this area, has spent most of his professional working life working with local and national union officers, teaching them how to improve their financial accountability and transparency.

And he has brought that expertise with him to OLMS, as one would expect. That he has brought a degree of professionalism and balance to the rules on union accounting and union financial transparency to the office, that ought to be welcomed.

And we can see this in his written publications too, that he repeatedly states that strong enforcement is desirable, strong enforcement is necessary.

Of course, actions do speak louder than words. And when we look at the actions of the current OLMS in this area, it also reinforces the point that enforcement of the law has been robust.

And again, as Chairman Andrews said, the record, when it comes to investigations, indictments and convictions compares extremely favorably to the last administration, to the Bush administration, and actually suggests that the current OLMS is doing a better job in terms of targeting of scarce resources in a way that actually gives the greatest bang for the buck, so to speak. In terms of indictments and convictions, the number is actually up.

And finally, in terms of providing ordinary union members with the type of information they are most likely to want in a usable form, the current OLMS also has an excellent record. And if you go to the website, if you look at the information that is available to ordinary union members, and if you look at the form that the information is being presented in, I think that reinforces the point that the current OLMS is doing an excellent job in this area.

So, I would like to sum up simply by saying that under the current OLMS, enforcement of the law in this area has been robust and has been very professional. It is living up to its obligations under the law.

The previous revisions did not bring about their stated purpose. And the people who were most likely to be hurt by the previous revisions, the revisions of the previous administration, are ordinary union members themselves.

And thank you for your time.

[The statement of Mr. Logan follows:]

Prepared Statement of John Logan, Professor and Director of Labor and Employment Studies, San Francisco State University

In the testimony that follows, I will stress four main points: First, the Bush DoL revisions have failed to promote the goals of greater financial transparency and disclosure, and have failed to provide any real benefit to ordinary union members. Second, if anyone has benefited from these revisions it has been not been rank-and-file union members, the public or the government, but external organizations hostile to unions and collective bargaining on ideological grounds. Third, while they have failed to advance accountability and transparency, the Bush revisions have imposed a significant compliance burdens on unions, and ordinary union members have borne the financial and administrative costs of those burdens. Fourth, by any significant measure, the current OLMS is fully committed to and has effectively enforced the goals of the LMRDA, and has provided ordinary union members with more useful information in a more useable form than did its predecessor.

1. Have the Bush-era revisions improved transparency and accountability?

There is no evidence of increased transparency and accountability. A brief examination of the rule changes introduced by the Bush DoL makes clear the absence of any evidence of real benefit to ordinary union members, the public or the government.

- 2003 LM-2 Revisions: The 2003 revisions—which have not been rescinded by the current OLMS—made the LM-2 form considerably longer and more complex. But, as discussed below, these more detailed LM-2s have neither exposed or deterred corrupt practices nor provided ordinary union members with greater transparency and accountability.
- 2009 LM-2 revisions: The substantial last-minute 2009 revisions to the LM-2s significantly increased the reporting burden over the already complex 2003 revisions with no attempt to determine if there would be any benefit to ordinary union members, the government or the public. The stated rationale, to expose cases of embezzlement, has not been achieved by the 2003 LM-2 revisions and would not have been achieved by these even more extreme revisions.
- 2009 LM-3 revisions revoking authorization for reasons of untimely or deficient compliance: The 2009 proposal to make small organizations that had trouble filing

the more simple and straightforward LM-3 forms on time, often due to a lack or resources, lack or expertise or lack of experience, file the more complicated and onerous LM-2 forms simply makes no sense—the Bush DoL itself stated that the rule "may appear counterintuitive"—unless of course the true purpose behind this new rule is to force small organizations into criminal refusals to file. That is certainly likely to be the most common outcome of this revision, as it would be virtually impossible for most small organizations to comply with the complex LM-2 requirements if they are unable to comply with the simpler LM-3 requirements. Indeed, prior to the enactment of the LMRDA, Congress recognized that smaller organizations might face difficulty meeting the financial reporting requirements of the law. If transparency and accountability were really the goals of the revision, the logical solution to untimely or deficient compliance would not be to impose more onerous reporting requirements, but for OLMS to increase its compliance assistance for officers of small organizations. Rather than chose this logical option, the Bush DoL opted to take arbitrary and punitive measures that would cripple the ability of these organizations to represent effectively ordinary union members.

• T-1 Revision on reporting for union trust funds: The Bush DoL T-1 report was, from the very beginning, a failure. The courts have twice struck down this revision—the D.C. Court of Appeals struck down the 2003 T-1 rule in 2005, and the D.C. District Court struck down the revised 2006 T-1 rule in 2007. The Courts would almost certainly have struck down the Bush DoL's final 2008 iteration of the T-1 rule also, if only because it requires reporting on trust funds that unions do not finance or control. If the Bush T-1 had ever gone into effect, moreover, it would have covered subsidiary organizations, but not in as much detail as the LM-2 amendment adopted by the current OLMS. The OLMS has incorporated this reporting requirement into the LM-2 reports. The agency has reduced the threshold of gross annual receipts from $250,000 to $200,000, and requires disclosure of expenditures of $5,000 or more, where the Bush T-1 had a reporting threshold of $10,000. Thus, in several respects, the current OLMS has actually extended and improved reporting in this area compared with that proposed by the Bush DoL.

• LM-30 2009 Revision: The Bush rule—which, in a sweeping departure from 40 years of past practice, introduced longer and more complex LM-30 forms—may as well have been designed to discourage rank-and-file participation in unions. The Bush rule extends reporting requirements to a variety of workplace positions not on the union payroll—such as shop stewards and safety committee members—thereby greatly expanding the number of ordinary union members required to report personal financial information. This revision would affect at least 100,000 ordinary union members. The Bush LM-30 would require union members who are neither officers nor paid employees of the union to report, because it treats shop stewards and safety committee members as union employees if their employers do not dock their pay for time spent on grievances or safety matters. The Bush LM-30 also expands the reportable financial interests to require these union members to report on personal financial information, such as loans at commercial rates from a union-affiliated credit union or mortgages and other personal loans at commercial rates from any bank that did any business with the union or a union benefit fund or substantial business with any unionized employer. The potential filer must inquire of any lender how much business it does with unionized employers and keep records of the response in order to avoid criminal prosecution for willful failure to file.

• Additional and Unnecessary Complexity in Revised LM-30: The Bush LM-30 is vastly more complicated than the form that had been used successfully for the first four-and-a-half decades of the LMRDA. The old LM-30 was a clear and straightforward two-page form, while the revised Bush LM-30 is a complex and confusing nine-page form. The Bush DOL quickly acknowledged the extent of the confusion caused by its revised form. After releasing the revised LM-30, the Bush OLMS immediately issued 83 FAQs to explain the new form—which works out at almost 10 questions per page!—and then had to follow those FAQs with numerous additional clarifications. This revision is obviously contrary to sound and clear accounting standards, and has likely discouraged, not encouraged, rank-and-file participation in the effective governance of unions.

• Overall impact of revisions: It is clear from OLMS annual reports that all of the additional reporting requirements implemented throughout the Bush-era DoL—and still mandated by the current DoL—has resulted in only a minor increase in enforcement actions. The number of union audits increased greatly under the Bush DoL, but the number of enforcement actions barely increased, suggesting that the 2003 revisions had not assisted OLMS in enforcing the law more effectively. In sum, these revisions have not furthered the OLMS mission of protecting the interests of ordinary union members through greater transparency and accountability, and have

most likely achieved exactly the opposite—less transparency, less accountability, and unions less able to serve the best interests of their ordinary members.

Has more detail and complex financial reporting under the revised LM-2s resulted in greater transparency and accountability? Not only does the answer to this appear to be "no," but it seems more likely that they have resulted in less transparency and accountability in union financial affairs than existed before. Nor does the legislative history suggest that Congress had ever intended this level of detailed and burdensome scrutiny, even though it enacted the 1959 Labor Management Reporting and Disclosure Act (LMRDA) at a time when union corruption and embezzlement was a far more significant and newsworthy issue than it is today.[1] The Bush DoL failed to demonstrate a significant need in this area. There is no evidence of more cases of union embezzlement and corruption being exposed as a result of the far more detailed reporting required by the Bush DoL rules. Indeed, it is highly improbable that significant cases of embezzlement would be exposed because of more detailed, complex and sometimes trivial information on the revised LM-2s. Crooks are unlikely to self-report their own embezzlement, and while some ordinary union members may believe that they would be able to uncover cases of corruption with detailed and complex information, this is highly unlikely. Significant cases of embezzlement are likely to be highly complex cases that will not be uncovered by these reporting revisions.

So what is the most effective way to uncover corruption, if not through complex and burdensome financial reporting requirements? OLMS conducts union audits, as it has always done, and if it finds something irregular, these may result in criminal cases. Moreover, the intelligence that forms the basis of union corruption cases often comes from the national union itself, as no one has a greater interest in dealing with cases of local corruption and embezzlement than the leadership of national unions. Many national unions now have detailed codes of conduct that cover not only the ethics of union officials but also financial misdeeds, and extensive internal controls to prevent and detect embezzlement. These kinds of controls, not more detailed but less transparent LM-2s, are most likely to deter and expose cases of fraud and theft.

If the more detailed financial information and complex reporting requirements imposed by the Bush DoL have been ineffective when it comes to exposing cases of union corruption, one has to ask, what is the true motivation behind these rules? If the answer is really to go after the "bad apples" among union officials, then the current OLMS is doing this and doing it vigorously. If not, then it appears that, instead of finding a "significant need," the Bush DoL imposed more burdensome and confusing reporting requirements for purely partisan political reasons—in order to misuse LM-2s to, in the words of then Republican Whip Newt Gingrich, "weaken our opponents and encourage our allies."[2]

More Detailed Information and Greater Complexity is Not the Same Thing as Increased Transparency: These revisions greatly increased the length and complexity of the LM-2 forms that large unions are required to submit. But the OLMS annual reports from 2005-2009 provide no evidence of any real benefit to union members produced by the 2003 revisions. Providing rank-and-file members with more detailed information in a more complex form is not the same thing as providing them with greater transparency and accountability. As a result of the Bush DoL 2003 revisions, LM-2s have increased enormously in size—forms can now be several hundred pages in length—and are not organized in an easily understandable form. Few ordinary union members have the time to read such long reports and make sense of them. Fewer still would know what is important and what is not, or know how to act upon on this detailed information. The 2003 revisions requirements for itemized disbursements—which had never existed previously—has likely made the reports much less easy for union members to understand and use. In instances such as this, less information, restricted to what is most important and presented in an accessible and useable form, really is more.

The 2009 revisions introduce even greater complexity in LM-2s. The 2003 and 2009 LM-2 revisions do not improve standards of financial accounting and reporting. Indeed, they do the opposite—they will produce greater confusion and obfuscation,

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[1] Even one of the harshest critics of unions who runs a business advising employers on how to remain union free and who has twice testified in Congress about the need for greater union financial accountability, Philip Wilson, concedes that the detailed financial reporting required by Bush DoL rules may have exceeded what Congress had intended when it passed the LMRDA. "If you dig around in the congressional history," Wilson writes, "there is certainly some question as to the amount of detail some members of congress thought was appropriate." *http://lrionline.com/lm-2-reform-appeal*

[2] Newt Gingrich (Republican Whip), letter to Lynn Martin (Secretary of Labor) and Clayton Yeutter, February 19, 1992.

not greater clarity. The more detailed reporting requirements under the Bush DoL have failed to provide ordinary union members with the kind of information they are likely to want, and has failed to provide information in a form they can easily make use of. One has to question whether the intention of the Bush reporting requirements was to assist and inform ordinary union members, or a politically motivated attempt to impose burdensome reporting requirements on unions and make available detailed union financial information that could then be used, including in misleading ways, by outside groups hostile to unions and their members.

What kind of financial transparency and accountability do ordinary union members want? We have a dearth of empirical data when it comes to the financial literacy of union members, but based on the academic literature and my experience of running a university-based Labor and Employment Studies program that has connections with the practitioner community, I believe that they are interested in information in the following order of importance: first and foremost, they want access to salary information for officers in their local and national unions. Second, they want to know whether or not their union's revenues are greater than its expenditures. Third, they want information, in a general and understandable form, on where the union's money is coming from and where it goes. This financial information is currently available to union members, and was available prior to the Bush revisions. This information is most likely to be of interest during internal union election campaigns, and that is the way this information has always been used.

2. Who Has Really Benefited from the Bush DoL Revisions?

If not ordinary union members, then who has benefitted most from the detailed and complex financial information on the revised LM-2s? While we have little or no evidence of ordinary union members requesting or using this more detailed financial information, we have many examples of so-called "union avoidance consultants" using the information, charging employers for it, and encouraging them to use it to discourage employees from exercising their right to form a union. Like Newt Gingrich, they encourage the use of detailed LM-2s "to weaken our enemies and encourage our allies." A large number of union avoidance consultants and law firms have promoted the use of information on Bush LM-2s in this way. Below I cite only a few such examples.

One of the largest union avoidance firms in the nation, Labor Relations Institute, Inc. (LRI), tells employers that, "Facts drawn from these documents (LM-2s) * * * will help convince your employees to vote 'No' on election day."[3] In its publication, "Union Free: 5 Keys To Winning Your Union Election," LRI tells employers that revised LM-2s "contain a lot of valuable—and surprising—evidence to use against the union's arguments during a campaign."[4] The firm customizes it counter-organizing campaigns to oppose specific unions, and advertises LM-2s as a key component of, for example, the "Complete 'Operating Engineers Exposed' Package," which costs employers $2,300. Another important union avoidance firm, Labor Relations Services, which provides "Union Free Solutions for Employers," states that when faced with an organizing campaign, employers must "use high grade union avoidance materials such as videos, LM-2 reports," in order to defeat the union.[5] Several other union avoidance firms—often large and sophisticated operations—charge employers for (publicly available) LM-2s, advising them that the information in these forms is an essential part of the tool kit they require to remain union-free. Highly-price union avoidance seminars, which promise to teach employers the tactics needed to defeating organizing campaigns, frequently include discussions of how to use the information in the more detailed LM-2s to oppose employee efforts to form unions.[6] And the revised Bush LM-2 reports are also widely used by a several organizations dedicated to opposing all unions and collective bargaining on ideological grounds. For example, Union Free South Carolina, which is committed to keeping unions out of the Palmetto state, has a link to "Union LM-2 Information" from its homepage.[7]

The Opposite of What Congress Intended when enacting the LMRDA: These union avoidance firms, and their clients who are determined to operate union free, have benefitted more from the detailed and readily available financial information contained in the revised LM-2s than have ordinary union members. When Congress en-

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[3] *http://lrionline.com/union—avoidance/operating—engineers.htm. Another major union avoidance firm—Adam, Nash, Haskell & Sheridan—charges employers for each LM-2 financial report and recommends them for use in fighting union organizing campaigns.*

[4] LRI, "Union Free: 5 Keys To Winning Your Union Election," *http://www.slideshare.net/pbwilson/5-keys-to-winning-your-union-election*

[5] *http://proemployer.net/FAQ.aspx*

[6] See, for example, the union avoidance seminar, "Not Your Father's Union Movement," at *http://www.japantypeset.com/scope—newsletter/pdf/union-campaign-seminar.pdf*

[7] See *http://www.unionfreesc.org/mx/hm.asp?id=home*

acted the LMRDA, it intended to ensure not only transparency in internal union affairs, but also transparency when employers hire outside consultants for the purpose of dissuading their employees from supporting unionization. However, this critical part of the law is rarely enforced, and as a result employees and other stakeholders usually have no idea how much money employers are spending on efforts to defeat organizing campaigns, and whom they are paying for this service. Indeed, this is perhaps a more pressing topic for a congressional hearing than the one under consideration today. Thus, not only does the multi-million dollar industry of union avoidance consultants and lawyers benefit from the Bush LM-2s, it also benefits from the one-sided enforcement of the LMRDA in general.[8]

3. The Burdens of Compliance: Who Pays?

Have the Bush DoL rules imposed an onerous burden on unions? According to research conduct by three of the nation's pre-eminent employment relations scholars at Cornell and Penn State Universities,[9] the answer appears to be "yes." These scholars have conducted the most extensive and credible survey to date of the actual impact of these new rules on unions' financial and administration resources. Their results are based on empirical evidence, not on unsubstantiated or anecdotal statements or speculation. It is important to note that prior to the 2009 revisions, the Bush DoL made no real effort to assess the impact of the 2003 revisions on the actual experience of union officers, despite having had the opportunity to study four years of compliance with the new LM-2s. These scholars have investigated what the Bush DoL chose to ignore, and their findings demonstrate that the Bush DOL underestimated the burden of compliance. Based on a detailed survey of the administrative practices of 62 national unions, these academics concluded the following:

- 83% of unions responding reported that existing staff were required to spend more time on LM-2 compliance and less time on other duties to comply with the new LM-2 requirements
- 38% of unions responding reported that they had to significantly change their accounting practices in order to comply with the new LM-2 requirements
- 29% of unions responding reported that the union had to hire consultants to comply with the new LM-2 requirements
- 9% of unions responding reported hiring additional staff to comply with the new LM-2 requirements

This striking evidence of a significantly increased recordkeeping and reporting burden—in terms of increased administrative time and effort to comply with the revised LM-2s—is based on an academic survey of national unions. One would expect to find an even greater impact on the recordkeeping and accounting practices of smaller unions with fewer resources and less expertise and experience in financial compliance. Thus, there is no doubt the Bush LM-2 revisions have had a significant impact on union resources and finances. Even if these new requirements had improved union transparency and accountability, one would need to weigh the financial and administrative costs of complying with the new rules. Part of the job of OLMS is to balance its mission of promoting transparency with the burden of compliance. Those who have had to pay for the greater investment in time, money and administrative resources to meet the new, complex reporting requirements are ordinary union members. Their membership fees that pay for the hiring of additional staff and external consultants, new recordkeeping and accounting systems, and existing staff time devoted to compliance with detailed, itemized financial reports. However, absent any evidence of real benefits to ordinary union members—as is the case here—the excessive burden of complying with these new rules seems completely unjustified.

4. Has the OLMS Backed Off From Its Enforcement Duties?

Strong Record on and Commitment to Enforcement: In the area of internal union transparency and accountability, the OLMS is currently doing exactly what it is supposed to do—providing an invaluable service to rank-and-file union members, the general public and the government. Not only has the agency not retreated for its historic enforcement mission, but there is considerable evidence that it is now carrying out the mission more effectively—that it is achieving "more with less," which in this tough budgetary environment is something we commend. The current director of the OLMS, Dr. John Lund, recently stated his belief that, "strong en-

[8] On this point, see John Logan, "Lifting the Veiling on Anti-Union Activities: Employer and Consultant Reporting Under the LMRDA, 1959-2001," Advances in Industrial and Labor Relations, Vol. 15 (2007), pp. 295-332.

[9] Professor Paul Clark, Penn State University, Professor Lois Gray, Cornell University, and Professor Paul Whitehead, Penn State University, "Survey of Administrative Practices in American Unions," Fall 2010

forcement [of the LMRDA] is necessary." Having spent much of professional career teaching local and national union officers how to improve the management of their financial affairs, Lund has impeccable credentials to fulfill this role. Lund is the country's leading scholarly and practitioner expert in this area—indeed, he is an internationally-recognized expert who has advised on union transparency and accountability throughout the world—and has published several articles on union financial transparency and accountability in leading peer-reviewed academic journals. His publications have consistently stressed the need for strong rules and effective enforcement on union transparency and accountability.[10] In contrast, the head of the Bush-era OLMS had no background and no qualifications in an area that requires both a knowledge of labor-management relations and technical expertise in financial reporting and transparency for non-profit organizations. Indeed, it appears that the background of the Director of the Bush OLMS, Don Todd, was largely in the area of campaigning against political "adversaries" of the Republican Party.[11] In sum, it appears that both Todd and Lund were chosen to carry out their assigned roles—one to use the agency for political purposes, the other to bring professional expertise and balance to union financial reporting rules.

Actions speak louder than words, of course, and a direct comparison of OLMS activities in fiscal years 2008 and 2009 also demonstrates the commitment of the current OLMS to vigorous enforcement of the law. In the area of internal union elections, the record is stable. In 2009 the agency investigated 129 complaints about union elections, compared with 130 in 2008; it supervised 32 rerun union elections in 2009, compared with 35 rerun elections in 2008; and it filed 32 voluntary compliance election agreements or suits in 2009, compared with 35 in 2009.[12] The current OLMS also has a strong record in the area of investigations, indictments, and convictions. OLMS has increased slightly the number of criminal investigations—404 in 2009 versus 393 in 2008; it won 122 indictments in 2009 versus 131 in 2008; and it increased slightly the number of convictions—120 in 2009 versus 103 in 2008. Finally, it completed 754 compliance audits in 2009, compared with 798 in 2008.[13] Thus, convictions (Figure A) and indictments (Figure B)—important measures of OLMS activity, though not the only ones—have increased or held steady in number compared with the rate under the latter years of the previous administration, while compliance audits (Figure C) are down slightly only because the fall-out rate has increased. In short, the current OLMS has both a strong commitment to and good record on enforcement, and has promoted greater, not less, transparency and accountability in union affairs more generally.

Is OLMS currently providing ordinary union members with useful information? An examination of the OLMS website illustrates that the agency is producing more useful information in a more usable form than during previous administrations. The current OLMS site has, for example, uploaded and made available audit letters, internal union election information, union trusteeship information, and historical conviction and indictment information dating back to the late 1990s. Improving on past practice, moreover, the website now defines clearly the terminology on indictments and convictions, making it much more understandable and usable for ordinary union members. Much of this information is now available in an accessible form to ordinary union members for the first time. Thus, it appears that the record of the current OLMS when it comes to promoting real accountability and transparency is better than that of its predecessor.

Conclusion: Who Benefits and Who is Hurt?

When analyzing the impact of the Bush financial reporting requirements, one should ask the question: who has benefited from the revisions and whom have they hurt? As mentioned above, there is no reliable evidence that the new reporting requirements have benefited ordinary union members, either by exposing or discouraging corrupt practices, or by making union officials more accountable to their membership. But certain people have profited from the Bush DoL's significant departure

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[10] On Lund's publications in this area, see, for example, John Lund and John McLuckie, "Labor Organization Financial Transparency and Accountability: A Comparative Analysis," Labor Law Journal, 58:4 (Winter 2007), pp. 251-266; John Lund, "Financial Reporting and Disclosure Requirements for Trade Unions: A Comparison of UK and US Public Policy," Industrial Relations Journal, 40:2 (March 2009), pp. 122-139.

[11] On Don Todd's extensive background in Republican Party politics, see Scot Lily, Beyond Justice: Bush Administration's Labor Department Abuses Labor Union Regulatory Authorities (Center for American Progress, December 2007), pp. 4-6.

[12] Daily Labor Report, "OLMS Rethinks and Rescinds Bush-Era Rules but Retains Enforcement Role," January 19, 2010.

[13] Daily Labor Report, "OLMS Rethinks and Rescinds Bush-Era Rules but Retains Enforcement Role," January 19, 2010.

from previous long-standing and well-functioning union financial reporting rules—just not the ones intended by those who passed the legislation. Perhaps the most obvious beneficiaries of the Bush rules have been external financial experts hired by unions seeking to comply with the complex new reporting requirements—between one quarter and one third of international unions have hired external experts—and the "union avoidance" consultants who have charged employers seeking to oppose employee organizing efforts thousands of dollars for the LM-2 reports, repackaging the information in these public reports as sophisticated anti-union ammunition.

Those hurt by the Bush DoL revisions have not been corrupt union officials or those seeking to hide information from their membership. Rather, those most damaged by the rules are the ordinary union members themselves. Their money has paid for the increased costs of compliance and they most likely have experienced worse representation at work. Instead of providing their members with effective services, union officers have spent time and resources on reporting rules that provide no discernable benefit to their members. To restate the survey findings of the scholars from Cornell and Penn State: under the Bush DoL reporting requirements, 82% of national unions reported that existing staff were required to spend more time on LM-2 compliance and less time on "other duties." The impact on local unions is likely even greater. These other duties include contract negotiations, grievance handling, and a variety of other essential union activities. In sum, the Bush DOL reporting revisions have hurt the very people whom the LMRDA is intended to protect.

Figure A: Convictions by Fiscal Year (data from DoL)

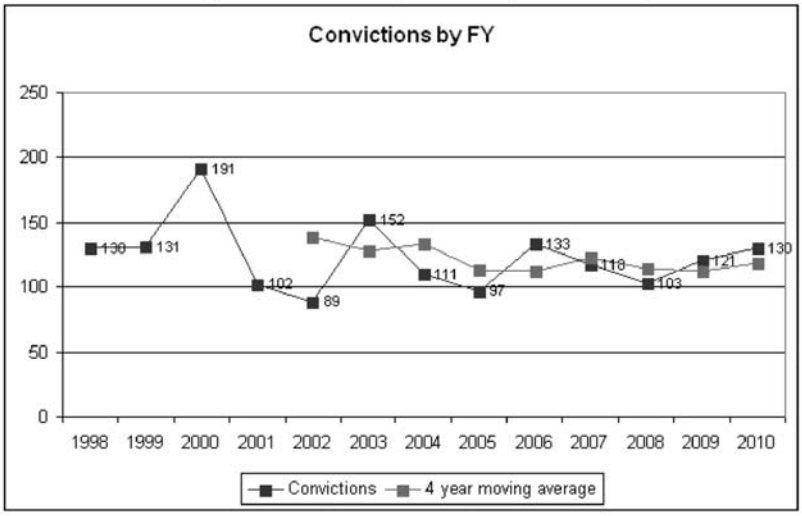


Figure B: Indictments by Fiscal Year (data from DoL)

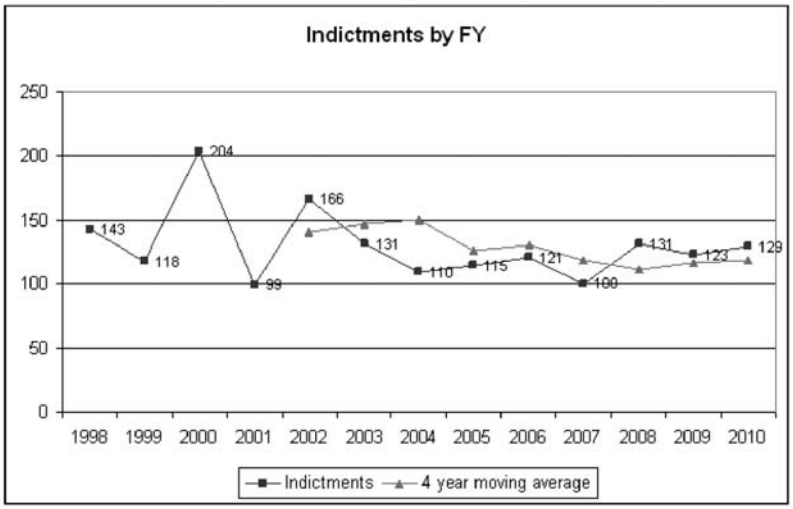
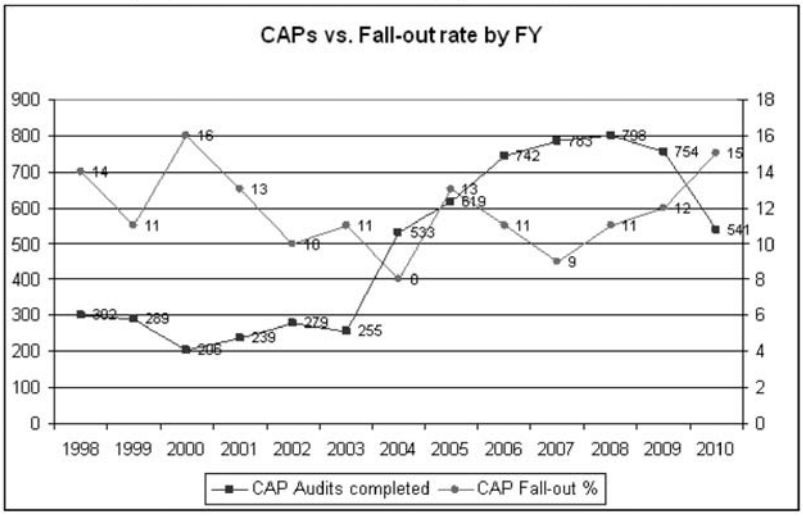


Figure C: CAP Audits vs. Fall-out rate by Fiscal Year (data from DoL)



Chairman ROE. Thank you, Dr. Logan.
Mr. Fox?

STATEMENT OF ARTHUR L. FOX, II, OF COUNSEL, LOBEL, NOVINS & LAMONT, LLP, ON BEHALF OF THE ASSOCIATION FOR UNION DEMOCRACY

Mr. FOX. Chairman Roe and members of the committee, I want to thank you for inviting me to testify today on behalf of the Asso-

ciation for Union Democracy, which I will refer to as AUD, short form.

By way of background, AUD is a non-political organization that seeks to promote democracy in unions as a means of strengthening the union movement among workers and the public. AUD believes that a strong labor movement is an essential element in American democracy.

AUD has been over the past 50 years in touch with tens of thousands of rank-and-file unionists, reform caucuses, a number of which have been engaged in battles against corruption and authoritarianism in their unions, and have become targets or even victims of unlawful and undemocratic repressive tactics by their union officers.

It is on the basis of this experience that AUD has participated over the years in a dialogue with Congress over the extent to which the LMRDA has succeeded in promoting Congress' objectives when enacting the law in 1959, and how it has fallen short and is in need of being strengthened.

Personally, I have devoted nearly my entire professional career to representing underdogs, be they subordinate union entities, union reform caucuses or individual union members in their struggles with higher-ups in the union hierarchies bent on suppressing their rights under our labor laws—principally, the LMRDA. And I have served on AUD's board of directors for many years.

The overriding objective of the LMRDA was to rid the union movement of corruption and tyranny. Congress chose to achieve this objective by giving union members the means to clean up their own unions from within by bestowing on union members a host of democratic rights, including the right to elect local union officers.

Of course, the cornerstone of any democracy is information, without which the right to vote is pretty meaningless—a "naked right." We recognized this axiom as we watched symbolic elections behind the Iron Curtain during the Cold War. And today we are observing as the Internet has allowed populations in North Africa and the Middle East to come alive and seek, as we say in union parlance, to throw the bums out.

Accordingly, when enacting the LMRDA, Congress charged the DOL with responsibility for requiring unions to become financially transparent. With information, members would be able to detect conflicts of interest and financial abuse by their elected officers, whom they could then vote to remove from office—and perhaps even to sue for breach of fiduciary in very, very serious cases.

Sadly, this informational cornerstone of the LMRDA has yet to be fully realized. A few years ago, the OLMS did take steps to improve the union financial reporting requirements.

While some of the changes to the reporting requirements promulgated by OLMS would arguably have been unduly burdensome on unions and of little value to members, many other of the provisions of the reformed reporting requirements would have been of great value to union members, enabling them more accurately to understand how their dues are being spent, as well as to detect conflicts of interest by their elected officers.

Not only would the more detailed information have enabled union members to hold miscreant officers accountable for their mis-

deeds, in all likelihood, they would have had an important—the revised rules would have had an important prophylactic effect by discouraging elicit behavior in the first place.

Unfortunately, rather than fine tuning these new reporting requirements after the change of administrations, OLMS rescinded wholesale the prior administration's more detailed reporting requirements. I am submitting for the record the written comments that were submitted by AUD in response to OLMS's regulatory proposals.

So be it for my remarks about the main topic of this hearing. However, this problem pales by comparison to the many, many even more serious weaknesses in the LMRDA itself. And over the years, AUD has participated in a number of hearings which have produced a very solid record in support of statutory reforms—a number of bills but, unfortunately, no legislative relief.

And I would like to encourage this committee to look at the written statement that I submitted, which catalogues the various hearings that have been conducted over the years, and urge the committee to breathe new life into the LMRDA by enacting some very well needed amendments that would enable achievement of the objectives of the 86th Congress when enacting the LMRDA a half-century ago.

Thank you.

[The statement of Mr. Fox follows:]

Prepared Statement of Arthur L. Fox, on Behalf of the Association for Union Democracy

Thank you for inviting the Association for Union Democracy to testify today. By way of background, the Association ("AUD") is a non-political organization that seeks to promote democracy in unions as a means of strengthening the union movement among workers and the public. AUD believes that a strong labor movement is an essential element in American democracy. It seeks to educate members concerning their rights under the Labor Management Reporting and Disclosure Act ("LMRDA") and to defend members, regardless of their politics, against abuses by their union officials. Its Board of Directors includes persons who are eminent in the field of union democracy law and related issues. Until his demise some months ago, law Professor Clyde Summers, a cofounder with Herman Benson and the draftsman of LMRDA's Title I, served on the Board along with labor law Professors Michael Goldberg and Alan Hyde. Experienced public interest litigators Paul Alan Levy, Barbara Harvey and myself, who have devoted much of their professional careers to representing individual union members and caucuses seeking to reform unions, also sit on the Board. Another distinguished Board member is James McNamara, former consultant on labor racketeering to the Manhattan District Attorney's office.

Founded shortly after enactment of the LMRDA, AUD has been, over the past 50 years, in touch with tens of thousands of unionists, individual rank and filers, organized caucuses, elected officers in most major unions in our country, and members who have been engaged in battles against corruption or authoritarianism in their unions, a number of whom have become targets, or victims, of unlawful and undemocratic repressive tactics by their union officials. It is on the basis of this experience that AUD has participated over the years in a dialogue with Congress over the extent to which the LMRDA has succeeded in promoting Congressional objectives, and how it has fallen short and is in need of being strengthened.

The overriding objective of the LMRDA was to rid the union movement of corruption and tyranny. Congress chose to achieve this objective by giving union members the means to clean up their unions from within by bestowing on members a host of democratic rights. Of course, and as many LMRDA scholars as well as a number of courts have noted, the cornerstone of any democracy is information without which the right to vote is meaningless—a "naked right." Accordingly, when enacting Title II, Congress charged the DOL with responsibility for promulgating rules requiring unions to become financially transparent entities such that their members would be able to detect, inter alia, conflicts of interest and financial abuse by their elected

officials whom they could then vote to remove from office, and perhaps even sue for breach of fiduciary duty under Title V. Or, as set forth in S. Rep. No. 187 on S. 1555 at 9, Vol. 1, NLRB Legis. Hist. of the LMRDA 405, this Title was intended to "insure[] that union members [would] have all the vital information necessary for them to take effective action * * * [such] that union members armed with adequate information and having the benefit of secret elections * * * would rid themselves of untrustworthy or corrupt officers." See also March 17, 1999 Testimony of Professor Clyde Summers before the Committee on Education and the Workforce, Report No. 106-11 at p. 8 (Addendum H,† attached hereto).

Sadly, this informational cornerstone has yet to be fully realized. A few years ago, the Labor Department's Office of Labor-Management Standards ("OLMS") did take steps to improve union financial reporting requirements. While some of the proposed changes to the LM-2 and T-1 reporting requirements under the LMRDA's Title II would arguably have been unduly burdensome for unions and of little value to members, many others would have been of great value to members, enabling them more accurately to understand how their dues are being spent, as well as to detect conflicts of interest by their elected officers that could lead to, or already had resulted in, political, contractual, or financial abuse. Not only would the more detailed reporting requirements have enabled union members to hold miscreant union officers accountable for their misdeeds, in all likelihood they would have had an important prophylactic effect by discouraging illicit behavior in the first place.

Unfortunately, rather than fine-tuning these new reporting requirements, after the change of administrations in January of 2009, OLMS rescinded wholesale the prior administration's more detailed reporting requirements. I am attaching for the record, as Addenda A-C,† the comments AUD has filed over the past two years on this and related OLMS agenda items.

Needed LMRDA reforms

The OLMS political tightrope

Indeed, while OLMS' critical role in developing and enforcing democratic standards under the LMRDA has generally improved over the past half century, the Office suffers from an endemic political problem. Residing as it does within the Department of Labor, which serves as every administrations' liaison to the incumbents within the institutional labor movement, OLMS suffers from an institutional conflict of interest. While many union officers have learned to live with the LMRDA and the political vicissitudes that are the hallmark of any democracy, very few union officials genuinely support the law and most would be thrilled to see it weakened if not repealed outright. As a consequence, as AUD has pointed out on numerous occasions over the years, the Labor Department is simply not an ideal home for OLMS given its responsibility for promoting Congress' objectives embodied in the LMRDA and enforcing many of its provisions against unions and their incumbent officials. This fundamental problem has been identified on a significant number of occasions in the past by AUD. See, e.g., October, 1994 memorandum, originally prepared for the Dunlop Commission, entitled "Proposals of AUD for Strengthening The Rights of Union Members," p. 15, submitted to Congressman Ford (Addendum D,† attached hereto); Herman Benson June 25, 1998 testimony before House Committee on Education and the Workforce, Report No. 105-125, at pp. 8-9 (Addendum E,† attached hereto), and his accompanying Statement at 4 (Addendum F,† attached hereto); March 17, 1999, Hearing Report No. 106—11 of the Committee on Education and the Workforce, Benson Testimony at p. 18, Professor Clyde Summers Testimony at p. 28, Chairman Boehner concluding remarks at p. 29: "I am one who believes that the best disinfectant is sunlight. And having reviewed some LM2s * * * over at the Department of Labor, I would agree that they are almost useless." (Addendum H,† attached hereto). As mentioned, while OLMS did subsequently promulgate regulations modifying the LM-2 and T-1 forms to require unions to report more useful detail, those regulations have now been rescinded, most likely as a consequence of the sort of political pressure that conflicts with OLMS' statutory mission.

Quite apart from the adequacy of the content of financial reports mandated by the LMRDA and promulgated by OLMS, there exists a serious problem with respect to their preparation and submission by unions to OLMS that was the subject of hearings before the Committee on Education and the Workforce in 2002 and 2003. In a June 24, 2003 Statement submitted by OLMS' Deputy Director (Addendum J,† attached hereto), "a significant number of unions consistently fail to comply with the statutory requirements that they timely file annual reports with the DOL. * * * In

†The documents may be accessed at the following Internet address:
http://www.gpo.gov/fdsys/pkg/CPRT-112HPRT68422/pdf/CPRT-112HPRT68422.pdf

report year 2002, over 43 percent [of unions] either were late or have failed to file * * * for that year." He went on to explain that OLMS' only recourse was to ask the Department of Justice to sue the non-reporting unions for injunctive relief, a very time-consuming activity for DOJ to undertake—indeed, a task that has rarely, if ever, been undertaken. As a consequence, a Bill was introduced to give OLMS the authority to impose civil fines on non-reporting unions (Addendum K,† attached hereto) which, unfortunately, was never enacted.

While AUD has, over the years, identified a number of weaknesses in the basic provisions of the LMRDA, unions have also been creative in finding ways to circumvent them that AUD has brought to Congress' attention. Thus, for example, while the statute requires all local unions to have periodic, secret-ballot elections directly among their members, it permits the indirect election of intermediate and national union officers by convention delegates rather than by members. See 29 U.S.C. § 481. Similarly, while the statute gives members a secret-ballot right to vote for dues increases, it permits delegates at intermediate and national union conventions to approve dues increases under the watchful eyes of the unions' top officers, individuals who will have the power of the purse strings and the ability to visit various forms of reprisal, political and/or financial, on subordinate "delegates" who fail to "vote the 'one-party' line." See Summers, "Democracy in a One-Party State: Perspectives from Landrum Griffin," 43 Maryland L. Rev. 93 (1984). See also Addendum E,† Benson Testimony at 34-35.

UBC eviscerates members' democratic rights via district councils

In the 1990's, the United Brotherhood of Carpenters ("UBC") devised a mechanism which has been successful in eviscerating its members' democratic rights under the LMRDA by creating and then transferring to "intermediate" District Councils 95 percent of the authority previously exercised by local unions, including the right to negotiate and enforce collective bargaining agreements and to raise dues. And after creating these new District Councils, and ordering a bunch of locals within various defined geographic areas to affiliate with them, the UBC president appoints the Councils' all-powerful CEO who then hires as business agents those local union Council "delegates" who demonstrate their fealty to him—a classic "I scratch your back, and you scratch my back by electing me several years after my initial appointment to continue as the Council CEO." For all intents and purposes, the rank and file in the UBC have been written out of the democratic process and their local unions have been reduced to social clubs which are even prohibited from hiring any elected officers or staff other than a single secretary to accept members' dues.

This undemocratic "business model," conceived and implemented by the UBC, a model other unions particularly in the construction trades had begun to adopt, was the subject of the 2008 and 2009 hearings before the Committee on Education and the Workforce. See, e.g., Addendum E,† Hearing Report at pp. 23, 40; Addendum F,† Statement of Herman Benson at 3; Addendum G,† Statement of Clyde Summers; Addendum I† at p. 2. And while AUD proposed, and Bills were introduced to give union members (particularly including Carpenters) the direct right to vote in secret-ballot elections for the officers responsible for negotiating and/or administering their collective bargaining agreements, whether holding office in a local or a regional or District council, i.e., a "intermediate" union entity as defined in 29 U.S.C. § 402, remedial legislation has yet to be enacted. See, e.g., Addendum N,† attached hereto, and discussion infra at p. 8. Indeed, as recently as by letter from Herman Benson to Speaker Boehner, dated March 27, 2011, AUD stressed the urgency of Congress' enacting relief from the UBC's "autocratic mold."

Political restructuring via mergers and acquisitions

Politically re-engineering union structures through mergers and acquisitions is by no means unique to the UBC. In recent years, unions have consolidated at both the national and local levels via affiliations and mergers at the national level, and the mergers of locals which have, in most instances, resulted in substantial alterations in both the structure and governance of the affected unions. In every instance, the changes have been either negotiated or engineered by officers with little or no input from affected members whose ability to participate in the democratic governance of their unions is, as a consequence, often diluted or otherwise eroded substantially by the merger/affiliation agreements and/or new, or substantially modified constitutions.

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†The documents may be accessed at the following Internet address:
http://www.gpo.gov/fdsys/pkg/CPRT-112HPRT68422/pdf/CPRT-112HPRT68422.pdf

So also has there been a movement within a number of unions, particularly including the Service Employees International Union ("SEIU"), to consolidate "subordinate" locals. Indeed, some national union officers have largely abandoned the use of trusteeships as a device for retaliating against dissident local officials and manipulating the political landscape, opting instead to utilize their constitutional authority unilaterally to redefine the jurisdiction of subordinate union entities to reward loyal local officials with more members, a stronger financial base, and greater authority, while shrinking the authority, membership, and finances of dissident locals and their democratically elected officers. In a number of cases, national union officials have revoked local charters altogether, issued new local charters, and transferred members into newly created locals whose officers were appointed by the national, rather than elected by the locals' members. See generally Steve Early, Civil Wars in U.S. Labor (Haymarket Books 2011); Addendum D,† Dunlop Memo at p. 9. While some of these consolidations have been necessitated by economic considerations, often they have been utilized to retaliate against dissident locals and their democratically elected officers.

To curb such abuses as well as to promote the underlying democratic objectives of the LMRDA, members affected by significant structural changes of their unions caused by mergers, affiliations, or jurisdictional changes should be given the right to ratify them by secret ballot vote on either a union-by-union, or local-by-local basis.

Members need the right to ratify collective bargaining agreements

Of great importance to all workers are the wages, and other terms and conditions of their employment. While some union constitutions grant their members the right to ratify collective bargaining agreements, many more do not. The LMRDA is silent on the subject and should be amended to guarantee to all union members a right to ratify the collective bargaining agreements under which they work. See, e.g., Addendum D,† Dunlop Memo at p. 3.

Members' right under Title I to vote on dues and fees has disappeared

Section 101(a)(3) currently provides that members have the right to vote by secret ballot on proposed local dues increases while per capita taxes and/or dues collected by intermediate and national unions are allowed to be raised by other means. As a consequence, over the years unions have amended their constitutions to withhold authority from local and their members to establish and raise dues and placed it in the hands of intermediate and national executive boards and conventions that are not directly accountable to members. To restore to members the right to determine how much of their money they are willing to pay in union dues, section 101(a)(3), 29 U.S.C. § 411a)(3), should be amended to read:

"All dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessments shall be levied upon such members, except by majority vote by secret ballot of the members in good standing."

Abusive trusteeships need to be curbed

Over the years, AUD has called Congress' attention to the ease with which national, parent unions have been able to get around the intended restraints of LMRDA's Title III when imposing trusteeships on politically recalcitrant locals. See, e.g., Addendum D,† Dunlop Memo at pp. 10-11; Addendum E, testimony of Herman Benson at p. 9; Addendum I,† Statement of Herman Benson at p. 2; Addendum N,† Bill to Amend Title III of the LMRDA.

While this Title was enacted to curb politically abusive trusteeships by national union officers, the presumption of validity accorded by it to trusteeships for a period of 18 months has operated to make it extraordinarily difficult as a practical matter to challenge abusive trusteeships. While AUD supports outright elimination of this presumption, if any presumption of legitimacy is to remain in the statute, it should be shortened to 6 months. Whatever the problem that may arguably have necessitated imposition of a trusteeship, it can invariably be remedied within that shorter time frame, after which the trusteeship should be presumed to be unlawful and the burden of proof shifted from those challenging trusteeships to those imposing them to demonstrate by a preponderance of the evidence that the trusteeship was, and its continuance is, necessary for a purpose sanctioned by the statute. See proposed language in Section 4 of Addendum N,† attached hereto.

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†The documents may be accessed at the following Internet address:
http://www.gpo.gov/fdsys/pkg/CPRT-112HPRT68422/pdf/CPRT-112HPRT68422.pdf

However, even these changes would be meaningless if local members are effectively deprived of the financial means judicially to challenge trusteeships. By seizing control of the local treasury when imposing trusteeships, the parent union can deprive members of access to their own dues without which they may be unable to retain legal counsel to preserve their democratic rights and their local's autonomy. Hence, Title III should be amended specifically to grant courts to authority to order trustees to provide plaintiff members sufficient funds to retain legal counsel on a preliminary showing of good cause that the trusteeship may be unlawful. Thereafter, if and whenever the court should become satisfied that the trusteeship is lawful, the court would be authorized to withhold further funding of plaintiff-members' legal expenses.

Title IV—Officer elections

AUD has long been championing amendment of LMRDA's Title IV which confers exclusive authority on OLMS to enforce the statute's officer election requirements. See, e.g., Addendum D,† Dunlop Memo at 12-15; Addendum E, Testimony of Herman Benson at 9.

To assure that union officers are democratically accountable to those members whose lives and welfare they are empowered to impact via the collective bargaining process, the following provision should be added to Title IV, 29 U.S.C. § 481:

"In the event that officers of any intermediate union body, are responsible, in whole or in part, for the negotiation, administration or enforcement of collective bargaining agreements, or who exercise control over the finances or other major functions of local unions, such officers shall be directly elected by secret ballot among all members in good standing of all local unions affiliated with the intermediate union body, such as general committees, system or joint boards, district or joint councils, in which they hold office. Officers of other intermediate bodies may be elected by representatives of such local members who have been elected by secret ballot."

This amendment would, for example, restore democracy to the UBC.

Further, section 402(c)(2), 29 U.S.C. § 482(c)(2), should be amended by striking "affected the outcome of an election" and inserting "substantially understated or overstated the support of one of the candidates for office such that the democratic process was undermined." The "affected the outcome" language has been construed over the years to impose on OLMS a burden of mathematical proof to demonstrate that the outcome of a given election would very likely have been different but/for a specific violation of Title IV. Given the difficulty of meeting this burden, only a small percent of Title IV violations get remedied and the overwhelming majority are effectively pushed under the rug, thereby giving encouragement to incumbent union officers to improve their odds of getting re-elected by violating Title IV.

See also Addendum N,† Section 5.

The duty to inform members of their rights under the LMRDA

The last area of concern at AUD that I will highlight in this Statement is the failure of unions to inform their members about the rights conferred upon them by the LMRDA, as mandated by Section 105 of the Act, 29 U.S.C. § 415. The Employer-Employee Subcommittee of the Committee on Education and the Workforce conducted an exhaustive hearing, Report No. 108-22, on this problem and reported out of Subcommittee two remedial Bills (H.R. 5373 and 5374) which, like so many other Bills to remedy deficiencies in the LMRDA also died on the legislative vine. See, e.g., Addenda H and L,† attached hereto. While AUD has done its best over the past half century, through its publications, website, conferences, letters and telephone conversations, to inform union members of their LMRDA rights, the only way to get this job done is to have unions, themselves, undertake this task as Congress mandated in the statute. Why is it that after more than a half century since enactment of the LMRDA compliance by unions with this statutory mandate is only occasional and sporadic? An enforcement mechanism clearly needs to be built into the statute.

Chairman ROE. Thank you, Mr. Fox.

I will now yield to Mr. Andrews.

Mr. ANDREWS. Thank you, Mr. Chairman.

I thank the witnesses for their testimony and their preparation. We appreciate your contribution.

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†The documents may be accessed at the following Internet address:
http://www.gpo.gov/fdsys/pkg/CPRT-112HPRT68422/pdf/CPRT-112HPRT68422.pdf

To those of you who are returning, thank you, and to those newcomers, thank you.

I would ask if any of the witnesses would contradict the facts in my opening statement about the number of indictments or prosecutions, or the amount spent per worker. Do you have any data which would conflict with any of those points?

Ms. FURCHTGOTT-ROTH. The amount spent per worker is accurate, but it is caused by the decline in the number of unionized workers. Right now, 6.9 percent of private sector workers belong to unions.

Mr. ANDREWS. That is right.

Ms. FURCHTGOTT-ROTH. The percentage was a lot higher in——

Mr. ANDREWS. No, I completely agree. So, if you are trying to protect a certain class of people, if there are fewer people in the class, it seems you would spend less money. We are actually spending more per worker.

So, Mr. Mehrens——

Ms. FURCHTGOTT-ROTH. But it is economies of scale.

Mr. ANDREWS [continuing]. Do you have any data that would contradict what I said earlier, Mr. Mehrens?

Mr. MEHRENS. No, Mr. Ranking Member.

Mr. ANDREWS. I wanted to ask, Mr. Mehrens, your comments about the LM-2 form. Let us say that we have a union leader who is stealing from the members of his union. And what I want to know is if there is anything that the proposed changes to the LM-2 rule add that would help members identify that theft, that cannot be found in the existing LM-2 form or the Form 5500 filed with the IRS.

So, I am a union member. I suspect that my union leader is stealing from me. Is there anything I would find out from the proposed enhancements of the LM-2 that I could not find out from the old LM-2 or the 5500?

Mr. MEHRENS. There were four different areas that were in—the January 21, 2009, final rule had four different areas where enhancements were made to the LM-2.

Mr. ANDREWS. Right.

Mr. MEHRENS. These were sales of investment, fixed assets. There was an additional disclosure made there. So, that——

Mr. ANDREWS. But if a fund sells a fixed asset, isn't that reported in either its 5500 or its LM-2 now?

Mr. MEHRENS. If a fixed asset is sold, the sale is reported on the LM-2 if it is from the union's general treasury fund——

Mr. ANDREWS. Okay.

Mr. MEHRENS [continuing]. Or in the name of the party——

Mr. ANDREWS. So, what new information would this enhancement add?

Mr. MEHRENS. The name of the party transacting with the labor organization, either the purchaser or the seller of that fixed or investment asset.

Mr. ANDREWS. Okay. And that is not disclosed presently in the LM-2 or the 5500?

Mr. MEHRENS. It is certainly not disclosed on the LM-2 and——

Mr. ANDREWS. Do you know about the 5500?

Mr. MEHRENS. I do not believe it is.

Mr. ANDREWS. But you are not sure.
Mr. MEHRENS. I am not sure.
Mr. ANDREWS. Okay. What is the second change?
Mr. MEHRENS. Well, the two are closely related. The first two are closely related. The sales of investments and fixed assets——
Mr. ANDREWS. Right.
Mr. MEHRENS [continuing]. The purchase of investments with fixed assets.
Mr. ANDREWS. Okay.
Mr. MEHRENS. There was an additional disclosure requirement there. I——
Mr. ANDREWS. I would ask the same question. Is there anything about the purchase of a fixed asset or investment that one could not find from the 5500 or the LM-2 without the enhancements?
Mr. MEHRENS. The 5500 generally covers a different universe of filers. Most labor organizations would not be filing a 5500 for their own general——
Mr. ANDREWS. I understand that. But is there anything about the purchase of an asset that would be an additional disclosure in the enhanced LM-2?
Mr. MEHRENS. You would have the name of the party transacting.
Mr. ANDREWS. You sure that is not in a 5500?
Mr. MEHRENS. If it is, I am not sure.
Mr. ANDREWS. Okay.
What is the third change?
Mr. MEHRENS. The third change was the itemization of additional categories of receipts.
Mr. ANDREWS. What does that mean?
Mr. MEHRENS. What this does is it enables the union members and the public to say we will look at the incoming receipts of a labor organization. And there is a bunch of different categories of them.
Let us say that you are a national labor organization, and you receive per capita due payments from various locals under your jurisdiction. Those payments would be itemized by the local, so that a member of that local could determine whether or not——
Mr. ANDREWS. How does that itemization differ from the existing LM-2?
Mr. MEHRENS. Most categories of receipts on the LM-2 are not itemized.
Mr. ANDREWS. But some of them are.
Mr. MEHRENS. There is a category called "other receipts."
Mr. ANDREWS. Right.
Mr. MEHRENS. Those are itemized, but most of them are not itemized.
Mr. ANDREWS. Which are the ones that are not itemized?
Mr. MEHRENS. I do not have that list in front of me.
Mr. ANDREWS. Okay. My time is short, but I would also want to ask this quickly about the additional regulations. Let us say you have a shop steward who has nothing to do with the operation of a pension fund. And her husband gets a mortgage for a business he operates from a bank that the pension fund does business with.

Under the proposed enhancements to the LM-30, would she have to disclose her husband's mortgage loan for his business? Anybody know?

Mr. MEHRENS. The vendor to that entity, yes——

Mr. ANDREWS. Even though she, as a shop steward, has no control over the fund.

Mr. MEHRENS. Yes.

Mr. ANDREWS. Thank you.

I yield back.

Chairman ROE. Thank you, Mr. Andrews.

Mr. Walberg?

Mr. WALBERG. Thank you, Mr. Chairman, and thank you to the panelists for being here today, and giving your testimony.

As a former member of the Steelworkers Union myself and working at U.S. Steel Southworks, south side of Chicago, as well as a short-time member of the Michigan Education Association, I have an appreciation for much of what the union is purported to and attempting to do, and some of the good things that they have done. Great concern, though, about our topic today.

And in lieu of Ranking Member Andrews' figures, and those being what they are, if they are that, let me ask Mr. Mehrens, you know, in your testimony, you discussed how staffing levels at OLMS are decreasing—approximately 135 people, a 35 percent reduction from 2010 to 2012.

We know that in fiscal year 2010, OLMS conducted 356 criminal investigations, slightly up from the goal of 355. But for fiscal year 2011, the agency set a target of only 300 criminal investigations, a 15 percent reduction, for whatever reason that might be. The agency set a goal of 200 compliance audits for fiscal year 2012, down again from 300 in fiscal 2010.

We could go on and on with figures that point to these type of reductions. But I am bothered that the enforcement goals seem to be lessening.

In the subcommittee which I chair, Workforce Protections, we have seen the administration engage in many efforts to increase enforcement to protect worker safety—as it ought. Yet when protecting the worker's right to know and right to transparency on how their money is being spent, we see cutbacks.

Why do you believe this is the case?

Mr. MEHRENS. I think you have to look at certain comments that were submitted to the Obama-Biden transition team. You know, some of those talked about in my testimony.

The AFL-CIO put together a list of things that they would like to see done during the transition time, were filtered around that the appropriate size of OLMS that the transition team would like was approximately the level that it was at in 2001, I think in the Clinton administration after the budget and staff had been slashed for a number of years.

So, I think what you are seeing now in terms of the appropriations request and the FTE request reflects the administration's priority in this area.

I think it is also noteworthy to point out that the last time I looked, the OLMS budget was approximately nine one-hundredths

of 1 percent of the department's budget. So, we are talking about a very small agency.

And the department has asked for tremendous appropriations increases in other agencies. And it apparently had money to spend there, but deciding not to spend it here. So, I think that is a reflection of the administration's priorities.

Mr. WALBERG. Mr. Fox, excluding LMRDA reporting forms, where can union members find financial information on their union or their union trusts?

Mr. FOX. Excluding the reports?

Mr. WALBERG. Excluding. Excluding their report forms.

Mr. FOX. They cannot.

Mr. WALBERG. So, none at all.

Mr. FOX. Correct.

Mr. WALBERG. No place to go.

Mr. FOX. Well, some unions do voluntarily have at their monthly meetings, the financial secretary will give some sort of a report. Some unions will publish in their newspapers some sort of a financial report.

But it is an overview of finances, and it typically is not sufficiently detailed to enable the union members really to look closely at and understand where there might have been conflicts in finances, et cetera.

Mr. WALBERG. Ms. Furchtgott, how do union reporting requirements compare to private sector reporting requirements?

Ms. FURCHTGOTT-ROTH. I think it depends on whether the private sector is a corporation or the private sector is a small business. The reporting requirements for publicly traded corporations are very substantive. And these forms—these forms are not—the compliance burden is not as high as for publicly traded corporations.

The compliance burden is probably higher than for small businesses in certain areas, although small businesses also have to provide a lot of details as to their expenses for tax purposes.

I would also like to say, with response to the stealing, is it possible from the new LM-2 form to see if someone is stealing. The answer to that is, yes, because what is needed is verification that sales and purchases of assets were performed without conflicts of interest.

And if I could give you an example. If, for example, a tractor is sold to a friend of someone in the union at a lower price, that is in essence stealing, because this piece of machinery is going out at a lower price. And so, that is in essence an incorrect valuation of the asset.

So, what the new LM-2, what the regulations that were brought out in January 2009 were supposed to do, was make sure that the transactions were at arm's length as the case may be. And that prevents that kind of stealing.

Chairman ROE. Complete your—we are a little over time.

Mr. WALBERG. Thank you for your latitude, Mr. Chairman.

Chairman ROE. Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. Chairman, I really will not be profound or cogent, or maybe even relevant in my remarks, so I apologize for that. But I just want to get them on the record.

This weekend, I will attend four union meetings, as is my custom when I go home, make my rounds in my four counties. If I were announced at one of those, any of those meetings that I have a very important announcement to make, that we had a hearing of the Education and Labor Committee on the union transparency and accountability, they would be sitting there.

But if I were to say, by the way, as co-chair of the Automotive Caucus in the Congress, I have been working with General Motors and the UAW, and we are going to add a third shift to the truck plant, I would get hosannas in the highest. I would probably be carried out, you know, with shouts.

The jobs are so—people are so desperate for a job. They really are concerned about jobs.

Oh, I am not saying we should not be concerned about what we are doing here today. But we are spending so much time on things that really are relatively not touching the lives of most of the workers in Flint, Michigan.

Most of the workers in Flint, Michigan, are not being hurt by a lack of transparency or accountability on union leadership. But they are being hurt by a lack of jobs.

So, I know my workers. I would like to do both. I would like to make sure that—and we certainly agree that there should be honesty everywhere—honesty in the Congress, honesty in unions, honesty wherever people gather together.

But my priority right now—and this committee does not seem to spend much time on that—is jobs. In Flint, Michigan, we used to have 80,000 General Motors employees. Now we have about 8,000.

The house I was born in has been torn down, as all the houses in the whole block are being torn down. The house I was raised in is being torn down, as are all the houses in that whole block are being torn down.

I am not demeaning what we are talking about today. But I do wish that we would emphasize the need to help in some way, shape, manner or form, bringing all the sources of power together in this country to create jobs.

Because if I were to tell them what our hearing was today, there would be a big yawn. If I were to tell them that, by the way, there is going to be a third shift at the truck plant, then there will be hosannas in the highest on that.

Thank you very much, Mr. Chairman.

Chairman ROE. Thank you.

Dr. Heck?

Mr. HECK. Thank you. Thank you, Mr. Chairman.

Mr. Mehrens, we heard testimony that there was an increased burden on the unions in trying to comply with these new forms. And in some of the written testimony, that seems to be based upon an academic study of self-reported information from the unions themselves, which would call into question the validity of the study.

Do you know how OLMS calculated the burdens associated with the individual reporting forms in arriving at their decision that the

burden was too great, that they would need to suspend those forms?

Mr. MEHRENS. Congressman, it depends on which of the rules you are referring to.

If you are referring to the most recent rule, the way that worked is, the department first built a spreadsheet of tasks that had to be accomplished in order to file the reports. You would break the reporting burden down by specific categories. You would figure out how many line items would exist in that particular category.

You would assign a dollar value to the amount of time that was spent based on the type of personnel that would be doing that particular task. And then you would aggregate that number together to come to a final burden number that would meet the requirements of the analysis necessary under the Paperwork Reduction Act.

Mr. HECK. And so, in your opinion, was that analysis, as it was conducted, a valid analysis, and such that the findings would justify suspending the final rule, or not using the forms?

Mr. MEHRENS. Well, I would say this. The department's numbers in the 2009 final rule were supposedly part of the basis for the department now proposing, and then finally rescinding, those enhancements.

However, if you look at the Paperwork Reduction Act section of both, in those rulemaking, as well as the final rule, the current administration adopts wholesale the burden numbers that were used in 2009.

And so, if the current administration had different numbers, or believed that that number was too high or too burdensome, it would have submitted a new statement as to what it actually believed those numbers were.

Mr. LOGAN. Mr. Heck, can I also answer that question?

Mr. HECK. I just want to have a question for Ms. Roth.

You brought up the right to work, some states in your——

Ms. FURCHTGOTT-ROTH. Correct, yes.

Mr. HECK [continuing]. In your testimony.

My state, Nevada, is a right-to-work state. And periodically, the state legislature is faced with a fair share law, in which non-union members would be required to pay a certain amount, not as union dues, but for the services of the recognized collective bargaining unit.

Without the forms currently under discussion, would there be any place that those individuals who are not union members, but may be subjected to a fair share law, be able to ascertain whether or not their payments or their assessments were actually being used for the purposes of representation versus being used for representational activities, potential lobbying or political activities, or contributions, gifts and grants?

Ms. FURCHTGOTT-ROTH. The original LM-2 form would give them some of that information. But the new, enhanced LM-2 form, which the Labor Department is trying to roll back, gives far more information.

There is no way they could find out that information without the new LM-2 form that the department is trying to roll back, or the

T-1 form that shows information about trusts, overseen by the unions. That is correct.

There is no way they could find out that information. There is information in these forms that they could not find out otherwise.

Some information is provided by the 990 IRS forms, but those come out with a 2-year delay.

Mr. HECK. Thank you. Thank you, Ms. Roth.

I yield back, Mr. Chair. Thank you.

Chairman ROE. Thank you.

Mrs. McCarthy?

Mrs. MCCARTHY. Thank you, Mr. Chairman, and I appreciate having this hearing.

You know, I sit here wondering what kind of witch hunt we are on. We have 15 million people unemployed. We have nine million people underemployed.

And I also am on the Financial Services Committee. And for a year-and-a-half, we have been working, and we did work, on legislation to have transparency and clarity on what caused the economical crisis that this country has gone through.

And yet, for the last couple of weeks, all we have been doing is tearing that apart and taking away that transparency. And yet, here we have a hearing, in my opinion, which I think everybody on this committee certainly wants to have transparency, wants to have clarity on where our unions are. We do not want any bad union bosses, or anything like that. And we have put the regulations there.

And yet, with H.R. 1, we have seen the large amount of money to protect workers taken away. And yet, we have so many people killed every year, injured in the job.

So, instead of not, certainly, working on the clarity, why aren't we doing something to make sure our workers in this country, whether they are union or non-union, why aren't they working? Why aren't we doing stuff to get them back to work, to get the economy going?

But with that being said, Mr. Logan, I wanted to ask you a question, and I saw you kind of like jumping before that. You wanted to answer some questions, so I am going to give you time to pick any points up that you might have heard from your colleagues that you might want to answer.

In your testimony, you noted that part of the duty of OLMS is to balance the mission of promoting transparency with the burden of compliance.

What, if any, considerations do you think were given by either the Bush administration for the financial costs, the administration's time and effort needed by these unions to comply with reporting changes?

And there is a follow up. In most cases, who footed the bill for these new expenses?

Dr. Logan?

Mr. LOGAN. Thank you. I think the clear answer is, very little examination, very little thought was given to this. When the new revisions were introduced in 2009, they were based on estimates that were carried out prior to the 2003 revisions. So there was no

actual study of the actual administrative burdens imposed on unions.

Now, as we said, I mean, this is not a debate about the desirability of transparency and accountability. We all agree that those are desirable goals. It is simply about, partly about, the utility of the Bush era revisions, and also about the records of the current OLMS, which I said, at the least, be very good in this area.

But Mr. Heck is no longer here, but he cited a study I mentioned in my written testimony that was conducted by two scholars at Penn State, one at Cornell University, who are among the preeminent scholars of employment relations in the country. They did a nationwide survey of union administrative practices. And their findings are quite startling about the administrative burden of the 2003 revisions to the LM-2 form, which are still in place, and they are still mandated by the current OLMS.

And what they found was, 83 percent of unions responding report that existing staff were required to spend more time on LM-2 compliance, less time on other duties, to comply with the new LM-2 requirements.

They go through a number of other areas about new accounting practices, about hiring external consultants to comply, about hiring new staff to comply.

And Mr. Heck suggested that, since this is based on union self-reporting, it is discredited. I do not really know what to say, but, I mean, even union officials tell the truth sometime.

But, you know, there is a serious point. I mean, I do research on union practices. I do research on company practices. And, of course, when doing research on company practices, I survey companies and ask them.

But you do not simply accept what they say at face value. You design surveys. And academics have background, you know, they have certain skills in these areas to design surveys, to try and uncover some kind of empirical truth.

And, you know, this is what we want. I mean, we do not have predesigned notions of what the results should tell us. We do not belong to a think tank of the right or to the left and say we are going to design a survey that is going to come up with this particular result.

These are leading scholars in the field. They design the survey. It is something like a process of trust examination, not unlike what you are doing here, to come up with a number of questions to make sure that the answers are consistent and to try and uncover what is really happening in terms of the administrative burdens input.

And as you said, I mean, the people who are bearing the cost of this additional administrative burden, or the union members themselves.

But the burden would be fine, perhaps. I mean, you always have to balance, of course, the goals with the administrative burden involved. The burden would be fine, if there was a very, very clear payoff in terms of increased transparency and greater accountability.

The point is, there is no evidence of that whatsoever with these revisions. We do not have any evidence that union members are being provided with useful information in a usable form.

But nonetheless, they have created this enormous new burden on unions, which ordinary union members have to pay for, both in terms of paying out of their dues money, and in terms of paying in—that union staff time is being used to comply with these very detailed, very complex forms, rather than contract negotiations, rather than dealing with grievances, et cetera.

So——

Chairman ROE. Mr. Logan, could you——

Mr. LOGAN. Sorry.

Chairman ROE [continuing]. Finish? Thank you.

Mr. LOGAN. Okay. I said academics could be long-winded, so I apologize.

Chairman ROE. So can politicians.

Mr. LOGAN. I said, I think, you know, you simply cannot say this survey does not have credibility because it is based on a national survey of union officers.

The people conducting the survey have impeccable credentials. They know what they are doing. They are trying to uncover the truth, not come up with some polemical argument concerning the impact of these new revisions.

Chairman ROE. Dr. Bucshon?

Mr. BUCSHON. Thank you, all the witnesses, for coming. And I would also like to say that my major focus in the Congress is job creation, and also has been stated on the other side.

And in that context, I think this hearing is very important, because I believe that the policies that are currently in place and the ongoing policy positions, specifically related to regulations that we currently have in regards to the administration, are detrimental to job creation.

And in that context, noting that AFSCME was the top outside political donor to all political candidates, promoting candidates that are putting these policies in place, this is a very important hearing.

In regards to the fact that—my question is, is the change in reporting going to significantly hamper the ability not only of union employees, but everyone else, to determine where political dollars are being directed? And if they are being directed from union dues, sometimes specifically in contrast to the political views of the people that are forced in many cases to contribute.

So, my question is, to Ms. Roth, is the current change, or the rescinding of the changes that were put into place for transparency reasons, does it—will it hamper the ability of us to determine where political donations have been made by union organizations?

Ms. FURCHTGOTT-ROTH. Absolutely. And it is very much connected with jobs.

I mean, here Congress spends a lot of time on Sarbanes-Oxley, Dodd-Frank. Transparency is fine for shareholders when it comes to the man in the street. The union rank-and-file worker, we are saying that he does not have the same right to transparency as the shareholders.

He has the right to know where his money is going, because, as you mentioned, $90 million, the largest single contributor to the 2010 electoral campaign was actually SEIU, AFL-CIO. They boast about how much they contribute.

Ninety-nine percent of the funds go to Democratic candidates, who are in favor of bills such as the Employee Free Choice Act, the Paycheck Fairness Act, the cap-and-trade energy tax, the new Obama health care law—all of which reduce jobs in the United States. And that is one reason we have had such slow job creation.

The recovery was started June 2009. We still have 14 million Americans out of work. Our unemployment rate is close to 9 percent.

The link could not be clearer.

Mr. BUCSHON. Thank you. And I also would like to just say as a background, my dad was a United Mineworker for 37 years, so I have a great deal of respect for the workers and their ability to hold their unions accountable.

I went through three strikes when I was a kid, and so, again, this to me is about the workers and their rights and their ability to assess whether or not their union is appropriately using their dues.

And that is, I think, where this hearing, in contrast to what has been said, does have a very direct connection to job creation, because the policies that are put in place in the United States government have—the union donations, the political candidates do have a major effect on the direction of policies in this government. And in my view, it has stymied job creation over the last 2 years.

So, my main focus also is job creation. And in that context, that is where my concern lies in this hearing.

So, with that I yield back my time. Thank you.

Chairman ROE. Thank you.

Mr. Hinojosa?

Mr. HINOJOSA. Thank you, Mr. Chairman. Thank you for holding this hearing.

And I want to thank each of our witnesses for your participation.

I want to thank you, Dr. John Logan, for your honesty in saying that you are long-winded. I want to ask you to be short, so that we can have longer opportunity to dialogue on some questions that I want to address.

I want to talk about the Obama administration's effectiveness.

You have heard today from other witnesses that they Obama administration has weakened union financial reporting requirements to the detriment of union members. Do you agree with that statement?

Mr. LOGAN. No, I do not agree with the statement. As I said——

Mr. HINOJOSA. Tell me why.

Mr. LOGAN. I think it is partly to do—the question is not whether or not transparency is a desirable goal. It is to do with the utility of the previous revisions. And I think if you look at the record of the OLMS, it demonstrates that it has not weakened it.

What we saw under the previous administration was there was a great increase in the budget of OLMS, and a great deal of increased audit activity, but very little payoff in terms of increased enforcement activity.

And so, if you look at the record of the department OLMS, in terms of criminal investigations and in terms of indictments, the record, it stands up. It is in my written testimony. I show it in the

figures—at the back I have all of the figures comparing 2010 to 2009.

I mean, I think the figures do speak for themselves.

Mr. HINOJOSA. I agree with you that the figures speak for themselves, because if you look at the second term of President Bush and his administration, the losses that we had in jobs was the greatest that I have ever seen while I have been in Congress 15 years.

A good example would be, the last month that he was in office we lost 700,000 jobs. And the months before that, it was all in the hundreds of thousands of jobs lost.

And I do not see or hear my friends on the other side of the aisle questioning why we did not have more transparency and clarity as to see why all of that was occurring.

Let me ask—or at least make a statement—that in my opinion, Secretary of Labor Hilda Solis is focused in protecting all men and women in the labor force, and that she is doing a good job.

So, let me ask you, Dr. Logan, Obama as compared to President Bush. In your testimony, you state that the Obama administration has strongly enforced the rights of workers under the Labor Management Reporting and Disclosure Act.

How does the Obama administration's efforts compare with the Bush administration?

Mr. LOGAN. Well, I think it compares very favorably. It is to do with the more efficient use of resources and the better targeting of these resources.

And that is why we find, despite the fact that we are in a period of flat budgets—there is no doubt about that all government agencies are having to make do with fewer resources. But now, effectively, the agency is doing more with less. It is targeting its investigations better, and this is having a direct payoff in terms of indictments and convictions. And as I said, the data shows this very, very clearly.

And it is trying to provide union members with the type of information they want in a usable form, and not simply to pass revisions to the existing law that have no clear benefit for ordinary union members, the government or the public.

Now, it has been noted from the very early history of the LMRDA that there is a danger of using union accountability, which everyone agrees that unions should be accountable——

Mr. HINOJOSA. Dr. Logan, I am going to interrupt you, because I think you have made your point.

Let me ask you this last question. In your testimony that I read, you cite evidence that the enhanced LM-2 requirement has imposed an increased recordkeeping and reporting burden.

So, when unions spend more time and money complying with those requirements, does that mean unions have less time and resources advocating for workers?

Mr. LOGAN. Yes, I mean, it does mean that. And it also means that the money that is used to pay for these new recordkeeping procedures, which do not provide any useful information to rank-and-file union members—the new software, the new accounting procedures, the outside expertise, the new staff that are hired to comply with the new revisions—all—members choose money.

And again, as I said before, if there was some clear payoff for this, you know, perhaps one could justify the use of members' dues money for this reason and the administrative burden.

But in the complete absence of any concrete evidence of any useful information being provided to ordinary union members, I think it seems, if not the intention being to impose a greater burden, then to tie unions up in these sort of administrative knots, then that is clearly being——

Mr. HINOJOSA. My time has expired, Dr. Logan. Thank you very much.

Chairman ROE. Thank the gentleman.

Mr. Barletta?

Mr. BARLETTA. Thank you, Mr. Chairman.

Ms. Roth, in your testimony, you said that until 2005 the union sector was mostly exempt from any regulation that required detailed financial disclosure.

Ms. FURCHTGOTT-ROTH. Yes, correct.

Mr. BARLETTA. Why do you think it took so long for the Department of Labor to get it straight and update these forms?

Ms. FURCHTGOTT-ROTH. Well, the Labor Department under Secretary Chao started updating the forms as soon as they came in, and then the new form was ready in 2003.

That sounds like a long time, but it takes a couple of years to actually get a form ready to go, because you have to have notice of proposed rulemaking and comment. You have to allow the public to comment. Then you have to deal with the comments.

So, it was out in 2003.

Then the department was sued by the AFL-CIO to prevent the form going into place. And it was put in place in 2004 after the suits were resolved with Judge Kessler. And then it became operative for fiscal years from 2005 onwards. So, that is why.

Mr. BARLETTA. Are the reporting requirements for unions vastly different from the reporting requirements for the private sector companies?

Ms. FURCHTGOTT-ROTH. I would say that they are less stringent than the requirements for publicly traded private sector companies.

The forms, the LM-2 forms before 2005 had vast gaps in them with expenses, with millions of dollars, other millions of dollars. So, the form existed before 2005. But many of the forms—the LM-30, for example—were not enforced.

Under its current status, I would say the forms are less onerous than those filed by publicly traded companies.

Mr. BARLETTA. In your opinion, is there a way for Congress and this committee to work with the current Department of Labor to reach some kind of compromise on what the unions must report on these forms?

Ms. FURCHTGOTT-ROTH. I think that it is to the great advantage of rank-and-file union members to know what is going into the trusts, which is the T-1 form. It is very useful to know if a piece of equipment is being sold at its correct price or not, with the difference being absorbed either by the union or by some friend of the union.

So, I would say that Congress has a duty to protect the rank-and-file union member, who does not have any power, who is po-

tentially intimidated by union bosses. Therefore, he cannot speak for himself. And he deserves the utmost protection. And all this information is something that he deserves to have.

Mr. BARLETTA. Mr. Mehrens, why do you think it took over four decades to stir up this much anger in the labor movement? I mean, it is 40 years.

Mr. MEHRENS. I think, like any piece of major legislation, it really depends on the secretary that is enforcing the act. The sponsor of the renewal, after the act was passed, said that the utility of this act is going to depend greatly on the secretary of labor.

If the secretary of labor is engaged and interested in making the act effective, then it will be. And if that secretary is not, then the act will not be really effective.

And for a number of years, like you said, Republican and Democratic administrations did not really have a lot of interest in updating the reports. And it took a new administration to come in that did have an interest and saw the value of transparency to make that happen.

Mr. BARLETTA. Thank you.

Ms. FURCHTGOTT-ROTH. It was difficult for Secretary Chao. She was threatened. She was sued by the AFL-CIO. It took a really tough woman—not a man, a woman—to take this issue on and get these forms.

And also the overtime rule; it just had not been updated for 40 years, either. But she updated that to have—and that again took a great deal of toughness on her part.

And that is why it had not been done before. No one else was tough enough to take it on.

Mr. BARLETTA. Thank you, Mrs. Roth. I have four daughters. I know how tough women can be. [Laughter.]

I yield back the balance of my time, Mr. Chairman.

Chairman ROE. I thank the gentleman.

Mr. Tierney?

Mr. TIERNEY. Thank you, Mr. Chairman.

I am moved nearly to tears by the great concern for the labor rank-and-file from my Republican colleagues and from some of the witnesses down there. It is absolutely touching.

You know, I look at the Labor Management Reporting and Disclosure Act, and it says, to ensure the basic standards of democracy and fiscal responsibility in labor organizations representing employees in private industry. And that is the goal of that act.

And I can tell you that I do not have people knocking my door down, rank-and-file members of a union, saying that this is not being done right, and that they feel their rights are not being protected.

This secretary of labor and others under Democratic administrations, as well, have done investigations. They have done audits. They have done good work in making sure that people comply with this and with the disclosure.

So, I was a little bit surprised, but at least I think it is honest for Ms. Furchtgott-Roth to come forward and acknowledge that there are politics involved here.

So, let me just state for the record a little bit of history on this that has been reported, and then I will go on with it. Former

Speaker Newt Gingrich was the first person to suggest the use of the act as a means to weaken unions.

Gingrich directed the secretary of labor at the time, Lynn Martin, to use the act to enhance union reporting requirements as a means to, open quote,—"weaken our opponents and encourage our allies,"—close quote.

Grover Norquist has said, open quote,—"every dollar that is spent on disclosure and reporting is a dollar that can't be spent on labor union activities,"—close quote.

You know, I seem to—back the recession period, 2001 to 2007, and there was tremendous loss of jobs on that. I see the fingerprints of weak performance by the SEC and other regulatory agents, the deregulation of Wall Street all over that.

I do not see any fingerprints of labor union activity doing that. In fact, during that period, labor had extensive reporting requirements under George W. Bush. So, I do not see a direction of those lost jobs from labor action as much as we do from deregulation of Wall Street.

There was a former staff member to Vice President Dan Quayle. The fellow's name was Robert Guttman. He was the assistant secretary of labor for employment standards. And he was the one who was charged with running the OLMS, the act.

He strongly objected to the reporting changes, and argued that they were a lot of junk, in quotes. And, quote,—"would produce little useful information, while imposing unconscionable burdens on unions,"—close quote. The department went ahead with the changes, and Mr. Guttman resigned.

The second Bush administration continued where the previous one left off. The man that was charged with running OLMS was formerly the head of opposition research at the Republican National Committee and did not have extensive experience with labor issues.

And one of his first efforts was to implement changes to the LM-2 reporting requirement and greatly increase the volume of what unions were mandated to report. It is estimated that the amount of information required in the form increased at least 60 percent on average. One union reported an increase in the pages of reporting from 125 pages to 800 pages.

The problem with the enhanced requirements was not just that the volume was increased, but also with the lack of usefulness for the information.

Dr. Logan, does that sound like an accurate history of what was going on here to you?

Mr. LOGAN. Yes, it is an accurate history. I think I would say—I mean, it would be inappropriate for me to comment on the intentions of the previous administration—say that if the revisions were designed to produce greater accountability and transparency, they were ill-thought-out and clearly failed in doing so.

We have not uncovered any cases of corruption that would not have come to light otherwise. They have not produced ordinary union members with useful information in a useful form.

And so, since it failed so abysmally in achieving that, I think there is a question as to what was the real motivation behind some of these revisions, and whether it was really to burden unions with

all sorts of additional administrative costs and to reduce their effectiveness, and to supply information that could be misused by people who are hostile to unions and to collective bargaining.

Because as I pointed out in my written testimony, while we do not actually have any reliable evidence to suggest that the Bush era revisions either have or would have produced additional and useful information to ordinary union members, they certainly have been used extensively by people who are hostile to unions and to collective bargaining on ideological grounds.

Mr. TIERNEY. And I note that the Obama administration record on pursuing them on this act, on investigations and on prosecutions is actually more rigorous than that under the previous administration on that.

And I do not think any of us want to try just ad hoc to ascribe motivations to others. We look to their own words. The quotes that I gave you from former Speaker Newt Gingrich, from Grover Norquist and from Mr. Guttman, I think pretty much speak in their own words about the motivation on that.

Mr. LOGAN. And I would also say that, again, to speak to the qualifications of the current head of OLMS under this administration is someone who really is the country's leading expert in this area of union financial transparency and accountability, and an internationally recognized expert. I mean, his qualifications really—it would be difficult to find anyone who matches him in terms of his experience, his professionalism. And he has brought this to the agency.

And the agency is doing precisely what it is supposed to do under the law, and doing it very well.

Mr. TIERNEY. And that would be in contrast to the head of opposition research for a political party that was previously there.

I yield back.

Chairman ROE. Thank you, Mr. Tierney.

Mr. Wu?

Mr. WU. I thank you, Mr. Chairman. I have no questions of this particular panel of witnesses. Thank you very much.

Chairman ROE. I thank the gentleman.

I will ask a few questions, and then we will wrap this up.

We want to thank you all for being here.

And I am sorry Mr. Kildee is gone, because I did my part. I bought a new Chevrolet Equinox for my wife. Unfortunately, the Toyota that I traded in on it, which was made in Georgetown, Kentucky, my Chevrolet was made in Toronto, Canada, I found out. But I did do my part there.

I also take a little bit of issue with one of my colleagues about not caring about union workers. My father, too, was a union worker for 40 years. He worked in a factory making shoe heels, and I cared very much about him and about the treatment he got and where his union dues were spent.

I want to go a little different direction. What is the purpose of the trusts that the unions set up? I know there are—I am very familiar with the 5500 reporting forms in a trust, because of some experience I have had as a—in college trusts.

But my question is, why are these trusts necessary? And why are they set up? If it is transparent, those funds ought to be easily followed. It should not be difficult to follow.

And I would think that the union would want transparency, because there are all these questions swirling around about the activity anyway, and have been for decades.

So, why wouldn't you want to have transparency? And why do they set up these trusts?

Ms. FURCHTGOTT-ROTH. Well, some of the trusts are credit unions, strike funds, pension and welfare plans and building funds. And it is important that the books of these funds be open so that rank-and-file members can see how much is in them and what they are being used for, and so that parts of them are not siphoned off for other purposes.

Chairman ROE. I did a little quick math in my head. If we have 6.9 million private sector union workers and $8 billion, that is over $1,000 a piece. It is almost $100 a month per union worker. And that is a fair amount of money if you are—depending on what wage scale—if you are not a six-figure income person, after taxes, that is a pretty good chunk of money.

So, I know that you mentioned in your, Ms. Furchtgott-Roth, that you mentioned in your testimony earlier about the reporting requirements that were required of us members of Congress here. And the comment was made that, if we have to fill out these forms in union, this is not time we have to spend on other issues.

Well, the same thing came be said of us. It is time we do not have to spend with our constituents.

But I think it is important for a person looking at me to be able to look to see if I have any conflicts of interest, or what I am doing. I have no problem with that whatsoever. I do not like to do it.

I was in a horrible mood Monday. I did my taxes. So, I get that.

But why wouldn't the unions want transparency and make it easy to have this information out there?

Ms. FURCHTGOTT-ROTH. Because they contribute immense amounts of money to political campaigns. They brag about it. And most of that money goes to Democratic politicians, and they want to hide that.

They also, if it was also open, then union members would not be able to take advantage of their rights under Beck to get back the portion of their union dues used for political contributions. They have the right to do that. But if they do not know what the political contributions are, then they cannot ask for it.

Chairman ROE. The other one I want to talk about just momentarily are audits. When I was reading the prep material here, it said that the OLMS reduced the time between union audits from once every 133 years—I doubt that anybody in this room will be around for the next set of audits—in 2000, to once every 33 years in 2006.

I found that astonishing when the audits occurred only once every 133 years. And to move it to 33 years was considered a burden?

Any comment about that? Does that seem reasonable?

Mr. MEHRENS. One thing I would add there is that the department has a goal, I believe, of 14 percent, what they call fall-out

cases from audits that are conducted. So, as a natural enforcement matter, the more audits that are conducted, the more criminal investigations that will occur, as well.

And I believe in the previous fiscal year, there was actually a 12 percent actual result where 12 percent of all audits led to fall-out criminal cases.

Chairman ROE. I would like to—my time is about up—but I would like to mention also, I would like to know, these indictments that occurred in 2009, I do not think you can just get all the investigation done in 2009. I have a feeling that some of that was a hold-over from the previous year of 2008. I would almost bet on that.

Ms. FURCHTGOTT-ROTH. Correct.

Chairman ROE. And we can look at that and find out, because I do want to find that information out. I think that the reporting requirements of the 5500 form is just a form that you fill out through the trust.

Mr. Mehrens, you were mentioning that. That is what that is.

Mr. MEHRENS. The 5500 is generally filed by ERISA-covered entities. A lot of the trusts are not ERISA-covered entities.

Chairman ROE. Well, I want to thank the distinguished panel we have had. It has been informative.

And, Mr. Andrews, do you have any closing comment?

Mr. ANDREWS. I do. I would also like to thank the panel and the chairman, and just note, I think the hearing is remarkable for what did not happen and what did happen, and what did not happen.

What did not happen was anyone putting on the record any facts to refute the record that this administration has vigorously prosecuted any wrongdoing.

What did happen is a refreshingly honest admission by Ms. Furchtgott-Roth and others that this is really about politics—the majority's concern that unions are supporting candidates they do not like, so they are going to try to stop that.

I think it is a little ironic, the same majority would fight tooth and nail under the Citizens United decision against the DISCLOSE Act, that would make corporations disclose their political behavior.

But what also did not happen was not one word, not one moment, not one idea about the 15 million unemployed people in this country we should be helping.

This was about politics. We are happy you admitted it.

Chairman ROE. Mr. Holt?

Mr. HOLT. Thank you, Mr. Chair, for accommodating.

I apologize for coming in late. I have tried to follow what has been going on this morning. And I must admit, I am a little puzzled by what I have heard.

Let me address this question to you, Ms. Furchtgott-Roth. In response to a previous question, you mentioned that organized labor, that unions were kind of misusing the money that had been collected from members for such things as the Paycheck Fairness Act. And you explained how a bill to help women fight pay discrimination, that that law is not something that should be advanced by unions, it is not something that should be advocated for by unions.

Did I understand that correctly?

Ms. FURCHTGOTT-ROTH. What I said was, I listed the Paycheck Fairness Act as one of four bills that were the object of lobbying activities, favorable lobbying activities by unions. They were using their political—they were using money to lobby for four bills: the Employee Free Choice Act; the Paycheck Fairness Act; the cap-and-trade energy tax; and the new health care law.

I said that those bills reduce employment in the United States. And that is one reason we have fewer jobs now.

Mr. HOLT. I see.

Ms. FURCHTGOTT-ROTH. And the Paycheck Fairness Act——

Mr. HOLT. So would you include child labor in that also?

Ms. FURCHTGOTT-ROTH. There was not a child labor law——

Mr. HOLT. I know. But would you——

Ms. FURCHTGOTT-ROTH [continuing]. That.

Mr. HOLTt [continuing]. Is that—would you include that in the same category?

Ms. FURCHTGOTT-ROTH. No.

With regard to the Paycheck Fairness Act, we have many laws that prevent discrimination against women. What the Paycheck Fairness Act would have done is require employers to report to the government the race, sex and earnings of their workers.

Mr. HOLT. Yes.

Ms. FURCHTGOTT-ROTH. So, the government could check that groups of men and groups of women were being paid equally, even if they were not necessarily in the same job with the same amount of work experience and the same tenure.

Mr. HOLT. Would it be okay if unions spent money on, you know, to advocate workplace conditions of fairness that were not enforceable? Is it improper for them to be using union funds to advocate enforcement of fairness in the workplace? Is that the distinction?

I must admit, I am puzzled by what I hear.

Ms. FURCHTGOTT-ROTH. It is fine to be—we have these forms so that people can see what unions lobby for. And it is completely legal for them to do that.

I was mentioning these four bills, because before you came, people were saying, why aren't we concentrating on job creation? Why are we worrying about these small matters and not worrying about creating jobs?

Well, it so happens that the four major bills that the unions completely legally lobbied for would have resulted, have resulted, in a decrease in employment. That is one reason why, even though the recovery started in January 2009, we still have almost 14 million Americans out of work and an unemployment rate of almost 9 percent.

The Paycheck Fairness Act impeded job creation. The health care law, with its mandate that if you employ 51 or more workers, you have to pay a penalty of $2,000 per worker per year, that has prevented firms at 48 workers from increasing to 51. It has made firms of 55 of 60 workers think, how do I get rid of five or 10 workers, so I get below the 50 limit?

And I can go through, if there were time, these other bills, the cap-and-trade energy bill, how that reduces employment by making energy more expensive.

Mr. ANDREWS. Will the gentleman yield?

Mr. HOLT. I would be happy to yield to my colleague.

Mr. ANDREWS. Just wondered if the witness would supplement the record with any empirical studies she is aware of that would support the point you just made about the firms with 60 workers laying people off because of the health care bill. Would you care to do that for us?

Mr. HOLT. If you would, please. That was exactly to be my question, because we have looked for that, because you are not the first person to raise this concern. And we just do not find any evidence.

And as for the energy, the would-be energy legislation that did not become law, I think it is very speculative what it would have done. On this, you are entitled to your opinion, because you will not be able to provide us facts.

Ms. FURCHTGOTT-ROTH. It is speculative that raising the cost of energy in the economy reduces employment? That is speculative? Why don't we make it—why don't we make gasoline, you know, $20 a gallon, instead of $4?

Mr. HOLT. It is speculative that that legislation would have increased the cost of energy at the workplace.

I mean, certainly, you know, the financial speculation that has resulted in increase of gas prices by 50 or 100 percent, you know, far more than production—actually, production, domestic production of oil has doubled, and yet the gas prices have gone up in the opposite direction of what, you know, the arguments would suggest.

Ms. FURCHTGOTT-ROTH. But CBO——

Mr. HOLT. That kind of speculation we can talk about, because there are facts.

Ms. FURCHTGOTT-ROTH. Okay.

Mr. HOLT. But the speculation on what the so-called cap-and-trade legislation would have done is purely speculation.

So, on these other matters——

Ms. FURCHTGOTT-ROTH. The CBO estimated——

Mr. HOLT [continuing]. On these other matters that you cite, if you would provide the committee any hard facts, we would be grateful. Thank you.

Ms. FURCHTGOTT-ROTH. I can provide you with a number of studies that show that raising the cost of labor reduces employment. It is a given in the academic labor economics literature. I would be happy to supply you with a list.

Chairman ROE. Okay. I thank the gentleman.

To summarize, I certainly agree, this has been an important event today. I think that jobs are the single most important, but also looking after workers with transparency, sunshine and information. The sun needs to shine, so people can see where their resources are going.

I think it is important—and, Mr. Fox, I would like to meet with you later to discuss about how you feel like that the law can be changed, the 1959 law can be changed to improve it.

I would certainly argue, and I would like to with my colleague, Mr. Holt, at some point. We have an Eastman Chemical Corporation in Kingsport, Tennessee, that has 9,000 employees and uses 60 carloads of coal every day.

If you tax coal and carbon, which is what organic chemists make stuff out of, the cost of their business compared to someone else

that does not have those same regulations, will strangle that business, and 9,000 jobs will be gone from Eastman. And it will be in China or India, or someplace else that does not have that.

AGC Glass, which has a plant that makes solar panels, it uses $1 million—their energy bill is $1 million per year—they would be gone if energy prices doubled, as we thought this would be. So, I would be delighted to have that.

Now, I am not arguing the benefit of lowering carbon dioxide. I am not saying that. I am just saying that this bill would have had a catastrophic effect on northeast Tennessee.

I would like to thank the panelists for being here, and I look forward to carrying on this conversation in the future.

This meeting is adjourned.

[Questions submitted for the record and their responses follow:]

May 9, 2011

Diana Furchtgott-Roth
Senior Fellow
Hudson Institute
1015 15th Street NW
6th Floor
Washington, DC 20005

Dear Ms. Furchtgott-Roth:

Thank you for testifying at the Subcommittee on Health, Employment, Labor and Pensions hearing, "The Future of Union Transparency and Accountability," on held on March 30, 2011. I appreciate your participation.

Enclosed are additional questions submitted by Committee members following the hearing. Please provide written responses no later than May 19 for inclusion in the official hearing record. Responses should be sent to Mr. Ryan Kearney of the Committee staff, who may be contacted at (202) 225-4527.

Thank you again for your contribution to the work of the Committee.

Sincerely,

David P Roe

Phil Roe
Chairman
Subcommittee on Health, Employment, Labor & Pensions

Submitted by Representative Robert Andrews

1.) Ms. Furchtgott-Roth: Please supplement the record with any empirical studies you are aware of that would support the point you just made about the firms with 60 workers laying people off because of the health care bill.

Submitted by Representative Rush Holt

1.) Ms. Furchtgott-Roth: Please provide the committee with any hard facts to support your statement that the Employee Free Choice Act; the Paycheck Fairness Act; the American Clean Energy and Security Act; and the Affordable Care (the only bill out of the four cited that is law) reduces employment in the United States and is one reason we have fewer jobs now.

Response by Ms. Furchtgott-Roth to Questions Submitted

Thanks for inviting me to testify before your committee on March 30, 2011. I am writing to respond to your questions for the record. Please excuse my delay in replying. I wanted to wait until I had completed a detailed study of the franchise industry so that I could provide you with complete data. A copy of the study, which will be released on Tuesday, is attached. [**Editor's Note:** The attachment referred to, "The Effects of the Patient Protection and Affordable Care Act on the Franchise Industry," may be accessed at the following Internet address:]

http://www.hudson.org/files/publications/The%20Effects%20of%20PPACA%20on%20Franchising-%20Final.pdf

You asked for empirical studies that support the statement that firms with 60 workers lay off workers because of the health care bill. The attached study, The Effect of the Patient Protection and Affordable Care Act on the Franchise Industry, shows that the new law will make it harder for small businesses with 50 or more employees to compete with those with fewer than 50 employees.

Franchisors and franchisees, who often own groups of small businesses, such as stores, restaurants, hotels, and service businesses, will be at a comparative disadvantage relative to other businesses with fewer locations and fewer employees. This will occur when a franchisor or franchisee employs 50 or more persons at several locations and finds itself competing against independent establishments with fewer than 50.

What's surprising is the incentive in the Act not to hire additional workers. This is illustrated in Table A4 of the attached reoirt. If a business does not offer health insurance, then, beginning 2014, it will be subject to a penalty if it employs more than 49 workers in all its establishments. For 49 workers, the penalty is 0. For 50 workers, the penalty is $40,000; for 75 workers, it is $90,000; and for 150 workers, the penalty is $240,000. Each time a business adds another employee, the penalty rises.

On the other hand, as is shown in Table A6, businesses can reduce costs by hiring part-time workers instead of full-time workers. A firm with 85,000 full-time workers and 7,000 part-time workers that does not offer health insurance would pay a penalty of $170 million. By keeping the number of hours worked the same, and gradually reducing full-time workers and increasing part-time workers, until the firm reaches 17,000 full-time workers and 92,000 part-time workers, the penalty is reduced to $34 million. If the firm abandons full-time workers altogether, the penalty is reduced to zero.

Many people think that because the Act is fully effective in 2014 then it is not affecting current employment. Nothing could be further than the truth. Businesses are rational and plan ahead. They see a penalty coming, so they adjust to it now. They don't take on additional workers with the risk of a penalty.

Second, you asked me to offer evidence that the Employee Free Choice Act, the Paycheck Fairness Act, the American Clean Energy and Security Act, and the Patient Protection and Affordable Care Act are one reason we have fewer jobs today.

The Employee Free Choice Act, the Paycheck Fairness Act, the American Clean Energy and Security Act created a climate of uncertainty among employers. If these laws had passed—and, with a Democratic Congress and Democratic president, there was a strong likelihood of passage—costs on businesses would have risen. This was especially true of large, energy-intensive, unionized businesses. As I mentioned above, businesses are rational an look ahead.

One need only look at the illegal violence and destruction wrought in the ports of Washington State by the Longshoremen to understand why the Paycheck Fairness Act, which would have removed the rights to secret ballots in elections for union representation, would have been so harmful. Workers would have been intimidated into voting for unions, and businesses would have been in danger of work stoppages and destruction of private property.

The Patient Protection and Affordable Care Act passed, and I repeat my answer to the first question as evidence.

[Whereupon, at 11:36 a.m., the subcommittee was adjourned.]