

AFL-CIO

AMERICA'S UNIONS

July 29, 2020

Dear Senator:

The AFL-CIO vigorously objects to the breach of yet another bipartisan tradition -- the Majority Leader's acquiescence to the Administration's decision to undermine the National Labor Relations Board's legitimacy by waiting months to fill even one of the two Democratic vacancies while moving quickly to fill the only Republican vacancy. It is critical that a modicum of balance be restored to the Board. Confirming a Democratic Member -- even a single Democratic Member -- who has a different background and different policy views -- is critical to restoring integrity and some balance to the Board's decision-making. We, therefore, urge you to confirm former NLRB Member Lauren McFerran, a diligent and respected member of the Board during her five years of service. At the same time, current Member Marvin Kaplan has contributed to this NLRB being the most partisan, anti-worker board in history, and we urge you to vote against his confirmation for a second term.

For decades, the President and the Senate have honored the bipartisan tradition that the party controlling the White House and the Senate chooses three individuals to serve on the Board, as well as the Board's chair, and the Senate's minority party chooses the other two members. The President would then appoint these five individuals whom the Senate would confirm as a package. Yet, since former Chairman Mark Pearce's term expired in August 2018, President Trump and Majority Leader McConnell have allowed the fifth seat on the Board to remain vacant despite having received the name of a highly qualified individual from Minority Leader Schumer. The result has been an NLRB of only four members, three Republicans and one Democrat, for a year and a half, followed by a period of seven months and counting with a Board of only three Republicans. This is unacceptable and cannot become the new normal.

Since President Trump appointed a majority of Board members, the NLRB has followed a predetermined agenda to destroy all of the progress made by the Obama Board. Rather than applying the Act to changing workplace conditions, the Trump Board has steadily moved the construction of the Act back in time. On numerous occasions, it reversed precedent, often without providing notice to the broader labor-management community, as was the Board's tradition, and, in important instances, without the benefit of briefing on the issue when no party in the case urged such reversal. That rush to judgment has involved Board members in serious ethical breaches.

This destructive agenda was furthered by an unprecedented number of rulemaking proceedings, each aimed solely at overturning precedents that the Board majority did not like. The rush to judgment that has marked the Board's adjudications is also evident in its decision to engage in rulemaking without notice and comment in violation of the Administrative Procedures Act, which was the conclusion reached by the United States District Court for the District of

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Columbia. The Board made and refused to correct gross errors in data presented to support proposed rules, and it failed to provide reasoned justifications for its rules. Member Kaplan and the majority of which he is a part has not ruled in favor of a union's position in even a single case of national significance since his service began almost a full five years ago. He has not been able to shed his former partisan role and become a neutral adjudicator of facts and a fair administrator of the Act.

The case here is clear. We urge you to vote in favor of Lauren McFerran for another term at the NLRB and against Member Marvin Kaplan for a second term.

Sincerely,



William Samuel
Director, Government Affairs

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