

**CORRECTED COPY (9/17/2024):** Yesterday’s letter omitted two signatories – the American Federation of School Administrators and the International Brotherhood of Electrical Workers. Both are included in this copy.

September 16, 2024

Dear Representative:

The undersigned labor unions, including the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), representing 60 affiliate unions and 12.5 million working people across our economy, write urging you to **vote NO on suspending the rules to pass H.R. 8314, “the Foreign Election Interference Act.”**

In the rush to fight foreign influence in our elections, this bill’s wide-ranging impact has not yet been given full consideration. Attempting to target foreign actors, the bill as drafted instead places Americans’ constitutional rights at risk. We do not believe the bill’s sponsors, nor the Committee members who voted to favorably report the bill, intended these consequences. They were nevertheless asked to vote the bill out of committee just seven days after it was introduced, without the benefit of a hearing, careful analysis, or deeper study.

**H.R. 8314 puts labor unions, trade associations, and other non-profits at risk of being restricted from full and fair participation in the political process, through no fault of their own.** We are in total agreement that foreign actors should not be permitted to influence our elections, but the bill’s approach to dealing with this issue and ambiguities in its provisions may lead to a slew of **unintended, harmful consequences for U.S. citizens** and their ability to fully engage the political process, such as:

- Prohibiting unions from contributing to federal political committees if they have a single foreign national member – and yet without any consequence for the political giving of their employers;
- Giving corporate interests the ability to undermine American workers’ full and fair participation in the political process;
- Encouraging anti-union employers to hire non-citizens over U.S. citizens; and
- Creating a new venue for foreign powers to thwart Americans’ good faith efforts to engage in their own democracy through any non-profit organization.

**For these reasons, the bill should be pulled from the suspension calendar, and a full review and analysis should be done.**

Given what is at stake - Americans' constitutional rights - H.R. 8314 is precisely the kind of bill for which the House should **not** suspend its rules and pass as-is. At a minimum, amendments are necessary to protect U.S. citizens and their democracy from the current bill's wide-ranging and unintended effects.

Here are three reasons to reject this bill on suspension.

**First, the bill poses a threat to working people's ability to fully and fairly engage in the political process. Indeed, the bill uniquely gives corporate interests the power to complicate labor unions' operations and First Amendment rights.**

The bill states that it applies to all not-for-profit 501(c) organizations. Labor unions, as 501(c)(5) organizations, may therefore be assumed to be covered by the bill. Under the bill, if such an organization "receives" a "contribution or gift" from a foreign national, its ability to donate to a federal political action committee – including a federal "super PAC" – is restricted for eight years from the date of that receipt.

The definition of "contribution or gift" is unclear under the bill. The bill refers to contributions or gifts "within the meaning of section 6033(b)(5)" of the Internal Revenue Code. That section of the Code applies only to 501(c)(3) organizations, but the bill would now appear to import this section's meanings for application to 501(c)(5) organizations. A labor union's principal receipts are its membership dues, not the kinds of donations which 501(c)(3) organizations typically receive. How would the Internal Revenue Service (IRS) or the courts interpret "contributions" under this bill as applied to labor unions, which are clearly covered by the bill? Would membership dues count as contributions?

To answer this question definitively, one might find solace in a clear definition of "contributions" in Internal Revenue Code section 6033(b)(5), to which the bill refers. Unfortunately, there is no such definition in that provision; it merely tells a 501(c)(3) organization to report its contributions. Thus, one must venture beyond the statute to try and locate a definition. An IRS regulation interpreting section 6033 comes closest: "Whether an item constitutes a contribution, gift, grant, or similar amount depends upon all the surrounding facts and circumstances." 26 C.F.R. § 1.6033-2. But this regulation is still ambiguous: something may be a contribution depending upon the facts and circumstances, without even pointing to what the relevant facts and circumstances are. The bill's proponents have directed interested parties to the instructions for IRS Form 990 which opine on how to treat a 501(c) organization's membership dues when reporting contributions. At best, page 38 of those instructions says that membership dues may be a mix of contributions and payment for services rendered. That is, membership dues may be partly a contribution. It depends upon the fair market value of the services provided to a member.

Any dues amount beyond the value of those services would be considered a contribution. In short, the proponents' answers to the question of whether union membership dues is a contribution are profoundly not-reassuring versions of "maybe" and "it depends."

But even that citation is legally unreliable. Instructions for an IRS form may change from year to year. And these instructions have only ever been considered "informal guidance" of little precedential value to the U.S. Tax Court. Other IRS guidance instructs unions to include disclosures on solicitations of membership dues payments that refer to such payments as "contributions or gifts." See IRS Notice 88-120. Add the fact that this is an entirely new proposed law with an entirely different intent than the reporting and accounting requirements of 6033(b)(5). Moreover, add the U.S. Supreme Court's recent decision in *Loper Bright*, ending *Chevron* deference to agency interpretations, and you have a potent recipe for absolute uncertainty for how "contributions" is interpreted under H.R. 8314. Incredibly, the bill asks Americans to entrust their First Amendment rights to an obscure, unclear, and unreliable passage buried deep in an IRS form instruction.

Why does it matter how a union's membership dues are treated under H.R. 8314? If any portion of a dues payment is considered a contribution under H.R. 8314, once a union receives a dues payment from a foreign national, those dues will trigger an eight-year-long restriction on the union's right to give to federal political action committees. Because the bill only applies to not-for-profit organizations, for-profit corporations face no danger of losing their First Amendment rights in the same fashion.<sup>[1]</sup>

How might a union end up receiving dues money from a foreign national? We are organizations of working people. The overwhelming majority of the U.S. workforce is composed of U.S. citizens, but a portion is noncitizens. Labor unions take the workforce as an employer employs it. Unions represent all the workers in a bargaining unit and do not have a role in the hiring process. A represented employer could hire one foreign national into the bargaining unit. That foreign national could be fully authorized to work in this country. Once the employer places that foreign national into the bargaining unit, the union is obligated to represent them, and they are entitled to participate. When they pay their dues to the union and any portion of those dues is considered a contribution under H.R. 8314, the union's right to fully participate in the political process is restricted by the bill. Even if the union never uses those dues for political giving and keeps them in a segregated account, H.R. 8314 would still restrict the union's right to participate in politics. All that matters is that the union received, even unknowingly, a dues payment from a foreign national. Ironically, under H.R. 8314, the employer, who chose to hire the foreign national and created the problem for the labor union, faces no restrictions on its ability to participate in the political process as a consequence of the hire.

In short, under H.R. 8314, the fate of an American labor union's First Amendment rights may be entirely in the hands of an employer.

**Second, H.R. 8314 encourages the hiring of foreign nationals over U.S. citizens.** Given the new complications posed for a union when an employer hires a foreign national, potentially forcing a union to choose between representing all workers in a bargaining unit or being able to fully participate in the political process, the bill would incentivize anti-union employers to always hire at least some foreign nationals over U.S. citizens in order to inject or threaten to inject the union's treasury with a foreign national's dues.

Such a hire may force a union to abandon an organizing drive because it does not want to lose its ability to fully participate in U.S. democracy. Or it may, at the very least, trigger restrictions on the union's political giving, allowing the corporate interests that hired the foreign national to dominate the political field. In either case, an anti-union employer stands to benefit from the hiring of a foreign national, whether fully authorized to work or undocumented, over a U.S. citizen.

**Third, H.R. 8314 creates a new, insidious way for foreign powers to undermine U.S. citizens' ability to participate in their own democracy.** Just as the bill puts labor unions' constitutional rights at the mercy of an employer's hiring decisions, the bill also puts every nonprofit organization at the mercy of foreign powers' manipulation of the donation process.

The bill has no scienter requirement. That is, to run afoul of the new law, a nonprofit organization need not know whether it received foreign national contributions. Receipt of the contribution is all that is required. Consequently, the bill invites a new form of foreign interference in our democratic system. Consider the following hypothetical, a scenario which could become commonplace if H.R. 8314 were enacted:

A group of U.S. citizens, enraged by the effects of unfair trade practices by the Chinese Communist Party, forms a non-profit organization to fight for policies that tackle the problem. Their new organization raises funds to engage in lobbying and to even give to political action committees that support a fair trade agenda. These U.S. citizens solicit donations from like-minded members of the U.S. public via a website. In light of H.R. 8314, these U.S. citizens insist upon donors clicking a box confirming they are not foreign nationals when they make an online donation to the organization. The Chinese Communist Party, hoping to subvert this organization's political activity, finds a foreign national to donate to the organization. The foreign national sends the organization \$5.00 via an online credit card payment and even lies about their citizenship status. Once the organization receives the money from the foreign national, an agent for the Chinese Communist Party notifies the IRS of the organization's receipt of the foreign national's contribution, at which point the organization cannot contribute any of its money, all of which but \$5.00 was donated by U.S. citizens for the purpose of fighting unfair trade practices by the Chinese Communist Party, to a political action committee for the next eight years without severe penalty.

We do not believe the authors of this bill intended any of these consequences, but they may well come to pass if H.R. 8314 were to become law in its current form.

Giving corporate interests power over labor organizations' rights to participate in the political process, incentivizing the hiring of foreign nationals, and handing foreign powers a powerful weapon to subvert Americans' right to participate in their own democracy are just three harmful consequences of the bill as currently drafted. There are likely many more dangers posed by this bill which would come to light if it was given better consideration and more careful study than the process has afforded thus far.

In this form, the bill should be nowhere near the House suspension calendar. **If H.R. 8314 is brought up on suspension, please vote NO for the sake of our sovereignty, our democracy, and working people's constitutional rights.**

Thank you for your attention to this gravely important matter.

Sincerely,

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

International Brotherhood of Boilermakers (IBB)

American Federation of Teachers (AFT)

Amalgamated Transit Union (ATU)

American Federation of State, County & Municipal Employees (AFSCME)

Office and Professional Employees International Union (OPEIU)

American Federation of Musicians (AFM)

National Postal Mail Handlers Union

Actors' Equity Association

National Federation of Federal Employees, IAMAW (NFFE)

American Federation of Government Employees (AFGE)

Association of Flight Attendants-CWA (AFA-CWA)

International Federation of Professional and Technical Engineers (IFPTE)

Service Employees International Union (SEIU)

National Education Association (NEA)

Alliance for Retired Americans

Seafarers International Union (SIU)

International Association of Fire Fighters (IAFF)

National Air Traffic Controllers Association (NATCA)

International Association of Machinists and Aerospace Workers (IAMAW)

International Union of Elevator Constructors

International Organization of Masters, Mates & Pilots

The International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers

Communications Workers of America (CWA)

United Auto Workers (UAW)

American Federation of School Administrators (AFSA)

International Brotherhood of Electrical Workers (IBEW)

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[1] While unions and corporations are prohibited from contributing from their general treasuries to federal political committees that contribute to candidates and political parties, both may use general treasury funds to contribute to federal political committees that do not make such contributions – *i.e.*, “super PACs” and “hybrid PACs.”