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SUMMARY

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Joint Employment and the National Labor Relations Act

The National Labor Relations Act (NLRA) recognizes the right of most private sector employees to engage in collective bargaining through their chosen representatives. By "encouraging the practice and procedure of collective bargaining," the act attempts to mitigate and eliminate the causes of labor-related obstructions that impair the free flow of commerce. The NLRA prohibits employers from interfering with, restraining, or coercing employees in the exercise of their collective bargaining rights. The act also restricts employers from refusing to bargain collectively with the unions that represent their employees.

When individuals work pursuant to an arrangement that involves more than one entity, such as a contract that provides that one business supply workers to another business, questions may arise concerning which entity should be considered the "employer" for purposes of the NLRA. Because both businesses may exercise some control over the individuals' terms and conditions of employment, one may contend that they should be considered joint employers of the individuals. On October 27, 2023, the National Labor Relations Board (NLRB) issued a final rule that established a new standard for determining whether two or more entities may be considered joint employers of a particular group of employees for purposes of the NLRA. Under the rule, an entity would be considered a joint employer of another entity's employees if the two "share or codetermine the employees' essential terms and conditions of employment." The rule permitted the NLRB to make a joint-employer determination if an entity possessed the authority to control, either directly or indirectly, the employees' essential terms and conditions of employment, even if the entity did not actually exercise that authority.

The 2023 joint-employer rule prompted legislative and judicial action. Congressional critics of the rule introduced legislation—S.J. Res. 49 and H.J. Res. 98—providing for its disapproval under the Congressional Review Act. H.J. Res. 98 passed both chambers but was vetoed by the President on May 3, 2024. Business groups, including the U.S. Chamber of Commerce, and the Service Employees International Union (SEIU) separately challenged the rule on various grounds. In March 2024, the U.S. District Court for the Eastern District of Texas in *Chamber of Commerce of the United States v. NLRB* vacated the rule, holding in favor of the plaintiff business coalitions that the rule was contrary to law because it exceeded the common law standard for identifying a joint employer. The SEIU's lawsuit, filed in the U.S. Court of Appeals for the District of Columbia Circuit, was later dismissed after the NLRB indicated that it would not appeal the court's decision and the union conceded that there were no grounds to consider further challenges to the rule. As a result of the district court's decision in *Chamber of Commerce*, a prior joint-employer rule adopted by the Board remains in effect. Under that rule, an entity will be considered a joint employer of a separate entity's employees only if it possesses substantial direct and immediate control over one or more essential terms and conditions of their employment.

This report provides background on joint employment and the NLRA and examines the NLRB's 2023 joint-employer rule. The report also reviews the district court's decision in *Chamber of Commerce of the United States v. NLRB*.

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On October 27, 2023, the National Labor Relations Board (NLRB or Board) issued a final rule that established a new standard for determining whether two or more entities may be considered joint employers of a particular group of employees under the National Labor Relations Act (NLRA).[1] The Board contended that the rule would "more explicitly ground the joint-employer standard in common-law agency principles."[2] Under the rule, an entity would be considered a joint employer of another entity's employees if the two "share or codetermine the employees' essential terms and conditions of employment."[3] The rule permitted the Board to make a joint-employer determination if an entity possessed the authority to control, either directly or indirectly, the employees' essential terms and conditions of employment, even if the entity did not actually exercise that authority.

The Board's final rule on joint-employer status prompted judicial and legislative action. Shortly after its publication, the U.S. Chamber of Commerce and other business groups sued the Board, seeking declaratory and injunctive relief.[4] On March 18, 2024, the U.S. District Court for the Eastern District of Texas granted the plaintiffs' request and vacated the rule, holding that the rule was contrary to law because it exceeded the common law standard for identifying a joint employer.[5] Members of Congress who were also critical of the rule introduced legislation—S.J. Res. 49 and H.J. Res. 98—expressing disapproval under the Congressional Review Act.[6] H.J. Res. 98 passed both chambers but was vetoed by the President on May 3, 2024. This report provides background on joint employment under the NLRA and prior NLRB rules on joint employment and examines the NLRB's 2023 joint-employer rule. The report also reviews the district court's decision in *Chamber of Commerce of the United States v. NLRB*. The Board has declined to appeal the March 2024 decision, and a joint-employer rule adopted by the Board in 2020 remains in effect.

Joint Employment and *Browning-Ferris Industries*

The NLRA recognizes the right of most private sector employees to engage in collective bargaining through their chosen representatives.[7] By "encouraging the practice and procedure of collective bargaining," the act attempts to mitigate and eliminate the causes of labor-related obstructions that impair the free flow of commerce.[8] The NLRA prohibits employers from interfering with, restraining, or coercing employees in the exercise of their collective bargaining

[1] Standard for Determining Joint Employer Status, 88 Fed. Reg. 73,946 (Oct. 27, 2023) (to be codified at 29 C.F.R. pt. 103); NLRA, 29 U.S.C. §§ 151–169.

[2] Standard for Determining Joint Employer Status, 88 Fed. Reg. at 73,946.

[3] *Id.*

[4] Complaint for Declaratory and Injunctive Relief at 20-21, Chamber of Commerce of the United States v. NLRB, No. 6:23-cv-00553 (E.D. Tex. Nov. 9, 2023). The Service Employees International Union (SEIU) also challenged the 2023 joint-employer rule in the U.S. Court of Appeals for the District of Columbia, but its case was dismissed after the rule was vacated by the U.S. District Court for the Eastern District of Texas and the NLRB indicated that it would not appeal the court's decision. The SEIU conceded that there were no grounds to consider further challenges to the rule. *See* Order, Service Employees International Union v. NLRB, No 23-1309 (D.C. Cir. Aug. 26, 2024).

[5] Chamber of Commerce of the United States v. NLRB, No. 6:23-cv-00553, 2024 WL 1203056, at *17 (E.D. Tex. Mar. 18, 2024).

[6] H.J. Res. 98, 118th Cong. (2023); S.J. Res. 49, 118th Cong. (2023). For background on the Congressional Review Act, *see* CRS In Focus IF12386, *Defining Final Agency Action for APA and CRA Review*, by Valerie C. Brannon.

[7] 29 U.S.C. § 151.

[8] *Id.*

rights.[9] The act also restricts employers from refusing to bargain collectively with the unions that represent their employees.[10]

When individuals work pursuant to an arrangement that involves more than one entity, such as working under a contract that provides that one business supply workers to another business, questions may arise concerning which entity should be considered the "employer" for purposes of the NLRA. Because both businesses may exercise some control over the individuals' terms and conditions of employment, one may contend that they should be considered joint employers of the individuals.

The NLRA does not define the term "joint employer."[11] In the absence of a statutory definition, as early as 1984, both the NLRB and courts attempted to articulate a joint-employer standard.[12] In 2015, a majority of the Board, in reviewing whether to adhere to its then-existing standard or to adopt a new one, determined that two or more entities would be considered joint employers of a single work force if they were both considered employers under the common law definition and "if they share or codetermine those matters governing the essential terms and conditions of employment."[13]

The dispute in the 2015 case, *Browning-Ferris Industries*, arose after a union petitioned to represent a group of workers that had been placed in one of Browning-Ferris's recycling facilities by a staffing company, Leadpoint Business Services, pursuant to a labor services agreement. Under the agreement, Leadpoint was responsible for hiring the workers, determining their wages, and evaluating their performance. Browning-Ferris established the facility's schedule of working hours, could reject or "discontinue the use" of a Leadpoint worker at the facility for any reason, and retained other rights pursuant to the agreement.[14]

In 2013, an NLRB regional director concluded that Browning-Ferris and Leadpoint were not joint employers of the relevant employees.[15] Under the then-governing standard—which had evolved since 1984—the NLRB based joint-employer status on whether an entity shared the ability to control or codetermine essential terms and conditions of employment, as well as whether the entity actually exercised direct and immediate control over these employment matters.[16] The regional director determined that Browning-Ferris was not a joint employer because it did not control the daily work performed by the Leadpoint workers and its control over their terms and conditions of employment was neither direct nor immediate.

The union appealed the regional director's decision to the NLRB, and a majority of the Board's five members not only reversed the decision but adjusted the existing joint-employer standard.[17]

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[9] *Id*. § 158.

[10] *Id*. § 158(a)(5).

[11] *See id*. § 152.

[12] *See* Standard for Determining Joint Employer Status, 87 Fed. Reg. 54,641 (Sept. 7, 2022) (to be codified at 29 C.F.R. pt. 103) (citing Browning-Ferris Industries of Pennsylvania, Inc., 259 NLRB 148 (1981), *enforced*, 691 F.2d 1117 (3d Cir. 1982)).

[13] Browning-Ferris Industries of California, Inc., 362 NLRB 1599 (2015), aff'd in part, 911 F.3d 1195 (D.C. Cir. 2018). Prior to *Browning-Ferris Industries*, the NLRB maintained that an employer must meaningfully affect matters relating to the employment relationship to be considered a joint employer. *See* Laerco Transportation, 269 N.L.R.B. 324, 325 (1984) ("To establish joint employer status there must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction.").

[14] *Id*. at 1600–04.

[15] Browning-Ferris Industries of California, Inc., No. 32-RC-109684, 2013 WL 8480748 (N.L.R.B. Aug. 16, 2013).

[16] *See* TLI, Inc., 271 NLRB 798 (1984); Laerco Transportation, 269 NLRB 324 (1984).

[17] *Browning-Ferris Industries of California, Inc.*, 362 NLRB at 1613.

The NLRB acknowledged the evolution of its joint-employer standard, from an early decision in 1965 to its 1984 precedential decisions, which had established a finding of a joint employer where entities "share or codetermine those matters governing the essential terms and conditions of employment."[18] The Board further acknowledged that 1984 "marked the beginning of a 30-year period during which the Board—without any explanation or even acknowledgment and without overruling a single prior decision—imposed additional requirements that effectively narrowed the joint-employer standard."[19]

The majority, in revisiting the joint-employer standard, described both the policies of the NLRA and the diversity of modern workplace arrangements before "restating" the joint-employer standard and returning to the traditional test previously used by the Board.[20] The Board, acknowledging the increased use of staffing arrangements and contingent workers in the modern workplace, observed:

> This development is reason enough to revisit the Board's current joint-employer standard.... If the current joint-employer standard is narrower than statutorily necessary, and if joint-employer arrangements are increasing, the risk is increased that the Board is failing in what the Supreme Court has described as the Board's "responsibility to adapt the Act to the changing patterns of industrial life."[21]

The majority concluded that the prior standard (i.e., that two or more entities would be considered joint employers of a single workforce if they are employers under common law and if they share or codetermine matters governing the employees' essential terms and conditions of employment) would be the standard going forward.[22] The majority indicated that the Board would consider the various ways in which joint employers may share control or codetermine the terms and conditions of employment in its evaluation of the allocation and exercise of each employer's control in the workplace.[23] The Board would no longer require that employers exercise direct control over these matters. Instead, joint-employer status could be established even if an employer's control over employment matters was indirect or reserved by contract.[24] The majority explained that consideration of an entity's indirect or reserved control over workers was consistent with common law principles and that these principles recognize an individual as being employed by an entity if he or she is subject to its control or right to control. According to the majority, the Board's prior standard disregarded consideration of an entity's right to control workers, particularly when that right is not exercised: "Just as the common law does not require that control must be exercised in order to establish an employment relationship, neither does it require that control (when it is exercised) must be exercised directly and immediately.... "[25]

Applying the "restated" joint-employer standard to the case at hand, the majority concluded that Browning-Ferris and Leadpoint were joint employers of the relevant workers.[26] The majority identified examples of direct, indirect, and reserved control over the Leadpoint workers shared by both Browning-Ferris and Leadpoint, including Browning-Ferris's unilateral control over certain facility functions that had a direct connection to work performance, Browning-Ferris's

[18] *Id*. at 1608.

[19] *Id*.

[20] *Id*. at 1613.

[21] *Id*. at 1609.

[22] *Id*. at 1613.

[23] *Id*.

[24] *Id*. at 1614.

[25] *Id*. at 1612.

[26] *Id*. at 1616.

requirement that all applicants pass drug tests, and Browning-Ferris's retained right to reject any worker referred by Leadpoint.[27]

NLRB's 2020 Joint-Employer Standard

In 2018, the U.S. Court of Appeals for the District of Columbia Circuit upheld the restated joint-employer standard established in *Browning-Ferris Industries*, indicating "that both reserved authority to control and indirect control can be relevant factors in the joint-employer analysis."[28] The court remanded the case, however, contending that the NLRB's consideration of Browning-Ferris's indirect control over the Leadpoint workers failed to distinguish between control over essential terms and conditions of employment and control that is part of "ordinary third-party contracting relationships."[29] Explaining the difference between these two forms of indirect control, the court observed:

> To inform the joint-employer analysis, the relevant forms of indirect control must be those that "share or co-determine those matters governing essential terms and conditions of employment." By contrast, those types of employer decisions that set the objectives, basic ground rules, and expectations for a third-party contractor cast no meaningful light on joint-employer status.[30]

Remanding the case to the NLRB, the D.C. Circuit also indicated that the Board "should keep in mind" whether the retroactive application of a new joint-employer standard to Browning-Ferris and Leadpoint was appropriate.[31]

In 2020, following a change in the NLRB's composition, the Board concluded that a retroactive application would be "manifestly unjust" and indicated that there was "no need to clarify and refine the joint-employer standard" that had been applied by the NLRB regional director in 2013.[32] The Board's decision effectively endorsed the use of a standard that emphasized direct and immediate control over conditions of employment.

The NLRB's 2020 decision came after the Board issued a new joint-employer rule in February 2020 that actually required a showing of direct and immediate control over individuals' terms or conditions of employment to be deemed a joint employer.[33] Under the Board's 2020 rule, an entity would be found to be a joint employer of a separate employers' employees "only if the two employers share or codetermine the employees' essential terms or conditions of employment."[34] The Board explained, however, that it had modified the definition of "share or codetermine" and that, under the revised joint-employer standard, an entity would be considered a joint employer of another entity's employees (e.g., share or codetermine the employees' essential terms or conditions of employment) if it possessed and exercised "substantial direct and immediate control" over one or more essential terms or conditions of their employment.[35] The rule further defined "substantial direct and immediate control" to mean "direct and immediate control that has

[27] *Id*. at 1616–17.

[28] Browning-Ferris Industries of California, Inc., v. NLRB, 911 F.3d 1195, 1222 (D.C. Cir. 2018).

[29] *Id*.

[30] *Id*. at 1219-20.

[31] *Id*. at 1222.

[32] Browning-Ferris Industries of California, Inc., 369 NLRB No. 139 (N.L.R.B.) (2020).

[33] Joint Employer Status Under the National Labor Relations Act, 85 Fed. Reg. 11,184 (Feb. 26, 2020) (to be codified at 29 C.F.R. pt. 103).

[34] *Id*. at 11,235.

[35] *Id.*

a regular or continuous effect on an essential term or condition of employment of another employer's employees."[36] Control was not "substantial" if it was "only exercised on a sporadic, isolated, or de minimis basis."[37]

Unlike the *Browning-Ferris Industries* standard, which permitted a joint-employer determination even if an entity did not exercise direct control over employees' essential terms and conditions of employment, the 2020 rule required that an entity possess and exercise substantial direct and immediate control over these matters in order to be deemed a joint employer. Under the rule, only this level of control "would warrant finding that the employer meaningfully affects matters relating to the employment relationship with those employees."[38]

Several businesses and trade associations generally expressed support for the 2020 rule, praising the adoption of clear criteria for determining joint-employer status.[39] Some labor organizations, however, criticized the rule. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), for example, described the rule as a "step backward in modernizing our outdated labor laws."[40]

NLRB's 2023 Joint-Employer Standard

In 2022, a newly composed NLRB proposed the rescission of the 2020 joint-employer rule and the adoption of a new standard that was more consistent with *Browning-Ferris Industries*.[41] The Board contended that the 2020 rule inappropriately constrained the joint-employer standard by emphasizing an entity's direct and immediate control over individuals' terms or conditions of employment. The Board explained that a new standard was needed because "the 2020 final rule . . . repeats the errors that the Board corrected" in *Browning-Ferris Industries*.[42] The Board also observed that the NLRA's purposes of promoting collective bargaining and stabilizing labor relations are best served when two or more entities that each "possess some authority to control or exercise the power to control employees' essential terms and conditions of employment are parties to bargaining over those employees' working conditions."[43]

The NLRB finalized a new joint-employer standard on October 27, 2023.[44] Under the new standard, two or more employers of the same particular employees would be considered joint

[36] *Id*. at 11,236.

[37] *Id*.

[38] *Id*. at 11,235.

[39] *See, e.g.*, News Release, Associated Builders and Contractors, ABC Applauds the NLRB Joint Employer Final Rule (Feb. 25, 2020), https://www.abc.org/News-Media/News-Releases/abc-applauds-the-nlrb-joint-employer-final-rule.

[40] Press Release, AFL-CIO, Trump Administration's Politicized NLRB Rule is an Attack on Working People's Freedom (Feb. 25, 2020), https://aflcio.org/press/releases/trump-administrations-politicized-nlrb-rule-attack-working-peoples-freedom. The Service Employees International Union (SEIU) also challenged the 2020 rule, arguing that it violated the Administrative Procedure Act. The lawsuit, filed in the U.S. District Court for the District of Columbia, was stayed until the U.S. Court of Appeals for the District of Columbia Circuit resolved the union's subsequent challenge to the 2023 joint-employer rule. The D.C. Circuit dismissed the SEIU's case on August 26, 2024, and the parties are expected to file a status report with the district court within two weeks of that decision. *See* Order Granting the Parties' Joint Motion for Further Extension of Litigation Stay, Service Employees International Union v. NLRB, No. 21-2443 (D.D.C. Apr. 30, 2024).

[41] Standard for Determining Joint-Employer Status, 87 Fed. Reg. 54,641 (Sept. 7, 2022) (to be codified at 29 C.F.R. pt. 103).

[42] *Id*. at 54,642.

[43] *Id*. at 54,645.

[44] Standard for Determining Joint Employer Status, 88 Fed. Reg. 73,946 (Oct. 27, 2023) (to be codified at 29 C.F.R. pt. 103).

employers of those employees if they shared or codetermined those matters governing employees' essential terms and conditions of employment. The Board defined the phrase "share or codetermine those matters governing employees' essential terms and conditions of employment" to mean that an employer "possess[es] the authority to control (whether directly, indirectly, or both), or ... exercise[s] the power to control (whether directly, indirectly, or both), one or more of the employees' essential terms and conditions of employment."[45] The Board also defined the phrase "essential terms and conditions of employment" to mean the following employment matters:

> (1) Wages, benefits, and other compensation;
>
> (2) Hours of work and scheduling;
>
> (3) The assignment of duties to be performed;
>
> (4) The supervision of the performance of duties;
>
> (5) Work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline;
>
> (6) The tenure of employment, including hiring and discharge; and
>
> (7) Working conditions related to the safety and health of employees.[46]

The Board's focus on these seven employment matters was different from the proposed rule, which did not limit what could be considered essential terms and conditions employment. Under the proposed rule, the phrase would have "generally include[d], but [was] not limited to" employment matters such as hours of work and scheduling.[47] The Board indicated that the change that appeared in the final rule was in response to commenters who advocated for greater clarity and predictability.[48] By limiting the relevant essential terms and conditions of employment to seven specified employment matters, the Board also addressed, in part, concerns from the franchise industry. Some franchisors had argued that their efforts to maintain brand-recognition standards could possibly be viewed as having a connection to employees' essential terms and conditions of employment.[49] According to the Board, the exhaustive list of employment matters would provide "clearer guidance to franchisors about the forms of control that the Board will find relevant to a joint-employer inquiry."[50]

Despite the clarification, the franchise industry remained a critic of the new joint-employer standard.[51] It contended that the rule created uncertainty in the relationship between franchisors and franchisees.[52] In November 2023, the International Franchise Association joined the U.S. Chamber of Commerce and others to challenge the new rule.[53] The lawsuit, filed in the U.S.

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[45] *Id.* at 73,956.

[46] *Id.*

[47] *Id.* at 73,963.

[48] *Id.*

[49] *Id.* at 73,971.

[50] *Id.*

[51] *Issue: Joint Employer*, International Franchise Association, https://www.franchise.org/advocacy/brand-standards/joint-employer (last visited Dec. 29, 2023).

[52] *Id.*

[53] Complaint for Declaratory and Injunctive Relief, Chamber of Commerce of the United States v. NLRB, No. 6:23-cv-00553 (E.D. Tex. Nov. 9, 2023).

District Court for the Eastern District of Texas, alleged that the rule was contrary to law and violated the Administrative Procedure Act.[54]

Chamber of Commerce of the United States v. NLRB

On March 18, 2024, the U.S. District Court for the Eastern District of Texas vacated the 2023 joint-employer rule, holding that the rule was contrary to law because it exceeded the common law standard for identifying a joint employer.[55] In *Chamber of Commerce of the United States v. NLRB*, the court focused on provisions in the rule that addressed whether an employer "possesses the authority to control or exercises the power to control one or more of the employees' essential terms and conditions of employment."[56] These provisions stated, in relevant part, that "possessing the authority to control one or more essential terms and conditions of employment is sufficient to establish status as a joint employer, regardless of whether control is exercised" and "[e]xercising the power to control indirectly (including through an intermediary) one or more essential terms and conditions of employment is sufficient to establish status as a joint employer, regardless of whether the power is exercised directly."[57] The court observed that these provisions allowed an entity to be deemed a joint employer without any need to demonstrate an employment relationship under the common law of agency, which is characterized generally by an entity's "power to control 'the material details of how the work is to be performed.'"[58] According to the court, an entity could be considered a joint employer under the provisions by simply retaining the power to exercise control over a single term and condition of employment.[59] The court contended that this "reach" exceeds "the bounds of the common law and is thus contrary to law."[60]

Although the Board indicated initially that it would appeal the court's decision, it later decided against such an appeal.[61] The Board explained that it would like "the opportunity to further consider the issues identified in the district court's opinion in the first instance" and that it would review its options for addressing joint employer matters.[62] The case was dismissed on July 19, 2024.[63] As a result of the district court's decision in *Chamber of Commerce of the United States*, the joint-employer rule adopted by the Board in 2020 remains in effect.

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[54] *Id.* at 3. The Service Employees International Union also filed a lawsuit challenging the 2023 joint-employer rule, but the case was held in abeyance and the parties later moved to dismiss the case after *Chamber of Commerce of the United States v. NLRB* was decided. *See* Joint Motion to Dismiss Petition for Review at 4, Service Employees International Union v. NLRB, No. 23-1309 (D.C. Cir. Aug. 13, 2024) ("Due to the Board's withdrawal of its appeal in the Fifth Circuit, the Eastern District of Texas's order vacating the 2023 Rule represents a final judgment in that matter. Therefore, the 2023 Rule being challenged in this case has been set aside, and there are no grounds to consider further challenges to this now-vacated Rule."). The U.S. Court of Appeals for the District of Columbia Circuit dismissed the case on August 26, 2024. *See* Order, Service Employees. International Union v. NLRB, No. 23-1309 (D.C. Cir. Aug. 26, 2024).

[55] Chamber of Commerce of the United States v. NLRB, No. 6:23-cv-00553, 2024 WL 1203056, at *17 (E.D. Tex. Mar. 18, 2024).

[56] *Id.* at *13-14.

[57] *See* 29 C.F.R. § 103.40(e).

[58] Chamber of Commerce of the United States v. NLRB, 2024 WL at *12-13 (quoting NLRB v. Town & Country Elec., Inc., 516 U.S. 85, 90 (1995)).

[59] *Id.* at *14.

[60] *Id.*

[61] Unopposed Motion for Voluntary Dismissal, Chamber of Commerce of the United States v. NLRB, No. 24-40331 (5th Cir. July 19, 2024).

[62] *Id.*

[63] Order, Chamber of Commerce of the United States v. NLRB, No. 24-40331 (5th Cir. July 19, 2024).

Considerations for Congress

On November 9, 2023, Senator Bill Cassidy and Representative John James introduced joint resolutions—S.J. Res. 49 and H.J. Res. 98—providing for congressional disapproval of the 2023 joint-employer rule under the Congressional Review Act.[64] The sponsors maintained that the rule burdened small businesses and harmed the franchise model.[65] The House of Representatives passed H.J. Res. 98 on January 12, 2024, and the Senate passed the resolution on April 10, 2024. On May 3, 2024, the President vetoed the resolution, stating that the rule "would prevent companies from evading their bargaining obligations or liability when they control a worker's working condition ... If multiple companies control the terms and conditions of employment, then the right to organize is rendered futile whenever the workers cannot bargain collectively with each of those employers."[66] A House vote to override the President's veto was conducted on May 7, 2024, but failed to achieve the two-thirds majority needed to succeed.

While the 2020 joint-employer rule remains in effect as a result of the Texas district court's decision, supporters of the rule may still be interested in codifying the rule's standards in the NLRA. Legislation that would amend the act to statutorily require evidence of direct and immediate control over individuals' terms or conditions of employment to establish employer status has been introduced in the 118th Congress. The Save Local Business Act (SLBA) would amend the NLRA's definition of "employer" to state:

> An employer may be considered a joint employer of the employees of another employer only if each employer directly, actually, and immediately, exercises significant control over the essential terms and conditions of employment of the employees of the other employer, such as hiring such employees, discharging such employees, determining the rate of pay and benefits of such employees, supervising such employees on a day-to-day basis, assigning such employees a work schedule, position, or task, or disciplining such employees.[67]

The House of Representatives passed a substantially similar version of the SLBA during the 115th Congress, but the bill has never been considered by the Senate.[68]

Opponents of the 2020 joint-employer rule could also work to amend the NLRA to establish a joint-employer standard that resembles the 2023 rule. The Richard L. Trumka Protecting the Right to Organize Act of 2023 (PRO Act), for example, would amend the act to allow for consideration of indirect control and reserved authority to control employees' terms and conditions of employment when determining whether two or more entities should be considered joint employers.[69] The House of Representatives passed versions of the PRO Act with similar language during the 116th and 117th Congresses, but the bill has never been considered by the Senate.[70]

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[64] S.J. Res. 49, 118th Cong. (2023); H.J. Res. 98, 118th Cong. (2023).

[65] *See* Press Release, Rep. John James, James Joins Bicameral Group of Legislators in Introducing Resolution to Overturn the Biden Administration's Joint Employer Rule (Nov. 9, 2023), https://james.house.gov/news/documentsingle.aspx?DocumentID=96.

[66] Message to the House of Representatives—President's Veto of H.J. Res. 98 (May 3, 2024), https://www.whitehouse.gov/briefing-room/presidential-actions/2024/05/03/message-to-the-house-of-representatives-presidents-veto-of-h-j-res-98/.

[67] H.R. 2826, 118th Cong. § 2(a)(2) (2023); S. 1261, 118th Cong. § 2(a)(2) (2023).

[68] H.R. 3441, 115th Cong. (2017).

[69] H.R. 20, 118th Cong. § 101(a) (2023); S. 567, 118th Cong. § 101(a) (2023).

[70] H.R. 842, 117th Cong. (2021); H.R. 2474, 116th Cong. (2019).

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