

March 3, 2023

Dear Members of the Senate Health, Education, Labor, & Pensions Committee:

On March 1, 2023, Senate Health, Education, Labor, & Pensions (HELP) Committee Chair Bernie Sanders announced his intention to seek an all-encompassing “Authorization for Investigation into Violations of Federal Labor Law by Major Corporations” at an upcoming Executive Session of the Committee on March 8, 2023. On behalf of the undersigned organizations, we write to express our opposition to the granting of such untethered authority. Presumably, Chairman Sanders seeks this authority under Committee Rule 17(a).

While Committee rules require authorization to launch some investigatory activities, there is no precedent for this type of comprehensive and boundless authority which could enable unconstructive and undisciplined investigations. In fact, the Committee, which has existed in one form or another since 1869, has to our knowledge never approved a subpoena to compel witness testimony. Past Committee chairs rarely used the authority that Chairman Sanders now requests, and none ever sought a blank check to investigate such a vast area as “violations of federal labor law.” A review of available Committee records, in fact, reveals only two instances in which the HELP Committee voted to issue subpoenas, once in 2006 and once in 1983.

It appears that in both cases, the authorization was narrowly tailored and, more importantly, had bipartisan support, which is fitting as the Senate HELP Committee has a long and storied history of bipartisan cooperation. Indeed, in the decades that Senators Kennedy, Gregg, Harkin, Alexander, Jeffords, and Murray chaired the Committee, not once was such authority granted or even sought.

Chairman Sanders, on the other hand, appears to seek a grant of blanket authority without parameters, constraints, or boundaries. The Executive Session notice provides no explanation for seeking such broad permission for Committee staff to interfere with existing investigations or enforcement proceedings being conducted by the multiple federal agencies that enforce our country’s labor laws. There is little justification to permit the Chairman to mandate American employers and executives answer for allegations that have yet to be fully adjudicated. In fact, in this regard, the Chairman’s request is at odds with the Constitution’s separation of powers.

If the Chairman were to seek investigatory authority on a particular matter after any legal proceedings are complete to understand how to improve current law, that might help inform the Committee on legislative undertakings. That is not the circumstance before us here, however. Instead, the current effort appears to be an extension of the Chairman’s ongoing campaign against companies involved in labor disputes. Moreover, it threatens to interfere with ongoing legal proceedings in a manner that will likely undercut the due process rights of employers and employees.¹ Indeed, the subject of the first subpoena is currently involved in such proceedings.

¹ See, e.g., “Bernie Sanders wants democrats to make unions their biggest message,” Senator Bernie Sanders Official Website, April 28, 2022. (“There’s nothing that I would say to [Jeff Bezos] except, ‘You know what? We’re gonna take you on,’” Sanders said in a phone interview last week. “You could either start responding to the needs of your

As drafted, the authority sought also could permit the Chair to meddle in the affairs of any employer anywhere in the country at any time. The abuse of process by a Committee to target individuals for their beliefs and/or for their assertion of their constitutional due process rights has historically been frowned upon.² The Committee has shown prior restraint in granting such blanket authority for investigations into prior financial improprieties or failures to file appropriate disclosures with the Department of Labor, even though it arguably has greater reasons for seeking such authority.^{3,4}

At a time when our country faces real challenges, including an ongoing workforce shortage, the recovery from the impacts of the pandemic on our education system, the ongoing rise in health care costs, and a dearth of retirement security, the HELP Committee and its staff could be focused on solutions to assist everyday Americans. Rather, the Chair seeks HELP Committee members' permission to focus on pursuing needless, unconstructive, undisciplined investigations of American employers.

In his recent State of the Union address, President Biden sounded a note of optimism that bipartisan cooperation could still occur in a divided nation and even more divided Congress. He stated, "to my Republican friends, if we could work together in the last Congress, there's no reason we can't work together and find consensus on important things in this Congress as well." It is hard to imagine that the kind of bipartisan comity the President seeks will be fostered in the HELP Committee this Congress if the Committee grants the authorization sought by Chairman Sanders on Wednesday.

We respectfully request that you vote against the broad investigatory authority sought by the Chair and, by so doing, restore the Committee to its history of bipartisan cooperation in facing America's toughest challenges.

Sincerely,

American Bakers Association
American Hotel & Lodging Association
American Trucking Associations
Associated Builders & Contractors
Associated Equipment Distributors
Associated General Contractors of America
Consumer Technology Association
Foodservice Equipment Distributors Association
Heating, Air-conditioning, & Refrigeration Distributors International

workers, or we're gonna fight you ruthlessly.") Available at <https://www.sanders.senate.gov/in-the-news/bernie-sanders-wants-democrats-to-make-unions-their-biggest-message/>.

² Critics of the House Un-American Activities Committee "contend that its abuse of power trampled important First Amendment rights, such as freedom of expression and freedom of association." [House Un-American Activities Committee | The First Amendment Encyclopedia \(mtsu.edu\)](#)

³ Scheiber, Noam, and Boudette, Neal E., "Behind a U.A.W. Crisis: Lavish Meals and Luxury Villas," *New York Times*, December 26, 2019. Available at <https://www.nytimes.com/2019/12/26/business/uaw-gary-jones-investigation.html>.

⁴ Letter from Representatives Virginia Foxx and Rick Allen to Government Accountability Office, November 15, 2022. Available at https://edworkforce.house.gov/uploadedfiles/11.15.22_-_letter_to_gao_re_olms_request.pdf.

HR Policy Association
Independent Bakers Association
Independent Electrical Contractors
International Franchise Association
Metals Service Center Institute
National Association of Manufacturers
National Association of Wholesaler-Distributors
National Council of Chain Restaurants
National Federation of Independent Business
National Marine Distributors Association, Inc.
National Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
Outdoor Power Equipment and Engine Service Association, Inc.
Petroleum Equipment Institute
Small Business & Entrepreneurship Council
Textile Care Allied Trades Association
U.S. Chamber of Commerce