

**CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA**

NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
CHIEF POLICY OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062
(202) 463-5310

September 17, 2018

Senator Lamar Alexander
Chairman
Committee on Health,
Education, Labor and Pensions
United States Senate
Washington, DC 20510

Senator Patty Murray
Ranking Member
Committee on Health,
Education, Labor and Pensions
United States Senate
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

The U.S. Chamber of Commerce strongly opposes the nomination of Mark Pearce to serve another five-year term on the National Labor Relations Board (NLRB) because in his prior service as Chair, and recently as a member, Pearce has shown a disturbing lack of regard for balance and fairness.

Pearce served as the Chair of the NLRB during the Obama administration and engineered some of the most harmful decisions and regulations in the Board's history. Under his leadership, the Board issued decisions reversing more than 4,550 years of precedent.

As Chair, Pearce led the campaign to outlaw numerous common sense and commonplace employee handbook policies, such as requiring courtesy in the workplace. These efforts ultimately allow the NLRB to extend its enforcement presence into non-union businesses, as well as to serve as a basis for overturning union organizing elections results even if the employees vote not to unionize.

Pearce was also the architect of the *Browning-Ferris Industries* (BFI) decision, which upended a decades old definition of joint employment under the National Labor Relations Act (NLRA). The BFI decision exposed many companies to potential liability for workplaces they neither own nor manage, and for workers they do not employ. The impact of this decision was especially severe on the franchise sector and on firms that work as subcontractors. There is bipartisan concern over the decision.

Additionally, Pearce was behind decisions that take away an employer's ability to manage his or her e-mail system, require the disclosure to unions of confidential witness statements during workplace investigations, and outlaw employment arbitration agreements. In the last example, a ruling by the U.S. Supreme Court itself was required to demonstrate to the NLRB that it had overstepped its authority.

Finally, Pearce pursued a partisan agenda at the NLRB by continually spearheading false claims that Republican board members had conflicts of interest. These claims were an attempt to force Republican board members to recuse themselves, giving the Democratic board members a majority when making controversial decisions.

We oppose Mark Pearce's nomination because he will support decisions that harm employees and employers, and because he is the board member orchestrating situations that compromise the NLRB's integrity. There is no urgency for a confirmation vote, and certainly better candidates for nomination can be found. The Chamber strongly opposes the Pearce nomination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley", with a stylized flourish at the end.

Neil L. Bradley

Cc: Majority Leader McConnell
Democratic Leader Schumer
Members of the Senate Committee on Health, Education, Labor and Pensions