WORKFORCE FAIRNESS INSTITUTE

Mr. Chairman, members of the Board.

My name is Fred Wszolek. I am spokesperson for the Workforce Fairness Institute.

Thank you for the opportunity to address the Board on that portion of the proposed election rule that will extend the Board's Excelsior List requirements to include disclosure of an employee's "telephone numbers and, where available, e-mail addresses" to a union seeking to organize them.

We are opposed. We believe that an employee's personal contact information, whether it be a home or e-mail address, should not be disclosed to third parties absent the employee's consent.

In his famous dissent in the 1928 case, *Olmstead v. United States,* Justice Louis Brandeis said that the "right to be left alone is the most comprehensive of rights, the right most valued by civilized men." Today, Brandeis' view is the law and the right to be left alone, the right to privacy, is recognized as an essential component of our liberty. It protects our individuality; allows us to exercise control over information about ourselves and to make decisions free from coercion.

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There is no express “right to privacy” in the Constitution; its contemporary contours largely developed in American law over the last half of the last century. In addition to important Supreme Court jurisprudence, as privacy has become increasingly threatened by new technologies and business methodologies, a variety of state and federal laws have been passed protecting individuals from the unwanted disclosure of personal information.

The Board’s proposal is inconsistent with these developments in the law; it improperly invades private space and is contrary to the reasonable expectations of today’s workers.

An employee’s personal contact information is provided to the employer with the expectation that it will be kept private and used by the employer in the event of an emergency or when circumstances require that the employee be contacted outside of work time.

If the Board wishes to modernize its rule in this area, it should do so in a manner consistent with our society’s contemporary concern for individual privacy. This means putting the worker in control and not releasing any personal contact information absent his or her prior consent.

In the Board's *Excelsior Underwear* decision, the employer mailed an 8-page letter to employees that allegedly made misstatements about the union and contained threats of retaliation. It then refused to give the union a mailing list of employees to enable the union to counter what it said. It was under those circumstances that the Board adopted the current Excelsior requirement to "remove an impediment to communication" and to allow for a more "fully informed and reasonable choice."

While disclosure of an eligibility list with home addresses may have been necessary fifty years ago under the facts present in *Excelsior Underwear*, disclosure of personal contact information such as that being proposed is wholly unnecessary today. Today, if an employer communicates with its employees on the issue of unionization, it will likely be via e-mail, its intranet site or at a mandatory employee meeting. The content of these communications will readily become known to the union which can counter them on its own website or blog, all of which are easily accessible, or by contacting employees by the method they have consented to.

Let me add, picketing, even the threat to picket, is considered inherently coercive because of the history of violence surrounding it.

Today, contemporary media with its 24-hour news cycle is saturated with stories of union intimidation and violence. This exhibit, which I respectfully request be made part of the hearing record, catalogues a very small bit of it. It supports the conclusion that the existing rule forcing the disclosure of employees' home addresses without their consent is intimidating, if not coercive, and that the proposal for expanding the disclosure of personal contact information ill considered.

Thank you.