

**Testimony of Stefan Marculewicz Before
The United States House of Representatives
Health, Employment Labor and Pensions Subcommittee
September 19, 2013**

Chairman Roe and Ranking Member Andrews, thank you for the opportunity to offer testimony to the members of this Committee. My name is Stefan Marculewicz and I am a Shareholder at the law firm of Littler Mendelson here in Washington, DC. I am speaking to you today on my own behalf and not on behalf of my firm or any firm client.

Labor unions, the primary advocates for workers' rights in the United States for more than a century, have experienced a significant decline in membership. As a result, labor unions have sought new and innovative means to effectuate change in the workplace.

One of the most significant examples of this effort is the development of organizations known as "worker centers." In recent months, these groups have been involved in protests and other activities that have received substantial coverage in the media. Today there are hundreds of worker centers across the country. Their structure and composition vary. Typically, they are non-profit organizations that receive funding from foundations, grants—including from government, membership fees and other donations. Some are funded by other labor organizations. These groups offer a variety of services to their members, including education, training, employment services and legal advice. Increasingly, however, worker centers are directly engaging employers or

groups of employers to effectuate change in the wages, hours and terms and conditions of workers they claim to represent. Indeed, when it comes to such direct engagement, these worker centers often act no differently than traditional labor organizations.

Yet, few of these groups comply with the laws that regulate labor organizations. Statutes like the National Labor Relations Act (NLRA) and the Labor Management Reporting and Disclosure Act (LMRDA) contain significant protections with respect to representational democracy, organizational democracy, access to basic information and promotion of a duty of fair representation. These basic rights are an important part of the process governing the representation of employees in the workplace by third-party organizations.

Even though compliance with these laws would confer benefits upon the very workers these groups claim to represent, many such groups are reluctant to define themselves as labor organizations because the NLRA and the LMRDA are perceived as creating an impediment to worker centers' activities. In addition, worker centers have not considered themselves to be limited by the NLRA restrictions on secondary picketing and protracted picketing for recognition, and such conduct is a common tool used by these groups to convey their message, although it would violate the NLRA.

Without coverage of the NLRA and LMRDA these organizations can avoid accountability to the workers they claim to represent and avoid restraints that are imposed on traditional labor organizations. Yet, the laws that provide protections to workers *vis a vis* labor organizations that represent them were designed precisely to create that accountability. Moreover, these laws were also intended to protect worker

self-choice, to ensure a balance between labor and management interests, and to ensure the free flow of commerce. The burden of compliance with those laws is not so severe when considered within the context of the benefits afforded to workers and the economy in general.

The mission of many worker centers is often seen as being an important means of advocating on behalf of underrepresented employees who do not have access to or knowledge of the legal mechanisms to protect their rights. However, no organization, no matter how laudable its mission, is above reproach, and through its passage of the laws that regulate labor organizations, Congress established safeguards to give workers a say in and understanding of the operations of the organizations that represent them. Compliance with the NLRA and LMRDA serves not only as a protection for workers, but perhaps as a validator of the worker centers that claim to represent them.

A goal of many worker centers is to ensure that employers of their members comply with the basic laws that offer protections to workers. It therefore is not unreasonable to expect worker centers to do the same. Ultimately, the benefits of the laws that govern labor organizations flow to the workers they represent, and, as such, there simply is no viable justification for worker centers not to comply with them.

Thank you for your time, and I look forward to answering any questions you may have.