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The Pendulum Swings Left

Mark McQueen

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No Need for Speculation

- President Biden has been unambiguous.
- Intends to be "most pro-union White House in history."
- Assembled team of employee and union advocates.
- Agenda is Trump roll back, and plenty more, soon.

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New NLRB Appointments

Gwynne Wilcox

- Partner at law firm dedicated to union clients
- First Black woman on Board
- Advocate in McDonald's "Fight for \$15" Litigation
 - Possible ethics/conflict on joint employer dispute

New NLRB Appointments

David Prouty

- General Counsel of 175K member Local of Service Employee's International Union
- Previous lead attorney, Major League Baseball Players' Union

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New Board Majority

Prouty and Wilcox create a Democratic majority at the NLRB.

The new majority is:

- expected to swiftly deliver labor friendly opinions, and
- reverse precedent from the Trump majority.

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New NLRB Attorneys

Jennifer Abruzzo, General Counsel

-- Former attorney for the Communication Workers of America Union

Jessica Rutter, Associate GC

-- Former attorney for the American Federation of Teachers' Union

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NEW DOL Appointees

Seema Nanda, Solicitor

- ✓ the DOL's top lawyer
- ✓ Former CEO of DNC, and Obama DOL
- ✓ legal counsel to DOL's new Secretary Marty Walsh.

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NEW DOL Appointees

Marty Walsh, Labor Secretary

- ✓ Boston Mayor, and led the Boston Building Trades Unions.
- ✓ Co-chair of Biden's new federal labor task force, along with VP Harris.

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NEW DOL Appointees

Lisa Gomez, Assistant Secretary of Labor for Employee Benefits

- ✓ AFL-CIO Union Lawyers Alliance
- ✓ Agenda includes reversal of Trump initiative to limit social justice and climate change criteria for retirement investments

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NEW DOL Appointees

Jeff Freund, Director of the Office of Labor-Management Standards (OLMS)

- ✓ 40+ years representing labor organizations
- ✓ Promises to gather employer misconduct data to counter anti-union campaigns

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Biden's Executive Actions

LGBTQ Protection

- Executive Order 13988
- "Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation"
 - Beware of CA prison development.
- Endorsed H.R. 5, the Equality Act

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Biden's Executive Actions

\$15 minimum for federal contractors, effective Jan. 30, 2022

- Recalculated annually to account for CPI changes, beginning in Jan 2023.

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Biden's Executive Actions

Encouraging Union Membership

- February 2021 video at Amazon
- Created federal labor task force
 - Goal: increase membership/bargaining
- Trade chief speech at AFL-CIO convention
- NLRB outreach

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Game Changing Legislation

The Protecting the Right to Organize Act (PRO Act)

- House already passed
 - 225 to 206
- President Biden announced strong support the day before the vote

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Game Changing Legislation

The PRO Act would:

- Allow "fair share" agreements in Right to Work States.
- Redefine independent contractors per California "ABC standard"
- Outlaw individual arbitration agreements
- Prohibit employers from campaign meetings with employees
- Force law firms to publish their fee income, and client names
- Force disclosure of employees' home and cell numbers, and personal email

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Game Changing Legislation

The PRO Act would:

- Redefine many supervisors to make them union eligible
- Remove employer input for voting unit and method
- Authorize use of employer property for organizing
- Institute card check election outcomes
- Empower mediators to mandate initial contract terms
- Authorize secondary boycotts of neutral employers.
- Ban permanent strike replacements
- Increase Employer Fines

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COVID Relief?

Union Pension Bail Out

- Butch Lewis Emergency Pension Plan Relief Act of 2021
- Guarantees no reduced benefits through 2051
- CBO cost estimate: \$86 billion

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Regulatory Actions

Minimizing Independent Contractors

- DOL no longer recognizes its employer-friendly Independent Contractor Final Rule

Prohibiting Non-Compete Agreements

- President signed EO with goal of banning non-compete agreements
- Directs FTC to enact rules

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Regulatory Actions

Expanding Joint Employment Liability

- July 29, 2021: DOL rescinds rule from March 2020
- Trump administration tried to simplify standard, and provide employers with blueprint
- Federal judge in New York invalidated substantial portions of Trump rule
- Trump appealed federal decision, but Biden reversed course

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Regulatory Actions

Reestablishing Gov't Control of Apprentices Programs

- Trump initiated deregulation, and shifted oversight to private industry
- Biden reversed, and seeks to bolster traditional model favored by organized labor

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Likely NLRB Activism

- Handbook rules "chilling effect"
- Management rights in CBAs
- Confidentiality of Investigations
- Separation Agreements
- Emails
- Employee access during non-work hours
- Protected Concerted activity

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What to Do?

1. Aggressively oppose PRO Act.
2. Examine independent contractor and joint employer exposure, if any.
3. Prioritize internal LR and dispute resolution policies.
4. Redefine supervisory authority.

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Questions?

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