

April 22, 2024

Agricultural Labor Relations Board  
Regulations Subcommittee  
Attn: Santiago Avila-Gomez, Executive Secretary  
Via Email: [Santiago.Avila-Gomez@alrb.ca.gov](mailto:Santiago.Avila-Gomez@alrb.ca.gov)

**RE: Western Growers' Comments and Input Regarding Proposed Regulations  
Implementing Assembly Bill No. 113 (AB 113) – Notice File No. Z2024-0226-02**

Dear Mr. Avila-Gomez:

Western Growers Association appreciates the Agricultural Labor Relations Board's (ALRB) efforts in drafting regulations to implement the changes introduced by Assembly Bill No. 113. We recognize the importance of these regulations for providing clarity and guidance under the new legal framework. However, we urge the ALRB to address several concerns to ensure the regulations fairly and effectively serve all stakeholders involved, including agricultural employers and employees.

#### **1. Urgency of Finalizing Regulations**

Western Growers acknowledges the efforts of the Agricultural Labor Relations Board's Regulations Subcommittee in the development of regulations to implement Assembly Bill No. 113, which took effect on May 15, 2023. We recognize the importance of moving swiftly to finalize these regulations. Since the Subcommittee's initial report on June 9, 2023, followed by a public workshop on June 23, 2023, and subsequent approval of proposed regulatory language on October 4, 2023, there has been a considerable delay. The publication of the notice of proposed rulemaking on March 8, 2024, with a 45-day comment period has extended this process nearly a year. This delay places both employers and farmworkers in a precarious position, as there are certified majority support petitions currently under consideration that lack the legal framework necessary for proper enforcement. It is imperative that the Board promptly finalize these regulations to provide needed clarity and certainty. Adopted regulations will aid in preventing prolonged disputes and disruptions in agricultural operations.

## 2. Right to Withdraw Signature or Revoke Support

We strongly advocate for the inclusion of provisions that allow farmworkers to withdraw their signatures from majority support petitions or authorization cards. The regulations should expressly and explicitly allow employees to withdraw their signature or revoke their authorization for union representation, and authorization cards and petitions should expressly advise the worker of such right. The ability to revoke such signature or support aligns with other legal contexts where employee rights and intentions must be allowed to evolve over time, reflecting changes in circumstances or preferences.

Events at Wonderful Nurseries underscore the critical need for farmworkers to retain the ability to revoke their signatures or authorization cards. Nearly 150 employees have submitted declarations to the ALRB stating they were misled by the United Farm Workers (UFW), believing they were simply signing up for COVID-19 relief funds, not realizing they were consenting to union representation. Workers have reported to multiple media outlets including [KERO-TV](#), [KGET](#), [The Fresno Bee](#), and [The Los Angeles Times](#), that they were deceived into signing union cards under the false pretense of receiving financial aid, with union representatives failing to disclose the true implications of their signatures.

These serious allegations highlight the paramount importance of ensuring that workers can withdraw their consent before final action by the ALRB. This right is fundamental not only as a matter of fair labor practices but also to uphold the integrity of worker choice in union representation. Allowing workers to withdraw their signature or revoke their authorization, especially in light of being misled, aligns with both the spirit and the letter of labor rights protection under state and federal laws. Thus, we urge the ALRB to adopt regulations that explicitly enable a farmworker to revoke their signature as well as ensures that their choice is voluntary and informed.

When the state bypasses the farmworkers' right to a secret ballot election and offers no alternative but passive non-acceptance to oppose certification, preserving the right not to associate becomes critical. This right should not be restricted without undeniable proof that the farmworker consented to waive it. It is axiomatic that it is “[t]he right of employees to a choice and a choice through the secret ballot [that] should not be lightly disregarded,” and any “rule of convenience ... must give way to truth based on the record considered as a whole.”<sup>1</sup> Notably, the U.S Supreme Court has underscored that “the denial of the right to revoke is “a regulation of pure speech.”<sup>2</sup> Such regulations, especially those denying revocation of authorization, demand rigorous scrutiny as they regulate pure speech and impact fundamental freedoms.

Moreover, previous guidelines that acknowledge a farmworker's right to revoke reflect broader legal norms that protect individual choice in electoral processes. There are myriad cases which stand for the proposition that the right to withdraw one's name from a petition is upheld until official action is finalized.<sup>3</sup> Hence, denying this right not only undermines the intent of the The

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<sup>1</sup> *NLRB v. Lake Butler Apparel Company*, 392 F.2d 76, 82 (5th Cir. 1968)

<sup>2</sup> See, *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 344 (1995)

<sup>3</sup> “[A] majority of jurisdictions allow the retraction of signatures from a petition up until final action is taken on the petition, even though the result renders the petition ineffective for lack of the required number of signatures.” *Dale v. Town of Elsmere*, 2001 WL 541459, at \*4 & \*5 (Del. Super. Apr. 27, 2001) (“the right to withdraw one's signature is paramount to the future right to vote”) (collecting cases).

Agricultural Labor Relations Act (ALRA) authorizes the ALRB to oversee and protect the rights of agricultural employees to organize themselves in negotiating the terms and conditions of their employment, including whether or not to have labor unions represent them. Yet the proposed regulations risks committing constitutional violations by equating union self-authority with state functions without adequate safeguards. This approach risks the integrity and fundamental purpose of the ALRA, necessitating a reconsideration of the proposed regulations to align with constitutional norms and effectively protect farmworkers' rights.

The denial of the right to revoke a signature on a majority support petition is not merely a regulation of the electoral process but a regulation of pure speech, requiring exacting scrutiny. The imposition of a regulation that potentially misrepresents workers' current sentiments, as the one proposed, must be rigorously evaluated to ensure it does not infringe upon the constitutional rights of the individuals it affects. This scrutiny is vital to protect the rights of farmworkers and to maintain the legitimacy of labor certifications based on true majority rule.

Finally, the ability of farmworkers to freely associate—or choose not to associate—by revoking their support is paramount. This freedom must not be abridged by regulations that refuse to acknowledge timely and written revocations. The role of the state should be to facilitate, not hinder, this fundamental right by ensuring that revocations can be submitted at any time during the ALRB administrative process.

### **3. Transparency and Informed Consent**

We agree with and support the inclusion of language in the proposed regulation that states: *“Authorization cards or petitions submitted as evidence of majority support also shall identify the name of the agricultural employer to which the cards or petitions pertain and shall clearly state that (i) signing the card or petition is equivalent to a vote in support of the petitioning labor organization; [and] (ii) a signature on the card or petition is valid for one year from the date it is signed...”* (§ 20391(a)(1))

It is critical that all documents related to union authorization explicitly convey the implications of a worker's signature to ensure fully informed consent. Specifically, not only must workers be clearly informed that their signature effectively acts as a vote to elect the union as their collective bargaining representative, but workers should also be made aware that by signing, they are choosing to *waive their right to a secret ballot election*. Lastly, as discussed above, it must be communicated that the authorization can be withdrawn. Should the Board maintain the position that workers' signatures cannot be revoked, we appreciate the language that has been included in the proposed regulation clearly informing the individual that *“a signature on the card or petition may not be revoked.”* (§ 20391(a)(1)) This level of transparency is essential to uphold the integrity of the workers' decision-making process and their understanding of their rights under the ALRA.

### **4. Criteria for Valid Authorization**

Authorization cards should be considered valid only if the employee was actively employed by the employer at the time the signature was collected. This requirement ensures that decisions directly affecting the workplace are made exclusively by current employees. It enhances both

the legitimacy and relevance of the authorization process by preventing individuals who are not current employees from influencing decisions that do not affect them directly.

#### **5. Verification of Signatures**

To uphold the integrity of the authorization process, it is crucial that both union and company representatives are involved in verifying that the signatures on authorization cards match those in company records. This dual verification process will help prevent discrepancies and ensure that all parties can have confidence in the authenticity of the signatures collected.

#### **6. Language Accessibility of Authorization Cards**

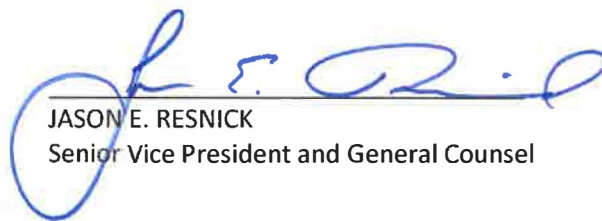
Authorization cards and related documents should be provided in the language understood by the worker to ensure that all employees fully comprehend what they are signing. This is essential for informed consent and aligns with fair labor practices by accommodating the diverse linguistic needs of the agricultural workforce.

#### **7. Reasonable Extension of Timeframes for Employer Compliance**

Considering operational realities, the 48-hour period provided for employers to submit a list of workers should exclude Saturdays (not just Sundays and holidays), reflecting standard business hours for many agricultural operations. Additionally, extending the period for employers to file objections to 30 days—matching the timeframe granted to unions for collecting additional signatures—would provide a more reasonable and equitable process for all parties. Finally, the timeframe for the company to file its answer should be extended to 30 days after service of the notice of hearing.

In conclusion, Western Growers appreciates the opportunity to submit these comments and suggested revisions. We thank you for your consideration and appreciate your interest in ensuring that the regulations take a fair and balanced approach to the rights of all stakeholders.

Sincerely,



JASON E. RESNICK  
Senior Vice President and General Counsel