

119TH CONGRESS
1ST SESSION

S. _____

To amend the Internal Revenue Code of 1986 to end the tax subsidy for employer efforts to influence their workers' exercise of their rights around labor organizations and engaging in collective action.

IN THE SENATE OF THE UNITED STATES

Mr. LUJÁN (for himself, Ms. SMITH, Mr. BOOKER, Ms. BALDWIN, Mr. BLUMENTHAL, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. DURBIN, Mr. FETTERMAN, Mr. GALLEG0, Mr. HEINRICH, Ms. HIRONO, Ms. KLOBUCHAR, Mr. MARKEY, Mr. MERKLEY, Mr. MURPHY, Mrs. MURRAY, Mr. PADILLA, Mr. REED, Ms. ROSEN, Mr. SANDERS, Mr. SCHATZ, Mr. SCHIFF, Ms. SLOTKIN, Mr. VAN HOLLEN, Ms. WARREN, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to end the tax subsidy for employer efforts to influence their workers' exercise of their rights around labor organizations and engaging in collective action.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "No Tax Breaks for
5 Union Busting (NTBUB) Act".

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The National Labor Relations Act (29
4 U.S.C. 151 et seq.) declares that it is the right of
5 employees to form, join, or assist labor organiza-
6 tions.

7 (2) The National Labor Relations Act further
8 declares that it is “the policy of the United States
9 to eliminate the causes of certain substantial ob-
10 structions to the free flow of commerce and to miti-
11 gate and eliminate these obstructions when they
12 have occurred by encouraging the practice and pro-
13 cedure of collective bargaining and by protecting the
14 exercise by workers of full freedom of association,
15 self-organization, and designation of representatives
16 of their own choosing . . .”.

17 (3) Despite Congress’ intention to give workers
18 full agency in these matters, many employers regu-
19 larly choose to involve themselves, lawfully or unlaw-
20 fully, in the decisions of their employees about
21 whether to avail themselves of their rights under the
22 National Labor Relations Act and the Railway
23 Labor Act (45 U.S.C. 151 et seq.).

24 (4) Employers frequently violate labor laws
25 around organizing and collective action. The Eco-
26 nomic Policy Institute finds that in approximately 4

1 of 10 labor organization elections in 2016-2017 em-
2 ployers were charged with committing an unfair
3 labor practice. Among larger bargaining units of 61
4 employees or more, over 54 percent of elections have
5 an unfair labor practice charge.

6 (5) In practice, these unfair labor practices
7 often include charges such as employees being ille-
8 gally fired for labor organization activity, refusal to
9 bargain in good faith with labor organizations, or co-
10 ercion and intimidation. Employers also frequently
11 use captive audience meetings, workplace surveil-
12 lance, and other lawful or unlawful tactics to sway
13 labor organization elections.

14 (6) Whether or not there are charges of unlaw-
15 ful behavior, employers spend millions of dollars to
16 sway the opinions of their employees with respect to
17 whether or how to exercise their rights under the
18 National Labor Relations Act and the Railway
19 Labor Act. According to the Economic Policy Insti-
20 tute, companies spent \$340,000,000 yearly on out-
21 side consultants to sway their workers' opinions
22 about labor organization activities. This and other
23 spending interfere with the United States' goal of
24 "encouraging the practice and procedure of collective
25 bargaining".

1 (7) The Internal Revenue Code of 1986 has
2 long recognized that spending by businesses with the
3 purpose of influencing the general public with re-
4 spect to elections, while it may be lawful, is not tax
5 deductible. Congress should extend that principle to
6 spending done by employers to influence workers'
7 elections and collective bargaining decisions. These
8 free choices to exercise the rights to engage in collec-
9 tive bargaining, labor organization representation,
10 and other lawful collective activities should be made
11 without taxpayer subsidies of undue outside influ-
12 ence from employers.

13 **SEC. 3. DENIAL OF DEDUCTION FOR ATTEMPTING TO IN-**
14 **FLUENCE EMPLOYEES WITH RESPECT TO**
15 **LABOR ORGANIZATIONS OR LABOR ORGANI-**
16 **ZATION ACTIVITIES.**

17 (a) IN GENERAL.—Section 162(e)(1) of the Internal
18 Revenue Code of 1986 is amended by striking “or” at the
19 end of subparagraph (C), by striking the period at the end
20 of subparagraph (D) and inserting “, or”, and by adding
21 at the end the following new subparagraph:

22 “(E) any attempt to influence the tax-
23 payer’s employees with respect to labor organi-
24 zations or labor organization activities, includ-

1 ing with respect to the opinion of such employ-
2 ees regarding such organizations or activities.”.

3 (b) LABOR ORGANIZATIONS; LABOR ORGANIZATION
4 ACTIVITIES DEFINED.—Section 162(e) of the Internal
5 Revenue Code of 1986 is amended by redesignating para-
6 graph (6) as paragraph (7) and by inserting after para-
7 graph (5) the following new paragraph:

8 “(6) LABOR ORGANIZATIONS AND LABOR ORGA-
9 NIZATION ACTIVITY DEFINED.—For purposes of this
10 subsection—

11 “(A) LABOR ORGANIZATION.—The term
12 ‘labor organization’ has the meaning given such
13 term in section 3 of the Labor-Management Re-
14 porting and Disclosure Act of 1959 (29 U.S.C.
15 402).

16 “(B) LABOR ORGANIZATION ACTIVITY.—

17 “(i) IN GENERAL.—The term ‘labor
18 organization activity’ means labor organi-
19 zation elections, labor disputes, collective
20 actions, and such other related activities
21 identified by the Secretary.

22 “(ii) OTHER TERMS.—For purposes of
23 clause (i)—

24 “(I) COLLECTIVE ACTION.—The
25 term ‘collective action’ means any ac-

1 tion, including collective bargaining,
2 described in section 7 of the National
3 Labor Relations Act (29 U.S.C. 157)
4 or any action that is a right of em-
5 ployees or labor organizations under
6 the Railway Labor Act (45 U.S.C.
7 151 et seq.).

8 “(II) LABOR DISPUTE.—The
9 term ‘labor dispute’ has the meaning
10 given such term under section 3 of the
11 Labor-Management Reporting and
12 Disclosure Act of 1959 (29 U.S.C.
13 402).

14 “(III) LABOR ORGANIZATION
15 ELECTION.—The term ‘labor organi-
16 zation election’ means any election de-
17 scribed in section 9 of the National
18 Labor Relations Act (29 U.S.C. 159)
19 or section 2 of the Railway Labor Act
20 (45 U.S.C. 152).”.

21 (c) SPECIAL RULES.—

22 (1) IN GENERAL.—Section 162(e)(4) of the In-
23 ternal Revenue Code of 1986 is amended by adding
24 at the end the following new subparagraph:

1 “(D) EXPENSES RELATING TO LABOR OR-
2 GANIZATIONS OR LABOR ORGANIZATION ACTIVI-
3 TIES.—

4 “(i) IN GENERAL.—For purposes of
5 paragraph (1)(E), amounts paid or in-
6 curred in connection with attempting to in-
7 fluence the taxpayer’s employees with re-
8 spect to labor organizations or labor orga-
9 nization activities include—

10 “(I) any amount paid or incurred
11 directly or indirectly by the taxpayer,
12 including wages and other general and
13 administrative costs, in connection
14 with an action that results in—

15 “(aa) a complaint issued
16 under section 10 of the National
17 Labor Relations Act (29 U.S.C.
18 160) against the taxpayer for an
19 unfair labor practice under sec-
20 tion 8(a) of such Act (29 U.S.C.
21 158(a)),

22 “(bb) a settlement offer re-
23 lated to an investigation by the
24 National Labor Relations Board
25 of a charge of an unfair labor

1 practice under section 8(a) of
2 such Act (29 U.S.C. 158(a)) that
3 results in a settlement of such
4 charge without issuance of a
5 complaint under section 10 of
6 such Act (29 U.S.C. 160), or

7 “(cc) a finding of inter-
8 ference, influence, or coercion by
9 a Federal court under section 2
10 of the Railway Labor Act (45
11 U.S.C. 152),

12 “(II) any amount paid or in-
13 curred directly or indirectly by the
14 taxpayer, including wages and other
15 general and administrative costs, in
16 producing, conducting, or attending
17 any meeting or training—

18 “(aa) which includes employ-
19 ees of the taxpayer who are or
20 who could become members of a
21 unit appropriate for the purposes
22 of collective bargaining, and

23 “(bb) at which labor organi-
24 zations or a labor organization
25 activity is discussed, and

1 “(III) any amount which is re-
2 quired to be reported under the
3 Labor-Management Reporting and
4 Disclosure Act of 1959 (29 U.S.C.
5 401 et seq.).

6 “(ii) EXCEPTIONS.—The following
7 amounts shall not be treated as amounts
8 paid or incurred in connection with at-
9 tempting to influence the taxpayer’s em-
10 ployees with respect to labor organizations
11 or labor organization activities under para-
12 graph (1)(E):

13 “(I) Amounts paid or incurred
14 for communications or negotiations di-
15 rectly with the designated or selected
16 representative of the employees of the
17 taxpayer described in section 9(a) of
18 the National Labor Relations Act (29
19 U.S.C. 159(a)) or under the Railway
20 Labor Act (45 U.S.C. 151 et seq.).

21 “(II) Amounts paid or incurred
22 for communications directly with
23 shareholders, as may be required
24 under section 13 of the Securities Ex-
25 change Act of 1934 (15 U.S.C. 78m).

1 “(III) Amounts paid or incurred
2 for communications or consultations
3 by the taxpayer in the process of vol-
4 untarily recognizing a labor organiza-
5 tion as a representative in accordance
6 with section 9 of the National Labor
7 Relations Act (29 U.S.C. 159).

8 “(IV) Amounts paid or incurred
9 with respect to the operation of a
10 labor-management partnership de-
11 scribed in a collective bargaining
12 agreement in effect between a rep-
13 resentative of employees of the tax-
14 payer and the taxpayer, including a
15 labor management committee estab-
16 lished pursuant to section 205A(a) of
17 the Labor Management Relations Act,
18 1947 (29 U.S.C. 175a(a)).

19 “(V) Amounts paid or incurred
20 for communications or consultations
21 related to the operation of a grievance
22 procedure described in a collective
23 bargaining agreement in effect be-
24 tween a representative of employees of
25 the taxpayer and the taxpayer.

1 “(VI) Amounts paid or incurred
2 by a labor organization.

3 “(VII) Amounts paid or incurred
4 for communication materials, includ-
5 ing visual or audio media, required to
6 be posted for, or provided to, employ-
7 ees of the taxpayer by law, including
8 under the National Labor Relations
9 Act (29 U.S.C. 151 et seq.) or the
10 Railway Labor Act (45 U.S.C. 151 et
11 seq.).

12 “(VIII) Amounts paid or in-
13 curred relating to a complaint which
14 is issued by the National Labor Rela-
15 tions Board and which is set aside in
16 full in accordance with subsection (e)
17 or (f) of section 10 of such Act.”.

18 (2) REGULATORY AUTHORITY.—

19 (A) IN GENERAL.—Section 162(e) of such
20 Code, as amended by subsection (b), is amend-
21 ed by redesignating paragraph (7) as paragraph
22 (8) and by inserting after paragraph (6) the
23 following new paragraph:

24 “(7) REGULATIONS.—The Secretary shall pre-
25 scribe such guidance, rules, or regulations as are

1 necessary to carry out the purposes of this sub-
2 section, including rules relating to the timing of any
3 deductions in connection with amounts described in
4 paragraph (4)(D)(ii)(VIII).”.

5 (B) TIMING.—Not later than the date that
6 is 240 days after the date of the enactment of
7 this Act, the Secretary of the Treasury (or the
8 Secretary’s delegate) shall prescribe guidance,
9 rules, or regulations with respect to the applica-
10 tion of the amendments made by this Act.

11 (d) INFORMATION REPORTING.—

12 (1) CERTAIN INFORMATION INCLUDED IN TAX
13 RETURNS.—

14 (A) IN GENERAL.—Part I of subchapter B
15 of chapter 68 is amended by adding at the end
16 the following new section:

17 **“SEC. 6720D. FAILURE TO INCLUDE CERTAIN INFORMATION**
18 **WITH RESPECT TO EMPLOYER ACTIVITIES**
19 **RELATING TO LABOR ORGANIZATIONS.**

20 “(a) IN GENERAL.—If any taxpayer who makes ex-
21 penditures described in section 162(e)(1)(E) fails to pro-
22 vide with the return of tax for the taxable year to which
23 such expenditures relate the information provided in sub-
24 section (c) with respect to such expenditures, or who fails
25 to provide all of the information required under subsection

1 (b) or fails to provide correct information, shall pay a pen-
2 alty in the amount determined under subsection (b).

3 “(b) DETERMINATION OF PENALTY AMOUNT.—

4 “(1) IN GENERAL.—The amount of the penalty
5 under this section for any failure described in sub-
6 section (a) shall be the greater of—

7 “(A) \$10,000, or

8 “(B) the product of \$1,000 and the num-
9 ber of full time equivalent employees of the em-
10 ployer (as determined under section 45R(d)(2)).

11 “(2) INCREASED PENALTY WHERE FAILURE
12 CONTINUES.—

13 “(A) IN GENERAL.—If any failure de-
14 scribed in subsection (a) (1) continues for more
15 than 90 days after the day on which the Sec-
16 retary mails notice of such failure to the tax-
17 payer, the taxpayer shall pay a penalty (in addi-
18 tion to the amount of any penalty under para-
19 graph (1)) equal to the amount determined
20 under paragraph (1) for each 30-day period (or
21 fraction thereof) during which such failure con-
22 tinues after the expiration of such 90-day pe-
23 riod.

1 “(B) LIMITATION.—The penalty imposed
2 under this paragraph with respect to any failure
3 shall not exceed \$100,000.

4 “(c) INFORMATION TO BE PROVIDED.—The infor-
5 mation required under this subsection shall include—

6 “(1) the dates that such activities described in
7 section 162(e)(1)(E) took place,

8 “(2) a statement indicating whether the activity
9 was an activity described in item (aa), (bb), or (cc)
10 of section 162(e)(4)(D)(i)(I),

11 “(3) the amounts paid or incurred for such ac-
12 tivities,

13 “(4) a copy of any disclosures which are re-
14 quired to be reported under the Labor-Management
15 Reporting and Disclosure Act of 1959 (29 U.S.C.
16 401 et seq.), and

17 “(5) such other information as the Secretary
18 may prescribe.

19 “(d) REASONABLE CAUSE EXCEPTION.—No penalty
20 shall be imposed by this section on any failure which is
21 shown to be due to reasonable cause and not due to willful
22 neglect.”.

23 (B) CLERICAL AMENDMENT.—The table of
24 sections for part I of subchapter B of chapter

1 68 is amended by adding at the end the fol-
2 lowing new item:

“Sec. 6720D. Failure to include certain information with respect to employer activities relating to labor organizations.”.

3 (2) **THIRD-PARTY INFORMATION REPORTING.**—

4 (A) **IN GENERAL.**—Subpart A of part III
5 of subchapter A of chapter 61 of the Internal
6 Revenue Code of 1986 is amended by inserting
7 after section 6039J the following new section:

8 **“SEC. 6039K. INFORMATION WITH RESPECT TO CERTAIN**
9 **EMPLOYER ACTIVITIES RELATING TO LABOR**
10 **ORGANIZATIONS.**

11 “(a) **IN GENERAL.**—Any person conducting activities
12 described in section 162(e)(1)(E) on behalf of another per-
13 son shall file a return (at such time and in such manner
14 as the Secretary may by regulations prescribe, which in-
15 cludes the information described in subsection (b)).

16 “(b) **INFORMATION TO BE PROVIDED.**—Information
17 required under subsection (a) shall include—

18 “(1) the person on behalf of whom the activities
19 described in section 162(e)(1)(E) were performed,

20 “(2) the dates that such activities described in
21 such section took place,

22 “(3) a statement indicating whether the activity
23 was an activity described in item (aa), (bb), or (cc)
24 of section 162(e)(4)(D)(i)(I),

1 “(4) the amounts paid or incurred for such ac-
2 tivities, and

3 “(5) such other information as the Secretary
4 may prescribe.”.

5 (B) PENALTY.—Subparagraph (B) of sec-
6 tion 6724(d)(1) of such Code is amended—

7 (i) by striking “or” at the end of
8 clause (xxvii),

9 (ii) by striking “and” at the end of
10 clause (xxxviii) and inserting “or”, and

11 (iii) by adding at the end the fol-
12 lowing new clause:

13 “(xxvix) section 6039K (relating to in-
14 formation with respect to certain employer
15 activities relating to labor organizations),
16 and”.

17 (C) CLERICAL AMENDMENT.—The table of
18 sections for subpart A of part III of subchapter
19 A of chapter 61 of such Code is amended by in-
20 serting after the item relating to section 6039J
21 the following new item:

 “Sec. 6039K. Information with respect to certain employer activities relating to
 labor organizations.”.

22 (e) CONFORMING AMENDMENTS.—

23 (1) The heading for subsection (e) of section
24 162 of the Internal Revenue Code of 1986 is amend-

1 ed by striking “AND POLITICAL EXPENDITURES”
2 and inserting “, POLITICAL EXPENDITURES, AND
3 LABOR ORGANIZATION EXPENDITURES”.

4 (2) The heading of subparagraph (C) of section
5 162(e)(4) of such Code is amended by striking “AND
6 POLITICAL ACTIVITIES” and inserting “, POLITICAL,
7 AND LABOR ORGANIZATION ACTIVITIES”.

8 (f) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to amounts paid or incurred in tax-
10 able years beginning after the date that is 240 days after
11 the date of the enactment of this Act.