

118TH CONGRESS  
1ST SESSION

# S. 737

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.

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## IN THE SENATE OF THE UNITED STATES

MARCH 9, 2023

Mr. CASEY (for himself, Mrs. MURRAY, Mr. WYDEN, Mr. VAN HOLLEN, Mr. BOOKER, Mr. SCHATZ, Ms. SMITH, Mr. REED, Mr. MURPHY, Mr. WELCH, Mr. DURBIN, Mr. MARKEY, Ms. WARREN, Ms. BALDWIN, Mr. LUJÁN, Ms. KLOBUCHAR, Mr. MERKLEY, Mr. SANDERS, Mr. WHITEHOUSE, Mr. CARDIN, Mr. BROWN, Mr. BLUMENTHAL, Ms. STABENOW, Mr. PADILLA, Mr. MENENDEZ, Ms. HIRONO, Mr. FETTERMAN, Mr. PETERS, and Ms. CORTEZ MASTO) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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 the comma at the end  
8                   of clause (xxvii), as added by the Infra-  
9                   structure Investment and Jobs Act, and in-  
10                  serting “, or”, and

11                  (ii) by adding at the end the following  
12                  new clause:

13                   “(xxviii) section 6039K (relating to  
14                   information with respect to certain em-  
15                   ployer activities relating to labor organiza-  
16                   tions), 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.

○