

# 2023 LEGAL SYMPOSIUM

MAY 7-9, 2023 | WASHINGTON, DC



LABOR WARS: THE UNION STRIKES BACK

# Labor Wars: The Union Strikes (Back)

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# Safe Space Disclaimer



# What We Intend To Cover

1. What is happening right now?
2. What happened in the past?
3. What strategies can we implement?



August 2019, Washington, D.C. Labor Protest



# What Is Happening Now?



# Reinstatement of Labor Laws

## Wage & Hour Division, Department of Labor

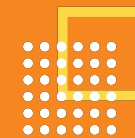
- Rescinds “Joint Employer Status Under the Fair Labor Standards Act” established on March 16, 2020

## NLRB

- Proposed Rescission of “2020 Rule” reinstating indirect control



Jennifer Abruzo, General Counsel, National Labor Relations Board



# State Legislature Actions

## Party Split

- 17 Democratically controlled states
- 30 Republican controlled states
- 3 Divided control states

## Labor Friendly Bills

- California AB 257
- California HB 1228
- Many, many more

2022 State Legislature Party Map



# Grassroots Unionization of Starbucks

## December 2021

- First store votes to unionize

## April 2023

- 360+ stores have held union elections in 40 states
- 300+ successful union elections
- 80+ active NLRB labor complaints
- 500+ active unfair labor practice charges
- 130+ NLRB findings against Starbucks



December 2021, Buffalo, New York Starbucks Union Vote

# What Happened In The Past?



# Creation of Joint Employer Laws

## Wage & Hour Division, Department of Labor

- “2016 Guidance” broads the standard for establishing joint employer liability

## NLRB

- *Browning-Ferris Industries of California, Inc.*, 362 NLRB 1599 (2015)



Richard Griffin, General Counsel, National Labor Relations Board



# Union Organized Labor Protests

## City by City Protests

- November 29, 2012 – NYC      April 4, 2013 – NYC
- April 24, 2013 – Chicago      May 10, 2013 – Detroit
- May 9-10, 2013 – St. Louis      May 15, 2013 - Seattle

## National and Global Protests

- July 29, 2013      August 29, 2013
- December 6, 2013      May 15, 2014
- September 4, 2014      December 4, 2014
- April 15, 2015      November 10, 2015

By the end, more than 300 cities across the globe participated in strikes and protests



Fight for 15 Protest



# Joint Employer Test Cases

## 2014 - 2022

- McDonald's USA, LLC, a joint employer, et al.

## 2016 - 2017

- New York v. Domino's Pizza

## Critical Non-Franchise Cases

- Salinas v. Commercial Interiors
- Hall v. DirecTV, LLC
- New York v. Scalia



McDonald's Strike, March 23, 2019, Des Moines, Iowa

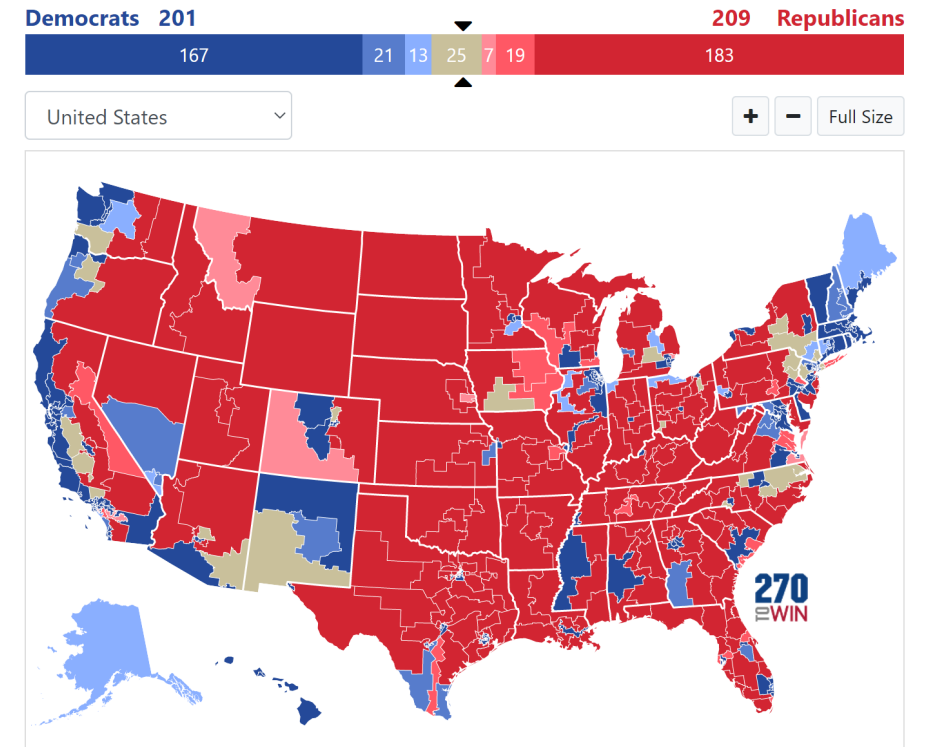


# What Strategies Can We Implement?



# State & National Politics

- Support IFA & FranPAC!!!
- Oppose radical federal department administrators
- Educate politicians & constituents
- Pass state joint employer shield laws



Current 2024 House of Representatives Election Map, 270 to Win



# Union Statistics Have Changed

## Union Approval Is Up

- In 2014, only 53% of Americans approved of labor unions.
- In 2022, 71% of Americans approved of labor unions.

## Reasons For Joining Are New

- Pay and Benefits Remains (65%)      Employee Rights and Representation (57%)
- Job Security (42%)                      Pension and Retirement Benefits (34%)
- Work Environment (25%)              Fairness and Equality (23%)

U.S. Approval of Unions, Gallup, 2022



# Employee Attitudes Have Changed

## Employee Engagement Is Going In The Wrong Direction

- Employee engagement at work dropped to 34%
- Employee active disengagement rose to 18%
- Younger employees (under 35) engagement was impacted more than older employees
- Female employees engagement was impacted more than male employees

## Reported Reasons For Decline

- |   |                                       |
|---|---------------------------------------|
| • Clarity of expectations                             | Their opinions counting               |
| • Connection to the mission or purpose of the company | Feeling cared about at work           |
| • Opportunities to learn or grow                      | Having someone that encourages growth |
| • Opportunities to do what employees to best          | Having a best friend at work          |
| • Having progress discussions                         |                                       |

U.S. Employee Engagement, Gallup, 2023



# Preventative Legal Strategies

- High risk franchisees
- High risk states
- Audit Franchise Disclosure Document, Franchise Agreement, & Operations Manuals
- Preferred versus mandatory vendors, software, and tools
- Cost/Benefit analysis for control of franchisees
  - Employment data collection
  - Performance monitoring
  - Training
  - Qualification requirements
  - Employment policies, forms, and processes



# Questions?

