

Sustainability Meets Solidarity: Protecting Workplace Climate Advocacy Under the NLRA

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The mutual aid and protection clause of the National Labor Relations Act (NLRA) protects workers from employer retaliation when engaged in “concerted activities for the purpose of . . . mutual aid or protection.” In Eastex v. NLRB, the Supreme Court recognized that political advocacy may also be protected under the clause when the advocacy advances “employees’ interests as employees.” This Note contends that, by framing climate change as a workplace issue, workplace climate advocacy can be protected under the mutual aid and protection clause.

Part I of this Note explores the impacts that climate change will have on workers, focusing on its impacts on occupational health and safety, and finances, and documents the ways that unions, workers, and governments have begun to recognize and address climate change as a workplace issue. Part II lays out the standard for when political activity is protected under Eastex. Applying this, Part III argues that, when properly framed, workplace climate advocacy falls within Eastex’s ambit. To illustrate the bounds of this approach, Part III also explores the ways that workplace climate advocacy could fall outside of the protections of Eastex. Finally, Part IV briefly explores the legal viability and effectiveness of a variety of forms of workplace advocacy that climate advocacy could take in practice, such as educational campaigns and climate strikes.

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INTRODUCTION

In a 2022 speech at the “Fight for Our Future” Earth Day climate rally, Liz Shuler, president of the AFL-CIO, proclaimed that “[l]abor and climate issues are two sides of the same coin.”¹ She continued, “[a]s our weather gets more and more extreme—with colder winters and hotter summers—working people are paying the price.”² To illustrate her point, she told the tragic story

1. Liz Shuler, President, AFL-CIO, Labor and Climate Issues are Two Sides of the Same Coin (Apr. 23, 2022), <https://aflcio.org/speeches/shuler-labor-and-climate-issues-are-two-sides-same-coin> [<https://perma.cc/S9RN-ZQCD>]. The AFL-CIO serves as the voluntary federation of 65 national and international labor unions representing nearly 15 million working people. *About Us*, AFL-CIO, <https://aflcio.org/about-us> [<https://perma.cc/F8BF-SQR3>].

2. *Id.*

of Sebastian Francisco Perez, a 38 year-old farm worker who died from heat exposure and dehydration while working in a field during a 104 degree heat wave.³ “If we don’t address our climate crisis, there will be more stories like [Sebastian’s] . . . the labor movement feels the urgency of addressing the climate crisis every day.”⁴

Through the release of greenhouse gases, human activity is driving profound changes in the Earth’s climate.⁵ According to the Intergovernmental Panel on Climate Change,⁶ every inhabited region in the world has already experienced changes in its weather and climate due to climate change.⁷ These and other climate-related changes have already damaged many terrestrial and aquatic ecosystems.⁸ Extreme weather events have become more frequent and severe: droughts parch entire regions, hurricanes batter coastlines, and floods devastate communities.⁹ In the United States, wildfires are more frequent and expansive

3. *Id.* Shuler explained that Perez moved irrigation lines on an agriculture field in extreme heat for many hours that day. When his coworkers realized they hadn’t seen him in a long time, they started searching and found him unresponsive. *Id.*

4. *Id.*

5. See Mark Lynas et al., *Greater than 99% Consensus on Human Caused Climate Change in the Peer-Reviewed Scientific Literature*, 16 EN’VT RSCH. LETTERS 1 (2021) (“[W]e conclude with high statistical confidence that the scientific consensus on human-caused contemporary climate change . . . exceeds 99% in the peer reviewed scientific literature.”); INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2023 SYNTHESIS REPORT 42 (2023), <https://www.ipcc.ch/report/ar6/syr/> [<https://perma.cc/7X8P-MR8D>] [hereinafter INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *2023 Report*] (“Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850–1900 in 2011–2020.”).

6. The Intergovernmental Panel on Climate Change (IPCC) serves as the United Nations’ body that compiles and assesses the world’s scientific literature about climate change. *About the IPCC*, IPCC, <https://www.ipcc.ch/about/> [<https://perma.cc/P8WU-UHUY>].

7. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS: SUMMARY FOR POLICYMAKERS 10 (2021), <https://www.ipcc.ch/report/ar6/wg1/chapter/summary-for-policymakers/> [<https://perma.cc/A49B-X8LK>] [hereinafter INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *2021 Report*] (noting that every inhabited region in the world has experienced changes in extreme heat, heavy precipitation, or drought due to climate change).

8. See *id.* at 46 (detailing how climate change has caused damage to terrestrial and aquatic ecosystems).

9. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *2023 Report*, *supra* note 5, at 7–8, 25.

compared to the past.¹⁰ Scientists attribute these shifts to anthropogenic, or human-caused, climate change.¹¹

While countries have attempted to respond to climate change through international agreements that establish emissions reduction targets,¹² the climate will continue warming to alarming levels over this century even if these targets are met.¹³ If governments fail to meet these targets, the effects of climate change will be significantly exacerbated.¹⁴

In either scenario, as evidenced by the tragic story of Sebastian Francisco Perez,¹⁵ climate change has, and will continue to have, profound effects on workers. Prolonged heat waves and worsened air quality, for example, put workers at heightened risk for occupational injury and death.¹⁶ Beyond risks to worker health and safety, climate change also impacts workers' pocketbooks.¹⁷ Climate-influenced natural disasters, for instance, can force businesses to shutter, depriving workers of their livelihoods.¹⁸

10. One study compared fire data from 1984–1998 and 2005–2018 and found that, during the latter period, the frequency of fires increased by three times, and the average fire size increased by roughly four times. See Virginia Iglesias et al., *U.S. Fires Become Larger, More Frequent and More Widespread in the 2000s*, 8 *SCI. ADVANCES* 11, at 1 (Mar. 16, 2022).

11. One study found that between 1979 and 2020, anthropogenic climate change explained 68 to 88% of the increase in vapor pressure deficit—a phenomenon closely linked with fire weather—in the American West. Yizhou Zhaung et al., *Quantifying Contributions of Natural Variability and Anthropogenic Forcings on Increased Fire Weather Risk Over the Western United States*, 118 *PROC. NAT'L ACAD. SCI. U.S.* 45, at 1 (2021). The National Oceanic and Atmospheric Administration (NOAA) concluded that this study “shows that western United States has passed a critical threshold since about 2000, and human-caused climate change is now the dominant contributor to the increase of wildfire risk.” Rong Fu, *Study Shows That Climate Change is the Main Driver of Increasing Fire Weather in the Western U.S.*, *NAT'L INTEGRATED DROUGHT INFO. SYS.* (Nov. 9, 2021), <https://www.drought.gov/news/study-shows-climate-change-main-driver-increasing-fire-weather-western-us> [<https://perma.cc/5PD5-WGJD>].

12. Under the Paris Climate Accords, for example, signatory countries have an obligation to set emission reduction targets, referred to as nationally determined contributions, and to implement policies to meet its targets. See *Key Aspects of the Paris Agreement*, U.N. CLIMATE CHANGE, <https://unfccc.int/most-requested/key-aspects-of-the-paris-agreement> [<https://perma.cc/7CB7-HCUZ>].

13. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *2023 Report*, *supra* note 5, at 68–90.

14. *1.5°C: What it Means and Why it Matters*, U.N., <https://www.un.org/en/climatechange/science/climate-issues/degrees-matter> [<https://perma.cc/C2UP-QK2F>] (explaining the emission targets set out by the Paris Climate Accords and the impacts of passing those targets).

15. See *supra* notes 1–3 and accompanying text.

16. See *infra* Part I.A.1 (discussing how climate change will impact worker health and safety).

17. See *infra* Part I.A.2 (discussing the economic impacts of climate change).

18. *Id.* (discussing the economic impacts of climate change).

Given these effects, workers have a real stake in both changing the future trajectory of climate change and protecting themselves from its current impacts.¹⁹ Existing labor law—in the form of the mutual aid and protection clause of the National Labor Relations Act (NLRA)—can provide a means for workers to do just this.²⁰ In the seminal case *Eastex v. NLRB*, the Supreme Court emphasized the broad scope of the mutual aid and protection clause and held that it protects political activity that falls within “employees’ interests as employees.”²¹

This Note contends that, by framing climate change as a workplace issue, workplace climate advocacy can be protected by the mutual aid and protection clause. Part I of this Note explores the impacts that climate change has, and will have, on workers and documents the ways that unions, workers, and governments have begun to recognize climate change as a workplace issue. Part II outlines when worker advocacy is, and is not, taken “for the purpose of mutual aid and protection” under the *Eastex* Standard. Applying this standard, Part III argues that, when properly framed, workplace climate advocacy falls within the *Eastex* Standard. Part III also discusses how this advocacy can fall outside of the protections of *Eastex*. Finally, Part IV briefly explores the legal viability and effectiveness of a variety of forms that workplace climate advocacy could take in practice.

I. THE NEXUS BETWEEN CLIMATE CHANGE AND LABOR

Climate change directly affects workers’ incomes and working conditions, and these effects will intensify as the climate crisis worsens.²² Part I.A explores the effects of climate change on workers, focusing on occupational health and safety, and finances. Part I.B then documents the ways that unions, workers, and governments have increasingly recognized climate change as a workplace issue.

19. See *infra* Part I (discussing the impacts of climate change on workers).

20. See 29 U.S.C. § 157.

21. See 437 U.S. 556, 563–68 (1978) (holding that § 7’s “mutual aid or protection” clause protects concerted activity directed at improving employees’ lot as employees, even when pursued through channels outside the immediate employment relationship).

22. See *infra* Part I.A–B (discussing how the ways climate change will affect workers’ health, safety, and income).

A. THE IMPACTS OF CLIMATE CHANGE ON WORKERS

Climate change will have far-reaching consequences for workers. For example, 65 million nonelderly workers are employed in an occupation that is at an increased risk for climate-related adverse health outcomes.²³ This accounts for 44% of the nonelderly working population in the United States.²⁴ Although climate change will affect workers in wide-ranging ways, this Part focuses on two major effects: (1) health and safety impacts and (2) financial impacts.

1. *Health and Safety Impacts*

Climate change exposes workers to higher average temperatures²⁵ and more frequent and prolonged heatwaves,²⁶ creating an ever-expanding risk of heat-related occupational injury or death.²⁷ Outdoor workers, like construction workers, and indoor

23. Nambi Ndugga et al., *Climate-Related Risks Among Workers: Who Is At Increased Risk?*, KAISER FAM. FOUND. (June 26, 2023), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/climate-related-health-risks-among-workers-who-is-at-increased-risk/> [<https://perma.cc/753V-MW4U>].

24. *Id.*

25. *Global Climate Change Indicators: U.S. and Global Temperature*, ENV'T PROT. AGENCY (2016), https://19january2021snapshot.epa.gov/climate-indicators/climate-change-indicators-us-and-global-temperature_.html [<https://perma.cc/8P7J-WVSB>]. Average temperatures are expected to continue to increase throughout the century. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *2021 Report*, *supra* note 7, at 15 (finding with virtual certainty that land surface warming will outpace ocean surface warming by a factor of 1.4 to 1.7 in the twenty-first century).

26. Climate change has been linked with more widespread, frequent, long-lasting, and intense heatwaves. *Climate Indicators: Heat Waves*, ENV'T PROT. AGENCY (Jan. 15, 2025), <https://www.epa.gov/climate-indicators/climate-change-indicators-heat-waves> [<https://perma.cc/X3FM-H2G9>]. One study compared heatwaves from 2016–2020 to heatwaves from 1979–1983 and found that when compared to the latter time period, heatwaves from 2016–2020 persist longer, affect larger areas, and have increased in frequency. Delger Erdenesanaa, *Heat Waves are Moving Slower and Staying Longer*, *Study Finds*, N.Y. TIMES (Mar. 29, 2024), <https://www.nytimes.com/2024/03/29/climate/heat-waves-longer-slower.html> [<https://perma.cc/8SWD-KU2K>]. Further, heatwaves are expected to continue to worsen throughout the century. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *2021 Report*, *supra* note 7, at 14–15 (noting that the average global surface temperature will “continue to increase until at least mid-century under all emissions scenarios considered” and how each 0.5° C increase in the global average temperature “causes clearly discernible increases in the intensity and frequency of hot extremes, including heatwaves”).

27. BRENDA JACKLITSCH ET AL., NAT'L INST. FOR OCCUPATIONAL SAFETY AND HEALTH, CRITERIA FOR RECOMMENDED STANDARD: OCCUPATIONAL EXPOSURE TO HEAT AND HOT ENVIRONMENTS 23–57 (2016); Jill Rosenthal et al., *Extreme Heat is More Dangerous for Workers Every Year*, CTR. AM. PROGRESS (June 13, 2024), <https://www.americanprogress.org/article/extreme-heat-is-more-dangerous-for-workers->

workers in facilities without adequate cooling, such as warehouse workers, are the most vulnerable to heat exposure from climate change.²⁸ Exposure to extreme heat can cause a host of short-term heat-related illnesses, including heat exhaustion, heat stroke, rhabdomyolysis, heat cramps, fainting, and heat rashes.²⁹ Exposure to extreme heat can also trigger flare-ups of preexisting conditions like asthma, kidney disease, and heart disease.³⁰ Further, long term exposure to heat may cause damage to the heart, kidneys, and liver.³¹ Exposure to extreme heat is also associated with an increase in certain injuries, including burns and falls.³² One study estimated that, in the United States alone, heat causes nearly 28,000 occupational injuries annually.³³ Another study put that number at 170,000.³⁴ Extreme heat can even be deadly for workers. According to the Bureau of Labor Statistics, between 2011 and 2021, 436 workers died from environmental heat exposure,³⁵ however, this is likely an undercount.³⁶ One study estimated that heat exposure is responsible for 600 to 2,000 occupational fatalities annually, meaning heat may be the greatest cause of workplace deaths in the United States.³⁷

every-year/ [https://perma.cc/8765-C76V] (noting that the risks of heat related occupational injury, illness, and death will increase because of climate change).

28. Rosenthal, *supra* note 27.

29. JACKLITSCH ET AL., *supra* note 27, at 47–57 (discussing the impacts of heat on the human body).

30. Rosenthal, *supra* note 27.

31. JACKLITSCH ET AL., *supra* note 27, at 57.

32. *Id.* at v.

33. Barrak Alahmad et al., *A Nationwide Analysis of Heat and Workplace Injuries in the United States*, 24 ENV'T HEALTH 65, at 8–9 (2025).

34. Juley Fulcher, *Boiling Point: OSHA Must Act Immediately to Protect Workers From Deadly Temperatures*, PUB. CITIZEN (June 28, 2022), <https://www.citizen.org/article/boiling-point/> [https://perma.cc/QN6H-XHC5].

35. U.S. Bureau of Lab. Stat., *36 Work-Related Deaths Due to Environmental Heat Exposure in 2021*, THE ECON. DAILY (June 5, 2023), <https://www.bls.gov/opub/ted/2023/36-work-related-deaths-due-to-environmental-heat-exposure-in-2021.htm> [https://perma.cc/7ZHW-7NLU].

36. See, e.g., *Leading Healthcare and Public Health Organizations Call for Federal Government to Fast-Track Rules to Protect Workers from Worsening Extreme Heat*, AM. PUB. HEALTH ASS'N (Jan. 14, 2025), <https://www.apha.org/news-and-media/news-releases/apha-news-releases/2025/extreme-heat-letter-to-osha> [https://perma.cc/JLF4-U8GL] (noting that heat related death numbers calculated by the U.S. Bureau of Labor Statistics likely undercount the true number of heat-related deaths due to “inconsistent reporting and ineffective data collection strategies”).

37. Fulcher, *supra* note 34 (“Heat exposure is responsible for 600 to 2,000 worker fatalities, annually, ranking it among the top three causes—and possibly the top cause—of occupational fatalities.”).

Climate change also adversely impacts the health and safety of workers by worsening air quality.³⁸ The concentration of several air pollutants—including ozone³⁹ and particulate matter⁴⁰—is expected to increase as a result of climate change.⁴¹ These increases will have both short- and long-term adverse health impacts on workers.⁴² Although outdoor workers are at a particularly high risk of adverse health outcomes from worsening air quality,⁴³ indoor workers are not immune.⁴⁴ Cumulatively, the risks from heat and poor air quality are properly understood as

38. The current scientific literature suggests that climate change will worsen air quality in many parts of the United States. See CHRISTOPHER G. NOLTE ET AL., FIFTH NATIONAL CLIMATE ASSESSMENT: CHAPTER 14. AIR QUALITY 14-5 to 14-8 (2023). For example, as forest fires continue to become more common and severe, there will be an increase in wildfire smoke, which contributes to particulate matter and ozone air pollution. See *supra* notes 11–12 and accompanying text; NOLTE ET AL., *supra*, at 14-9 to 14-10.

39. NOLTE ET AL., *supra* note 38, at 14-6 to 14-7; *Climate Change Impacts on Air Quality*, ENV'T PROT. AGENCY (Feb. 12, 2025), <https://www.epa.gov/climateimpacts/climate-change-impacts-air-quality#6foot> [<https://perma.cc/LKR6-28L9>] (“Ground-level ozone is also a greenhouse gas that contributes to climate change by trapping heat in the atmosphere.”).

40. NOLTE ET AL., *supra* note 38, at 14-5 to 14-6; *Climate Change Impacts on Air Quality*, *supra* note 39.

41. NOLTE ET AL., *supra* note 38, at 14-5 to 14-6; *Climate Change Impacts on Air Quality*, *supra* note 39.

42. Short-term exposure to ozone pollution, for example, is linked with shortness of breath, wheezing, asthma attacks, and an increased risk of respiratory infections. *Ozone*, AM. LUNG ASS'N (Feb. 4, 2025), <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone#how> [<https://perma.cc/4SKF-M6EP>]. Long-term exposure, meanwhile, has been linked to increased risk of respiratory illness (including asthma), metabolic disorders, nervous system diseases, reproductive issues, cancer, and cardiovascular mortality. *Id.* Inhalation of particulate matter has a similar list of short- and long-term effects. *Health and Environmental Effects of Particulate Matter (PM)*, ENV'T PROT. AGENCY (July 16, 2024), <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> [<https://perma.cc/A2YE-9FFY>].

43. P. A. Schulte et al., *Updated Assessment of Occupational Safety and Health Hazards of Climate Change*, 20 J. OCCUPATIONAL AND ENV'T HYGIENE 183, 187 (2023) (“Available studies show that the increasing impact of climate change on levels of air pollutants will disproportionately impact outdoor workers.”).

44. See, e.g., WASH. STATE DEPT LAB. & INDUS., PROTECTING WORKERS FROM WILDFIRE SMOKE EXPOSURE, at 1, <https://lni.wa.gov/forms-publications/F101-190-000.pdf> [<https://perma.cc/YP65-47EA>] (noting that indoor workers are at risk of exposure to wildfire smoke); Nathan Rott, *Sheltering Inside May Not Protect You from The Dangers of Wildfire Smoke*, NAT'L PUB. RADIO (Sep. 7, 2021), <https://www.npr.org/2021/09/07/1034895514/sheltering-inside-may-not-protect-you-from-the-dangers-of-wildfire-smoke> [<https://perma.cc/4BCM-8K2B>] (explaining that particulate matter from wildfire smoke “can seep through closed doors and shuttered windows, making air hazardous in homes and businesses”); Maeve G. Macmurdo et al., *Occupational Exposure to Ambient Air Pollution: At-Risk Worker Groups, Regulatory and Research Needs An Official American Thoracic Society Workshop Report*, 22 ANNALS AM. THORACIC SOC. 11, at 1621 (2025) (“[I]ndoor workers may also be impacted by outdoor air pollutants infiltrating the indoor environment in older poorly sealed buildings or those without mechanical ventilation and filtration systems, particularly during high-pollutant events.”).

work-condition hazards, not simply background risks, which matters for the *Eastex* “employees’ interests as employees” inquiry.⁴⁵

The negative health and safety impacts of climate change on the workplace stretch far beyond heat exposure and worsening air quality. By affecting temperature and rainfall, climate change increases workers’ exposure to biological hazards including vector-borne illnesses, mold, fungus, bacteria, and viruses.⁴⁶ Valley fever, for example, is a disease caused by the fungus *coccidioides*, which thrives in the soil of dry regions.⁴⁷ It is primarily contracted through the inhalation of contaminated soil⁴⁸ and causes pneumonia-like symptoms, which can result in serious medical complications.⁴⁹ As many as forty percent of those who contract the disease require hospitalization⁵⁰ and a further five to ten percent develop chronic lung disease.⁵¹ Already, Valley fever poses an occupational hazard to many workers, with the majority of reported cases traceable to workplace exposure.⁵² Because the disease is contracted when contaminated soil is disturbed, workers whose duties involve excavating, moving, or being otherwise exposed to soil and dust are at a particularly high risk of contracting Valley fever.⁵³ Agricultural workers, landscapers, construction workers, archeologists, wildland firefighters, and entertainment industry workers are among the professionals most at risk.⁵⁴

45. See *infra* Part II (discussing the *Eastex* Standard).

46. See Schulte et al., *supra* note 43, at 189–91 (discussing studies into the occupational effects of climate-change related biological hazards); Gabriel Petek, *Climate Change Impacts Across California: Workers & Employers*, CAL. LEGIS. ANALYST’S OFF., Apr. 2022, at 2–3 (listing Valley fever as an example of an occupational risk that climate change impacts).

47. *Valley Fever (Coccidioidomycosis) Overview*, OSHA, <https://www.osha.gov/valley-fever> [<https://perma.cc/77SY-RMNA>].

48. See *Valley Fever*, MAYO CLINIC (Mar. 21, 2023), <https://www.mayoclinic.org/diseases-conditions/valley-fever/symptoms-causes/syc-20378761> [<https://perma.cc/E68D-BSFR>].

49. *Symptoms of Valley Fever*, CDC (Apr. 24, 2024), <https://www.cdc.gov/valley-fever/signs-symptoms/> [<https://perma.cc/G4UU-DXWL>].

50. *Valley Fever and the Expanding Geographic Range of Coccidioides*, CDC (Mar. 24, 2020), https://www.cdc.gov/valley-fever/media/314949-A_FS_ValleyFever_Coccidioides_508.pdf [<https://perma.cc/4YCC-FBVY>].

51. *Symptoms of Valley Fever*, *supra* note 49.

52. NAT’L ACAD. SCI., ENG’G, & MED., IMPACT AND CONTROL OF VALLEY FEVER: PROCEEDINGS OF A WORKSHOP—IN BRIEF 6 (2023).

53. *Valley Fever (Coccidioidomycosis)*, *supra* note 47.

54. *Id.*

Currently, the coccidioides fungus is primarily found in the American Southwest and parts of Washington State.⁵⁵ Due to climate change, however, the range where the fungus can survive and where Valley fever can thus become endemic is expected to significantly increase by the end of the century.⁵⁶ Warming temperatures, more frequent droughts and dust storms, and changing precipitation patterns allow the fungus to spread and survive in regions previously unsuitable for its growth.⁵⁷ By increasing the number of people living in regions where Valley fever is endemic, climate change is also expected to increase the disease's prevalence,⁵⁸ thereby increasing the occupational risk of the fungus.⁵⁹

Further, workers will face an increased risk of occupational injuries, deaths, and other adverse health outcomes due to more frequent and extreme weather events and natural disasters driven by climate change.⁶⁰ Among the workers most at risk are police officers, firefighters, and paramedics who must respond during and immediately after extreme weather events and natural disasters.⁶¹ The risks, however, extend beyond first responders.

55. *Id.* (providing a map of the areas where Coccidiomycosis can be found in the United States).

56. Morgan E. Gorris et al., *Expansion of Coccidioidomycosis Endemic Regions in the United States in Response to Climate Change*, 3 GEOHEALTH 308, 318 (2019) (finding that under a high emission scenario the endemic range of Valley fever is expected to increase by 113% and under a moderate emission scenario the endemic range of Valley fever is expected to increase by 46%). “[W]e found that the endemic area to Valley Fever, as well as the number of cases, will increase in response to climate change.” *Id.* at 324. *See also* Madelynn H. Howard et al., *Valley Fever Under a Changing Climate in the United States*, 193 ENV'TAL. INT'L 109066 (Nov. 2024), at 1 (“The intensified onset of climate change causes natural hazard events like dust storms and drought to increase in number and severity, resulting in the proliferation of [Valley fever].”). “Climate change is causing an expansion in the area where Coccidioides [the fungus that causes Valley fever] can survive and reproduce while also playing a factor in the spread of Coccidioidomycosis to humans.” *Id.* at 7.

57. Gorris et al., *supra* note 56, at 309–10, 321–322, 324 (discussing the impacts of climate change on the range and incidence of Valley fever); Howard et al., *supra* note 56, at 2, 5–7 (same).

58. *Id.* at 324 (finding that in a high emissions scenario, the annual number of Valley fever cases could increase by 50% before accounting for the compounding effect of changes in human population).

59. *E.g.*, NAT'L ACAD. SCI., ENG'G, & MED., *supra* note 52, at 6 (“People who work outdoors in endemic areas and disrupt soil or work in dusty or windy conditions are at increased risk of infection.”).

60. *E.g.*, Schulte et al., *supra* note 43, at 188–89 (discussing how climate change is increasing extreme weather events and how these events impact workers).

61. INT. LAB. ORG., ENSURING SAFETY AND HEALTH AT WORK IN A CHANGING CLIMATE 36 (2024) (discussing the occupational hazards that first responders are exposed to when working in the aftermath of extreme weather events and natural disasters). Workers “may suffer respiratory tract injury from inhalation of irritant gases, combustion products, heavy

When Hurricane Helene hit the American Southeast in 2024, for example, widespread flooding resulted in the tragic loss of six factory workers in Tennessee.⁶² The workers were swept away and killed when floodwaters hit the Impact Plastics Factory during their shift.⁶³ Following Hurricane Helene, several studies concluded that the rainfall associated with the storm was worsened by climate change.⁶⁴

Climate change will adversely impact the health and safety of workers in a host of ways—from increasing the frequency of heat-related illnesses and injuries to increasing workers’ exposure to biological hazards. As climate conditions worsen, the frequency, severity, and geographic scope of these workplace hazards will only expand, placing a greater number of workers at increased risk.

2. *Financial Impacts*

In addition to affecting the health and safety of workers, climate change already affects workers’ financial health and will

dust and fibres.” *Id.* “Workers may also be exposed to biological hazards during flooding, for example bacteria, mould, faecal matter and vector-related risks (for example cholera and Weil’s disease), causing allergic, infectious and toxic effects.” *Id.* See also Daisy Simmons, *Climate Change Adds Stress for First Responders*, YALE CLIMATE CONNECTIONS (July 5, 2018), <https://yaleclimateconnections.org/2018/07/climate-change-adds-stress-for-first-responders/> [<https://perma.cc/8AQG-A8NF>] (discussing the mental health impact of increased extreme weather and natural disasters on some first responders).

62. Samuel Oakford et al., *The Decisions That Cost Some Lives and Saved Others During Helene’s Wrath*, WASH. POST (Nov. 17, 2024), <https://www.washingtonpost.com/nation/2024/11/27/hurricane-helene-erwin-tennessee-impact-plastics/> [<https://perma.cc/72DA-JPXG>]. Similarly in December 2021, six Amazon warehouse workers in Illinois and eight factory workers in Kentucky were killed when unseasonal tornadoes hit their workplaces. See Shelley Steward & David K. Gibson, *When Climate Change Meets a Bad Work Environment, Disaster Can Strike*, ASPEN INST. (Apr. 21, 2022), <https://www.aspeninstitute.org/blog-posts/when-climate-change-meets-a-bad-work-environment-disaster-can-strike/> [<https://perma.cc/W3R4-F8DP>].

63. Juliana Kim, *One Family’s Frantic Race To Save Their Mother As Helene Flooded A Tennessee Factory*, NAT’L PUB. RADIO (Nov. 3, 2024), <https://www.npr.org/2024/11/02/g-s1-28731/hurricane-helene-tennessee-plastics-factory-deaths-lawsuit> [<https://perma.cc/U5RJ-TSAF>]. The victims’ families and surviving employees at the factory have come forward stating that the employee deaths could have been prevented had they been allowed to leave work earlier that day. *Id.*

64. Haley Thiem & Rebecca Lindsay, *Hurricane Helene’s Extreme Rainfall and Catastrophic Inland Flooding*, CLIMATE.GOV (Nov. 7, 2024), <https://www.climate.gov/news-features/event-tracker/hurricane-helenes-extreme-rainfall-and-catastrophic-inland-flooding> [<https://perma.cc/NZ45-26L3>] (“In the aftermath of Helene at least three different rapid attribution studies have come out, all of which have come to the same conclusion: the rainfall associated with Helene was higher due to climate change than it would have been without it.”).

increasingly do so as climate change worsens.⁶⁵ More frequent and extreme weather events due to climate change⁶⁶ can require businesses to temporarily close, resulting in reduced working hours or furloughs.⁶⁷ Even when businesses manage to stay open in the wake of such disasters, workers may lose income and employer-provided benefits due to injuries or other disruptions.⁶⁸ Rising temperatures also reduce job productivity⁶⁹ and labor hours,⁷⁰ further decreasing workers' incomes. Many workers are already feeling the impacts of climate change on their incomes.⁷¹ One study estimated that between 2000 and 2019, climate change reduced incomes in the United States by around 12%.⁷² Another study projected that, under a high emissions scenario, the lifetime

65. *E.g.*, U.S. DEP'T TREASURY, THE IMPACT OF CLIMATE CHANGE ON AMERICAN HOUSEHOLD FINANCES (2023) (discussing the impacts of climate change on household finances).

66. *E.g.*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, 2023 Report, *supra* note 5, at 8 ("Human-induced climate change is already affecting many weather and climate extremes" including heatwaves, heavy precipitation, drought, and tropical cyclones.").

67. U.S. DEP'T TREASURY, *supra* note 65, at 5 ("Climate events such as flooding and wildfires can damage businesses, as well as key infrastructure . . . Moreover, hazards like wildfires or heat waves have the potential to create unsafe working or operational conditions that necessitate closures of businesses and infrastructure. Workers in areas impacted by these hazards may face income loss due to reduced working hours, job loss, or furlough.").

68. *See id.* (noting that workers could be unable to attend work due to injuries or illness resulting from extreme weather events and that prolonged absence from work "may cause workers to lose access to employer-provided health insurance benefits, income replacement or paid leave, and employee assistance programs").

69. *See id.* ("[P]rolonged exposure to climate hazards such as extreme heat can impair workers' physical and cognitive abilities, which can lower their overall productivity and, consequently, result in a decline in their earnings."); *see also* Matthew Neidell, *How Does Climate Change Affect Worker's Productivity?*, ECON. OBSERVATORY (Oct. 20, 2021), <https://www.economicobservatory.com/how-does-climate-change-affect-workers-productivity> [<https://perma.cc/T3TJ-YXFX>] ("[E]xposure to hotter temperatures has a well-established negative impact on human health, resulting in an unhealthy workforce. The effects may be strong enough that people don't turn up to work.").

70. The Environmental Protection Agency projects that, without mitigation, climate change, by increasing the frequency of extreme heat events, will result by the year 2090 in an annual loss of 1.9 billion labor hours. ENV'T PROT. AGENCY, MULTI-MODEL FRAMEWORK FOR QUANTITATIVE SECTORAL IMPACTS ANALYSIS 54–59 (2017), https://www.epa.gov/sites/default/files/2021-03/documents/ciraii_technicalreportfornc4_final_with_updates_11062018.pdf [<https://perma.cc/T35K-LA3P>]. This loss is the equivalent of 160 billion dollars of lost wages. *Id.*

71. For example, one survey found that 49% of workers making between 30,000 and 80,000 dollars a year have experienced negative changes to their work due to climate influenced extreme or unusual weather events. COMMONWEALTH, FEELING THE HEAT: CLIMATE CHANGE'S IMPACT ON WORKER FINANCIAL SECURITY 8–11 (2023).

72. Derek Lemoine, *Climate Change Has Already Made the United States Poorer*, 122 PROC. NAT'L ACAD. SCI. U.S.A. 51, at 5 (2025) ("The full calculation indicates larger losses, with a point estimate of 12.1%.").

cost of climate change to an American born in 2024 could range between 500,000 and 1 million dollars.⁷³

In addition to negatively impacting workers' income, climate change can result in job loss.⁷⁴ In the wake of extreme weather events, businesses may permanently close, leading to layoffs.⁷⁵ Climate change will also put pressure on entire industries.⁷⁶ Take the winter sports industry: climate change will cause warmer winters in many ski regions, leading to less snowpack and shorter ski seasons.⁷⁷ As a result, the increased financial pressure on ski resorts could lead to job losses for their workers.⁷⁸ The effects of fewer skiers will also spill over into the larger community as restaurants, hotels, gas stations, grocery stores, and bars see fewer customers.⁷⁹

B. UNION, WORKER, AND GOVERNMENTAL RESPONSES TO CLIMATE CHANGE

As the connection between climate change and the workplace has become increasingly apparent, unions have become more

73. See generally CONSUMER REPORTS, COST OF CLIMATE CHANGE TO AN AMERICAN BORN IN 2024 1 (2024). The study calculated this figure by projecting the impacts of climate change on net income and the cost of living. *Id.* at 2.

74. *E.g.*, U.S. DEP'T TREASURY, *supra* note 65, at 5 ("Workers in areas impacted by [climate-related extreme weather and natural disasters] may face income loss due to reduced working hours, job loss, or furlough, or could be forced to spend time away from work due to illness or injury.").

75. *Id.* (noting that climate-related extreme weather and natural disasters can damage businesses which can, in turn, result in job loss).

76. *E.g.*, *id.* ("Over the longer-term, recurring climate hazards, like wildfires or heatwaves, could prolong financial strain by reducing available jobs in certain sectors."); Jamil Wyne, *Climate Change and Jobs: How a Warming Planet Affects Labor Markets*, FORBES (Dec. 12, 2024), <https://www.forbes.com/sites/jamilwyne/2024/12/12/climate-change-and-jobs-how-a-warming-planet-affects-labor-markets/> [<https://perma.cc/F677-BCNR>] (discussing how climate change can cause job loss in the agricultural, forestry, and tourism sectors).

77. See generally ELIZABETH BURAKOWSKI & MATTHEW MAGNUSSON, CLIMATE IMPACTS ON THE WINTER TOURISM ECONOMY IN THE UNITED STATES (2012); *Climate Change Connections: Colorado (Winter Sports)*, EN'VT PROT. AGENCY (Jan. 16, 2025), <https://www.epa.gov/climateimpacts/climate-change-connections-colorado-winter-sports> [<https://perma.cc/TF3E-W9L6>] ("Many winter recreation locations in Colorado are expected to have a shorter ski season by mid-century, with even greater decreases by 2090. Shorter seasons can result in steep economic losses for local businesses as visitation declines due to the lack of snow.").

78. BURAKOWSKI & MAGNUSSON, *supra* note 77, at 14–16.

79. *Id.* at 3.

active on the issue of climate change.⁸⁰ Many unions have passed resolutions on climate change.⁸¹ The Service Employees International Union, for example, passed an environmental justice resolution highlighting the impacts of climate change on workers.⁸² The resolution emphasized that working people “are . . . more likely to be confronted with environmental and health hazards at work—and less likely to receive adequate protection from them.”⁸³ The resolution gave the example of healthcare workers, who it described as on the “frontlines” of treating climate-related illnesses.⁸⁴

Beyond passing resolutions, labor unions have also formed coalitions—in some cases even with non-labor organizations—to lobby for federal and state climate policies. The AFL-CIO, alongside other labor and environmental groups, for example, has petitioned FEMA to classify heatwaves and wildfires as “major disasters.”⁸⁵ Such a designation would provide state, local, and tribal governments with additional funding to address these

80. *E.g.*, Katie Myers, *In 2023, Organized Labor Became Core to the Climate Movement*, GRIST (Dec. 20, 2023), <https://grist.org/labor/in-2023-organized-labor-became-core-to-the-climate-movement/> [<https://perma.cc/2HBD-F4UU>] (“After decades of hesitancy, several major unions recognized an urgent need to organize those who will do the hard work of decarbonizing the nation’s economy [C]alls for a just transition rattled union halls and corporate offices as organized labor enjoyed one of its most active years in recent memory and environmental organizations, long uncertain about where unions stood, found new allies.”).

81. Anjali Katta, *Labor in Climate Crisis: Union Action for a Cleaner, Greener Future*, ON LABOR (Apr. 15, 2025), <https://onlabor.org/title/> [<https://perma.cc/Y5HQ-9HXM>] (finding that many unions have passed public resolutions on climate change but noting that there is variation in the substantive content of these resolutions across unions).

82. *See Resolution 108A—Environmental Justice for Working People*, SEIU (May 22, 2016), <https://s3.amazonaws.com/convdocs.seiumediamedia.net/resolutions/108A-Environmental-Justice-Resolution-052016.pdf?mtime=20160522100708> [<https://perma.cc/SBB5-S2VA>].

83. *Id.* at 1.

84. *Id.* (“SEIU members who work in healthcare have been on the front lines of responding to climate change related public health problems, like exacerbated asthma and other respiratory illness—and the increasing crisis from vector borne diseases like dengue fever, chikungunya and West Nile virus, which flourish in the wake of extreme weather events.”).

85. *FEMA Urged to Fund Disaster Response for Extreme Heat, Wildfire Smoke*, CTR. BIOLOGICAL DIVERSITY (June 17, 2024), <https://biologicaldiversity.org/w/news/press-releases/fema-urged-to-fund-disaster-response-for-extreme-heat-wildfire-smoke-2024-06-17/> [<https://perma.cc/Y9XY-MNWS>] (“The AFL-CIO calls on FEMA to swiftly classify heat and wildfires as ‘major disasters’ under the Stafford Act to ensure workers and their communities—especially marginalized communities—have the resources they need to prepare for and respond to the ongoing threats of climate change. FEMA has the power to save lives—and we urge them to use that power to meet this emergency with the urgency it deserves.”).

hazards.⁸⁶ Similarly, several high-profile national unions—including the United Steelworkers (USW), the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and the Communications Workers of America—joined with national environmental groups to form the Bluegreen Alliance, which has lobbied for climate legislation, including the Inflation Reduction Act.⁸⁷

Local and state level unions have made similar moves.⁸⁸ In California, for instance, a group of state and local unions, including several unions representing oil and gas workers, established California Labor for Climate Jobs.⁸⁹ The organization has lobbied for climate legislation in the California State Legislature.⁹⁰ The organization’s policy platform, entitled the “California Worker’s Bill of Rights,” highlights the ways climate change affects working conditions and calls for policymakers to protect workers who are employed in industries that will become obsolete after the green transition.⁹¹

Workers themselves have also become vocal on the issue of climate change.⁹² In 2018, Amazon workers—who own stock in the

86. *Id.* (“This [petition] would allow FEMA to make crucial funding available for state, local and Tribal governments to invest in community solar and storage, cooling centers, community resilience hubs, worker protections, air filtration systems and other ways to prepare for and respond to extreme heat and wildfire smoke that impact human health.”).

87. *See About Us*, BLUEGREEN ALL., <https://www.bluegreenalliance.org/about/> [<https://perma.cc/4KUR-G6XA>] (describing the organization’s makeup, platform, and history).

88. *See, e.g.*, Zach Cunningham et al., *Labor Changes the Climate: New Policies Move States Forward*, ILR CLIMATE JOBS INST. (July 6, 2021), <https://www.ilr.cornell.edu/climate-jobs-institute/research-and-policy/labor-changes-climate-new-policies-move-states-forward?utm> [<https://perma.cc/X7LM-SB9B>] (discussing how unions have worked with each other and environmental groups to advocate for climate legislation in New York, Connecticut, Maine, and Illinois).

89. *About Us*, CAL. LAB. FOR CLIMATE JOBS, <https://calaborforclimatejobs.org/about-us/> [<https://perma.cc/U5VK-VKKG>] (describing the group’s aims and membership makeup).

90. *Id.*

91. *See California Workers’ Climate Bill of Rights*, CAL. LAB. FOR CLIMATE JOBS, <https://calaborforclimatejobs.org/wp-content/uploads/2023/10/CLCJ-PolicyPlatform.pdf> [<https://perma.cc/WV92-VFTE>] (“As fires and floods devastate California, climate change is fundamentally shifting conditions for workers statewide—from lethal threats to farm workers suffering in extreme heat, to teachers crouching on the floors of their classrooms with students on smoke days, to caretakers evacuating clients from fire zones. As California moves to meet its emission reduction goals, [oil] refineries will downsize or close, requiring support for workers.”).

92. *E.g.*, Jeremy Brecher, *First U.S. Union-Authorized Climate Strike?*, LAB. NETWORK FOR SUSTAINABILITY, <https://www.labor4sustainability.org/strike/first-u-s-union-authorized-climate-strike/> [<https://perma.cc/A76R-XZDJ>] (discussing a strike by janitorial workers that included climate-related demands); Sarah Smith, *Meet the Man Who Turned 10,000 Microsoft Employees on to Climate Action*, WORK FOR CLIMATE (July 23, 2024),

company as a part of their compensation packages—filed a shareholder resolution calling for Amazon to establish a comprehensive plan to address climate change.⁹³ In 2019, 3,000 Amazon workers staged a walkout at the company’s Seattle headquarters to protest Amazon’s environmental practices.⁹⁴ Among the workers’ demands were that Amazon commit to zero emissions by 2030, pilot electric vehicles in communities most impacted by air pollution, cut its contracts with fossil fuel companies, and end donations to climate change-denying politicians.⁹⁵ In 2023, after many of their demands went unanswered, the workers again participated in a walkout to protest, among other things, their continued frustration with Amazon’s environmental practices.⁹⁶ Similarly, in 2025, workers at Alphabet—Google’s parent company—successfully campaigned for the company to provide a fossil fuel-free 401k retirement plan.⁹⁷

<https://www.workforclimate.org/post/meet-the-man-who-turned-10-000-microsoft-employees-on-to-climate-action/> [<https://perma.cc/J4PC-38PE>] (documenting how a Microsoft employee helped organize his coworkers to push Microsoft to take measures to address climate concerns); Jennifer Steinmann et al., *Engaged Employees are Asking Their Leaders to Take Climate Action*, DELOITTE (Nov. 9, 2023), <https://www.deloitte.com/us/en/insights/topics/environmental-social-governance/importance-of-sustainability-to-employees.html> [<https://perma.cc/RSN8-WWEY>] (finding that, among 2,016 surveyed C-level executives, 59% reported that employee activism on sustainability issues have caused them to increase their sustainability efforts over the past year).

93. Kate Conger, *Tech Workers Got Paid in Company Stock. They Used it to Agitate for Change.*, N.Y. TIMES (Dec. 16, 2018), <https://www.nytimes.com/2018/12/16/technology/tech-workers-company-stock-shareholder-activism.html> [<https://perma.cc/7C3S-VRT2>].

94. See Ahiza Garcia, *Amazon Workers Walkout to Protest Climate Change Inaction*, CNN BUS. (Sep. 20, 2019), <https://www.cnn.com/2019/09/20/tech/amazon-climate-strike-global-tech/index.html> [<https://perma.cc/TC5N-UKBT>].

95. *Id.*

96. Caitlan Harrington, *Amazon Workers Walk Out Over Layoffs and Broken Climate Promises*, WIRED (May 31, 2023), <https://www.wired.com/story/amazon-workers-walk-out-over-layoffs-and-broken-climate-promises/> [<https://perma.cc/625X-6Y9Z>].

97. A fossil-free 401(k) retirement plan keeps employees’ retirement savings from being invested in fossil fuel projects and companies. Robert Crow, *Google Launches Revolutionary Initiative that Solves Major Issue with Employees’ 401(k) Plans: “Helped Make Their Nest Egg a Little Bit Safer,”* YAHOO FIN. (July 25, 2025), <https://finance.yahoo.com/news/google-launches-revolutionary-initiative-solves-103027706.html> [<https://perma.cc/U6PX-PFQD>]. See also Sam Good & Van Riker, *The Employee Climate Advocacy Playbook: Lessons from Inside Microsoft and Alphabet*, TRELLIS (Sep. 22, 2025), <https://trellis.net/article/the-employee-climate-advocacy-playbook-lessons-from-inside-microsoft-and-alphabet/> [<https://perma.cc/U96U-UKX9>] (“[The] campaign to change this—complete with financial analysis, an employee petition, and stakeholder meetings—eventually led Alphabet to add its first fossil-fuel-free retirement option.”). As a part of the campaign, employees presented the company with a petition with over 1,000 signatures that called for the company to offer a fossil-fuel-free 401(k) retirement plan. Richard Nieva, *1,000+ Google Employees Urge Company to Divest 401(k)s from Fossil Fuels*, FORBES (June 5, 2024),

Under the Biden Administration, the federal government, recognizing the impact of climate change on workers, took steps to protect workers from climate change-related occupational risks. In 2021, the Department of Labor announced that it would promulgate a rule that would protect workers from exposure to extreme heat.⁹⁸ In announcing the decision, the Secretary of Labor explicitly linked the need for increased protections to the effects of climate change.⁹⁹ The proposed rule would, among other things, require certain employers to create heat injury and illness prevention plans, and implement certain protective measures at specified temperature triggers.¹⁰⁰

In addition to the federal government, many states have also taken measures to protect workers from the impacts of climate change. Seven states, including California, Colorado, and Maryland, have passed occupational heat protection laws.¹⁰¹

<https://www.forbes.com/sites/richardnieva/2024/06/05/google-employees-401k-fossil-fuels-letter/?sh=1138ebfb7e1c> [https://perma.cc/32CE-TJ5J].

98. Ariel Wittenburg, *Biden Tackles Climate-Driven Extreme Heat*, E&E NEWS BY POLITICO (Sep. 20, 2021), <https://www.eenews.net/articles/biden-tackles-climate-driven-extreme-heat/> [https://perma.cc/KSB3-W2P2].

99. *Id.* (“Throughout the nation, millions of workers face serious hazards from high temperatures both outdoors and indoors. Amid changing climate, the growing frequency and intensity of extreme heat events is increasing the dangers workers face, especially for workers of color who disproportionately work in essential jobs in tough conditions.”).

100. *See* Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, 89 Fed. Reg. 70698, 70699–701 (proposed Aug. 30, 2024). Under the proposed rule, for example, if the temperature reaches 80 degrees, employers have an obligation to provide workers with cool drinking water, paid rest breaks if needed to prevent overheating, and other measures. *Id.* at 70752–58. As of early 2026, the Trump Administration appears to be moving forward with the proposed rule; however, the timeline remains unclear, as do any potential changes to the proposal. *See* James J. Plunkett, *Beltway Buzz*, *January 9, 2026*, OGLETREE DEAKINS (Jan. 9, 2026), <https://ogletree.com/insights-resources/blog-posts/beltway-buzz-january-9-2026/> [https://perma.cc/C7L2-9LGZ] (noting that the Trump Administration has moved forward with the heat protection rule).

101. Juanita Constible, *Occupational Heat Safety Standards in the United States*, NAT. RES. DEF. COUNCIL (Mar. 9, 2026), <https://www.nrdc.org/resources/occupational-heat-safety-standards-united-states> [https://perma.cc/P532-EVQJ]. As of early 2026, 13 additional states are considering adopting occupational heat protection rules. Ariel Wittenberg, *12 States Debate Heat Rules as Trump Delays Action*, E&E NEWS BY POLITICO (Feb. 12, 2026), <https://subscriber.politicopro.com/article/eenews/2026/02/12/12-states-debate-heat-rules-as-trump-delays-action-00774740> [https://perma.cc/KSB3-W2P2] (“Twelve state legislatures are considering bills that would require employers to provide their workers with water, rest and shade during periods of high temperatures. A 13th state, New Mexico, is weighing a regulation that would offer similar protections.”). While these states have adopted these protective measures, Texas and Florida have passed laws preempting local governments from adopting their own occupational heat protection laws. *See* Chris Marr, *Worker Heat Safety Laws are Latest Focus of Red State Preemption*, BLOOMBERG L. (Apr. 17, 2024), <https://www.bloomberglaw.com/bloomberglawnews/daily->

Additionally, a few states, including California, Washington, and Oregon, have laws designed to protect workers from hazardous exposure to wildfire smoke.¹⁰²

Given the clear and escalating impacts of climate change on the workplace, climate change should not be viewed as exclusively an environmental policy concern. Climate change is also a workplace issue. This recognition is important to ensure that workers have the ability to advocate collectively for protections to safeguard themselves from its effects.

II. *EASTEX* AND THE “EMPLOYEES’ INTERESTS AS EMPLOYEES” STANDARD

Beyond enshrining the right of workers to join and form labor unions, Section 7 of the NLRA protects the right of “employees”¹⁰³ to “engage in . . . concerted activities . . . for the purpose of mutual aid or protection.”¹⁰⁴ This clause—referred to as the mutual aid and protection clause—provides broad legal protections to worker activity.¹⁰⁵ For example, if a group of workers raise concerns about workplace safety with management, the mutual aid and protection clause would provide legal cover for their actions.¹⁰⁶ Accordingly, any employer retaliation would constitute an “unfair labor

labor-report/XE8HFLFQK000000 [https://perma.cc/8AGF-W8YN] (discussing these laws broadly); see also TEX. LAB. CODE ANN. § 1.005 (2024); FLA. STAT. § 448.106 (2024).

102. Caitlin Dewey, *In Much of U.S. Workers Lack Protections from Wildfire Smoke*, WASH. ST. STANDARD (July 18, 2023), <https://washingtonstatestandard.com/2023/07/18/workers-lack-protections-when-wildfire-smoke-makes-the-air-dangerous/> [https://perma.cc/W5AW-R4AA].

103. The NLRA broadly defines “employee” to include any private sector worker who does not fall into an enumerated exception—for example, independent contractors, agricultural laborers, or domestic workers. 29 U.S.C. § 152(3).

104. 29 U.S.C. § 157.

105. *E.g.*, *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978) (“The 74th Congress knew well enough that labor’s cause often is advanced on fronts other than collective bargaining and grievance settlement within the immediate employment context. It recognized this fact by choosing, as the language of § 7 makes clear, to protect concerted activities for the somewhat broader purpose of ‘mutual aid or protection’ as well as for the narrower purposes of ‘self-organization’ and ‘collective bargaining.’”) (internal citation omitted); *Compuware Corp. v. NLRB*, 134 F.3d 1285, 1288 (6th Cir. 1998) (“Section 7 of the Act guarantees employees the right to engage in ‘concerted activities’ not only for self-organization, but also ‘for the purpose of . . . mutual aid or protection . . .’ The broad protection of Section 7 includes protecting unorganized employees who need to speak for themselves as best they can.”) (quoting *NLRB v. Washington Aluminum Co.*, 370 U.S. 9, 14 (1962)).

106. See, *e.g.*, *NLRB v. Talsol Corp.*, 155 F.3d 785, 791–92, 797 (6th Cir. 1998) (finding that workers who raised workplace safety concerns during a management meeting was engaged in protected concerted activity).

practice” under Section 8(a)(1)¹⁰⁷ and the Board could impose sanctions on the employer.¹⁰⁸ In line with the broad scope of Section 7, the mutual aid and protection clause provides every statutory employee¹⁰⁹ with the same legal protections regardless of union membership.¹¹⁰ To receive protection under the mutual aid and protection clause, worker activity must be “concerted,” the activity must be “for the purpose of mutual aid or protection,” and the workers must utilize protected means.¹¹¹

In the seminal case *Eastex v. NLRB*, the Supreme Court established the framework used to determine whether worker activity is taken “for the purpose of mutual aid or protection.”¹¹² One issue in the case was whether the distribution of a newsletter by a worker was protected by the mutual aid and protection

107. 29 U.S.C. § 158(a)(1).

108. The Board is authorized to “take such affirmative action . . . as will effectuate the purposes of the [Act].” 29 U.S.C. § 160(c). Remedies often include reinstatement and monetary remedies. *Id.*; *Radio Officers’ Union of Com. Telegraphers v. NLRB*, 347 U.S. 17, 55 (1954) (“The policy of the Act is to make whole employees [who have been the subject of an unfair labor practice].”); *see also* JAMES O. CASTAGNERA, *FEDERAL LABOR LAW: NLRB PRACTICE* § 2:4 (2025) (providing an in-depth discussion of the NLRB’s remedial powers).

109. *See supra* note 103 and accompanying discussion.

110. *See, e.g.*, *Wilson Trophy Co. v. NLRB*, 989 F.2d 1502, 1508 (8th Cir. 1993) (“Non-union employees as well as union employees share the right to engage in concerted activity.”).

111. 29 U.S.C. § 157; *Home Depot USA, Inc.*, 373 NLRB No. 25, at *7 (2024), *vacated*, *Home Depot USA, Inc. v. NLRB*, 158 F.4th 910 (8th Cir. 2025) (“To be protected by Section 7, employee activities must be both ‘concerted’ and engaged in for the purpose of ‘mutual aid or protection.’”); Charles J. Morris, *NLRB Protection in the Nonunion Workplace: A Glimpse at a General Theory of Section 7 Conduct*, 137 U. PA. L. REV. 1673, 1703–08 (1989) (separating whether worker activity can be protected under the mutual aid and protection clause into three distinct questions: (1) concertedness, (2) object, and (3) conduct). Put simply, under Supreme Court precedent, worker activity is “concerted” when it is “engaged in, with, or on the authority of other employees, and not solely on behalf of the employee himself.” *Meyers Indus., Inc.*, 281 NLRB 882, 885 (1986) (quoting *Meyers Indus., Inc.*, 268 NLRB 493, 497 (1984)), *aff’d sub. nom.*, *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987). Concerted activity also includes those instances where “individual employees seek to initiate or to induct or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management.” *Meyers Indus., Inc.*, 281 NLRB at 885. This Note focuses on the latter two elements of protection under the mutual aid and protection clause, namely, whether activity is for the purpose of mutual aid and protection and whether workers utilized unprotected means. Accordingly, this Note does not consider the concertedness element in depth and will assume that it is satisfied where relevant. The second element, as applied to workplace climate advocacy, is discussed *infra* Part III. The third element, as applied to workplace climate advocacy, is discussed *infra* Part IV.

112. *Eastex v. NLRB*, 437 U.S. 556, 558 (1978).

clause.¹¹³ The newsletter was broken into four sections.¹¹⁴ The first and fourth encouraged the workers to become active in the union.¹¹⁵ In contrast, the second and third sections did not reference the union or even the workplace.¹¹⁶ Instead, the second section encouraged workers to contact their state legislators to oppose an effort to enshrine an existing right-to-work law in the state's constitution, while the third section reported the President's recent veto of an increase in the federal minimum wage and urged workers to register to vote.¹¹⁷

The Court held that, for worker activity to be "for the purpose of mutual aid and protection," it must relate to "employees' interests as employees."¹¹⁸ Applying this to the facts of the *Eastex* case, the Court concluded that distributing the newsletter was protected under the mutual aid and protection clause.¹¹⁹ Importantly, the Court imposed a limiting principle on its newly minted standard: "at some point," it wrote, the relationship between the activity and employees' interests as employees "becomes so attenuated that the activity cannot fairly be deemed to come within the 'mutual aid or protection' clause."¹²⁰ For example, a topic could be so "purely political" as to fall outside of the protections of the mutual aid and protection clause.¹²¹ No clear line was drawn between activity closely tied to employees' interests as employees and activity that is too attenuated to fall under the mutual aid and protection clause.¹²² The Court instead left the

113. *Id.* at 563 ("Two distinct questions are presented. The first is whether, apart from the location of the activity, distribution of the newsletter is the kind of concerted activity that is protected from employer interference by §§ 7 and 8(a)(1) of the National Labor Relations Act. If it is, then the second question is whether the fact that the activity takes place on petitioner's property gives rise to a countervailing interest that outweighs the exercise of § 7 rights in that location.").

114. *Id.* at 558.

115. *Id.* at 559.

116. *Id.*

117. *Eastex v. NLRB*, 437 U.S. 556, 559 (1978).

118. *Id.* at 567–68.

119. The Court determined that the second section was related to employees' interests as employees because the right-to-work amendment would undermine union solidarity and weaken the union's bargaining position. *See id.* at 569–70. The Court concluded that the third section related to employees' interests as employees for two reasons. *See id.* First, although the minimum wage increase would not directly affect the workers' pay, it would have an indirect impact. *See id.* Second, by showing solidarity with minimum wage workers, the *Eastex* workers might in the future receive solidarity in return. *See id.*

120. *Id.* at 567–68 (cleaned up).

121. *Id.* at 570 n.20.

122. *Eastex v. NLRB*, 437 U.S. 556, 567–68 (1978).

task to the National Labor Relations Board (NLRB or the Board) to determine on a case-by-case basis.¹²³

The outer bounds of the *Eastex* Standard remain uncertain, particularly as applied to subjects like climate change.¹²⁴ However, one can discern three general principles from judicial opinions and Board decisions that have applied the standard—and one can apply these principles, in turn, to workplace climate advocacy. First, when the purpose of worker activity relates to working conditions—for example, worker health and safety—or job security, courts and the Board will likely find that the activity is protected under the *Eastex* Standard.¹²⁵ Second, when the purpose of worker activity is political—for example, to either elect a particular political candidate or political party—or to support non-employees without the prospect of reciprocal benefit, courts and the Board are likely to find that the worker activity falls outside of the *Eastex* Standard, and therefore is unprotected.¹²⁶ Finally, when worker activity is undertaken for a mix of protected and unprotected purposes, courts' and the NLRB's decision hinge on whether the primary purpose of the activity is protected or unprotected under *Eastex*.¹²⁷

A. PROTECTED PURPOSES

When the purpose of worker activity is aimed at workplace conditions, courts and the NLRB are likely to find that the activity

123. *Id.* at 568. An unfair labor practice case under the NLRA begins when an employee files a charge with their NLRB regional office. *NLRB ULP ("C") Cases*, STAN. L. SCH.: ADJUDICATION RES., <https://acus.law.stanford.edu/scheme/nlrbulpc0001> [<https://perma.cc/ZYX7-QPGV>]. Regional offices work under the NLRB General Counsel, who functions independently from the Board and is charged with investigating and prosecuting unfair labor cases. *Id.* If the regional office finds sufficient evidence for the charge, it issues a complaint and prosecutes the case before an administrative law judge. *Id.* Either party may then appeal the judge's decision to the Board, which issues a final order subject to review in a circuit court. *Id.*; see also *The NLRB Process*, NLRB, <https://www.nlr.gov/resources/nlr-process> [<https://perma.cc/FJ3L-5K3Z>] (providing a graphical overview of the unfair labor practice adjudicatory process).

124. See, e.g., Paul E. Bateman, *Intersection Between Political Activity and Section 7 Rights*, 23 LAB. LAW. 41, 57 (2007) ("Until the Board gives further critical analysis and guidance . . . as to how different political activity effectuates the stated policy goals of the Act, unions, employers, and employees alike are left to a case-by-case determination of the scope of Section 7's coverage of political activities.").

125. See *infra* Part II.A (discussing this principle).

126. See *infra* Part II.B (discussing this principle).

127. See *infra id.* (discussing this principle).

is for the purpose of mutual aid and protection.¹²⁸ In *American Medical Response West*, for example, a group of ambulance workers wore “No on Prop. 11” buttons during their shifts.¹²⁹ The action came in response to a California ballot initiative, Proposition 11, that would require ambulance workers to stay on call during work breaks.¹³⁰ Their employer subsequently prohibited the workers from wearing the buttons.¹³¹ The Board found that the buttons fell within the *Eastex* Standard because Proposition 11 would have an impact on the working conditions of the ambulance workers.¹³² Similarly, in *GHR Energy Corporation*, the NLRB found that an employee’s testimony before a state environmental protection agency and the United States Senate regarding their employer’s discharge of hazardous waste into a waterway was protected by the *Eastex* Standard because it highlighted the resulting risks to the health and safety of employees.¹³³

Likewise, when the purpose of worker activity is ensuring job security, courts and the Board are likely to find that the activity falls within the *Eastex* Standard and therefore is for the purpose of mutual aid or protection.¹³⁴ In *Kaiser Engineers*, for example, a

128. Kati L. Griffith & Tamara L. Lee, *Immigration Advocacy as Labor Advocacy*, 33 BERKELEY J. EMP. & LAB. L. 73, 94–95 (2012); *Ford Motor Co.*, 221 NLRB 663, 667 (1975) (finding that a worker who passed out a newspaper that discussed forced overtime and an alleged assault on a worker was engaged in activity for the purpose of mutual aid or protection), *aff’d*, NLRB v. *Ford Motor Co.*, 546 F.2d 418 (3d Cir. 1976); *Kenworth Truck Co.*, 327 NLRB 497, 501 (1999) (finding that a worker who passed out union literature that sought to overturn a state law that reduced benefits available to workers under the state’s workman compensation system was engaged in activity for the purpose of mutual aid or protection); *Riverboat Serv. of Ind., Inc.*, 345 NLRB 1286, 1287 (2005) (finding that ship workers who wrote a letter to the Coast Guard requesting that the Coast Guard impose more stringent licensing requirements for the ship’s engineers were engaged in activity for the purpose of mutual aid or protection because the letters sought to ensure stable wages for the engineers and the workers safety on the ship); *Five Star Transp., Inc.*, 349 NLRB 42, 47 (2007), *aff’d*, *Five Star Transp., Inc.*, 522 F.3d 46 (1st Cir. 2008) (finding that bus drivers who wrote letters to a school district requesting that the district cancel a contract with a new bus company were engaged in activity for the purpose of mutual aid and protection because they feared the new company would offer worse terms and conditions of employment).

129. *Am. Med. Response W.*, 2019 WL 6698340 (NLRB Div. of Judges Dec. 6, 2019), *aff’d*, 370 NLRB No. 58 (2020).

130. *Id.*

131. *Id.*

132. *Id.*

133. *See GHR Energy Corp.*, 294 NLRB 1011, 1014 (1989), *aff’d*, *GHR v. NLRB*, 924 F.2d 1055 (5th Cir. 1991) (“In our view, [the employee’s] testimony in support of environmental safety laws that have direct impact on the working conditions of employees handling toxic materials was clearly concerted activity for the ‘aid and protection’ not only of the Respondent’s employees but of employees generally.”).

134. Griffith & Lee, *supra* note 128, at 103–05.

group of engineers sent a letter to members of Congress urging them to exert pressure on the Department of Labor to maintain current immigration restrictions on foreign engineers after hearing rumors that the department was considering easing those restrictions.¹³⁵ The Board determined that both writing and sending the letter were actions protected by the mutual aid and protection clause.¹³⁶ Even though the letter concerned a political topic, the NLRB found that the workers believed that weakened immigration restrictions “might affect the job security of the [workers] and their fellow engineers.”¹³⁷ Accordingly, because the purpose of the letter was to protect the workers’ job security, writing and sending the letter were protected.¹³⁸

As shown by these cases, courts and the NLRB are likely to find that worker activity satisfies the *Eastex* Standard when the purpose of the activity relates to working conditions—for example the health and safety of workers—or when the purpose of the activity is to protect the worker’s own job security.

B. UNPROTECTED PURPOSES

Conversely, when the purpose of worker activity is to campaign for the election of a particular political party or candidate, or when its purpose is for third parties, it is unlikely that courts and the NLRB will find that the activity falls within the *Eastex* Standard.

If worker advocacy is aimed at electing a particular candidate or political party, then the advocacy would be deemed a purely political tract and therefore unprotected under the *Eastex* Standard.¹³⁹ In *Firestone Steel Products Company*, for example,

135. *Kaiser Eng’rs*, 213 NLRB 752, 754 (1974), *aff’d*, *Kaiser Eng’rs v. NLRB*, 538 F.2d 1379 (9th Cir. 1976).

136. *Id.* at 755 (“We conclude that the concerted activity of employees, lobbying legislators regarding changes in national policy which affect their job security, can be taken for ‘mutual aid or protection.’”). Because *Kaiser Engineers* predates the *Eastex* decision, the Board did not apply the exact standard announced in *Eastex*. However, the *Eastex* court acknowledged *Kaiser Engineers* as an example of the broad protections of the mutual aid and protection clause. See *Eastex v. NLRB*, 437 U.S. 556, 566 n.16 (1978).

137. *Kaiser Eng’rs*, 213 NLRB 752, 755 (1974).

138. *Id.*

139. This principle stems from the *Ford Motor Company* case. 221 NLRB 663 (1975), *aff’d*, *NLRB v. Ford Motor Co.*, 546 F.2d 418 (3d Cir. 1976). In that case, a worker distributed literature that criticized unions for endorsing candidates from the Democratic and Republican Parties and called for workers to form their own political party and government. *Id.* at 664. Classifying the literature as a “purely political tract,” the NLRB determined that the literature did not “relate to employees’ problems and concerns qua employees.” *Id.* at 666. While *Ford Motor Company* was decided prior to *Eastex*, it was still

the NLRB determined that workers who distributed literature supporting the election of two political candidates were not engaged in the activity for the purpose of mutual aid or protection because the activity was purely political.¹⁴⁰ In denying the workers' appeal, the D.C. Circuit concluded that the "principal thrust" of the literature was to "induce employees to vote for the endorsed individuals."¹⁴¹ Accordingly, the workers' activity could not be protected under *Eastex*.¹⁴² Importantly, the Court suggested that if the literature at issue instead aimed to "educate [workers] on political issues relevant to employment conditions," the outcome of the case could be different.¹⁴³

Additionally, if the purpose of worker activity concerns the interests of non-employee third parties, the activity will, as a general matter, be unprotected under the mutual aid and protection clause.¹⁴⁴ In *Five Star Transportation, Inc.*, for example, a group of school bus drivers wrote letters to their school district expressing concerns over the district's plans to enter into a contract with a new bus company, Five Star.¹⁴⁵ Several of the

good law when the Court issued its decision in *Eastex*. See *Eastex*, 437 U.S. at 568 n.18 (citing *Ford Motor Company* as an example of the NLRB determining the boundaries of the mutual aid and protection clause on a case-by-case basis). The Board and courts have continued to apply the purely political tract standard after *Eastex*. See, e.g., *Local 174, UAW v. NLRB*, 645 F.2d 1151, 1154 (D.C. Cir. 1981) (concluding that the distribution of a leaflet whose "dominant message" was to encourage workers to vote for particular political candidates was unprotected by the mutual aid and protection clause), *dismissing appeal from*, *Firestone Steel Products Co.*, 244 NLRB 826 (1979); *Mead Corp.*, 2001 WL 1598682 (NLRB Div. of Judges June 20, 2001) (concluding that the distributing a leaflet whose purpose was to "persuade employees to cast their ballot for Al Gore" was unprotected because "the outcome of an election is only remotely related to an employee's interest"); *Educ. Minn. Lakeville v. Indep. Sch. Dist. No. 194*, 341 F. Supp.2d 1070, 1079–80 (D. Minn. 2004) (concluding that a group of teachers were "unlikely to succeed in showing that the School District violated NLRA § 7 because they have failed to demonstrate that the 'principal thrust' of their [John] Kerry brochure was to educate teachers and educational assistants on political issues relevant to their employment conditions, and not to induce them to vote for Kerry.").

140. See *Firestone Steel Prod. Co.*, 244 NLRB 826, 826–27 (1979).

141. *Local 174, UAW*, 645 F.2d at 1154.

142. *Id.*

143. *Id.* at 1154–55 (noting that the NLRB places political literature on a "continuum" with literature "dominantly aimed at inducing votes for specific candidates" on one end and literature "designed principally to educate employees on political issues that may impinge on their employment conditions" with the latter warranting protection).

144. E.g., *Orchard Park Health Care Ctr., Inc.*, 341 NLRB 642, 643 (2004) ("The Board has held repeatedly that employee concerns for the 'quality of care' and the 'welfare' of their patients are not interests 'encompassed by the 'mutual aid or protection' clause.") (quoting *Lutheran Social Serv. of Minn.*, 250 NLRB 35, 42 (1980)).

145. *Five Star Transp., Inc.*, 349 NLRB 42, 42–43 (2007), *aff'd*, *Five Star Transp., Inc. v. NLRB*, 522 F.3d 46 (1st Cir. 2008).

letters expressed concerns about how the transition would affect schoolchildren, parents, and the broader community.¹⁴⁶ Because these letters focused “solely on general safety concerns” and “did not indicate that their concerns related to the safety of the drivers, as opposed to others” like the community, parents, and schoolchildren, the NLRB determined that they fell outside of the *Eastex Standard*.¹⁴⁷

An important exception to the general rule epitomized by *Five Star Transportation, Inc.* is the solidarity principle, which the Board recently reaffirmed in *American Federation For Children, Inc.*¹⁴⁸ Under this principle, workers who engage in activity for the purpose of helping a non-employee may still be protected by the mutual aid and protection clause if, by helping the non-employee, the workers also improve their own working conditions or the workers could receive future support from that non-employee.¹⁴⁹

In *American Federation for Children, Inc.*, a group of workers had engaged in a campaign to rehire a former co-worker.¹⁵⁰ The NLRB determined that the campaign was protected under the mutual aid and protection clause.¹⁵¹ According to the Board, whether the co-worker was a statutory employee was irrelevant for determining protection under the clause.¹⁵² Instead “the relevant question . . . is simply whether in helping [non-statutory employees], employees potentially aid or protect themselves, whether by directly improving their own terms and conditions of employment or by creating the possibility of future reciprocal support from others in their efforts to better working conditions.”¹⁵³ Applying this solidarity principle, the Board

146. For example, one letter argued that because Five Star had a history of safety problems, including improper maintenance and employing drivers with criminal records, it failed to “warrant the responsibility of transporting our children.” *Id.* at 44 n.5. Another letter, highlighting similar concerns, argued that the “the safety of the children in Belchertown are at stake.” *Id.*

147. *Id.* at 44.

148. *See Am. Fed. For Children, Inc.*, 372 NLRB No. 137 (2023).

149. *Id.* at 12.

150. *Id.* at 1–2.

151. *Id.* at 9.

152. *Id.* at 12.

153. *Am. Fed. for Children, Inc.*, 372 NLRB No. 137, at 12 (2023). As the Board recognized in *American Federation for Children, Inc.*, the solidarity principle has been recognized in the caselaw for some time. Judge Learned Hand eloquently explained the rationale behind this principle in *NLRB v. Peter Cailler Kohler Swiss Chocolates Co.*:

“When all the other workmen in a shop make common cause with a fellow workman over his separate grievance, and go out on strike in his support, they engage in a

determined that the campaign was protected for two reasons. First, if the campaign were successful and the former co-worker were rehired, the workers' employment conditions would improve due to the addition of another staff member.¹⁵⁴ Second, by engaging in the campaign, the workers could reasonably expect the former co-worker to support them in any future disputes with their employer.¹⁵⁵

C. MIXED PURPOSES

In some cases, worker activity can have multiple concurrent purposes. Further, some of these purposes may be protected while others might be unprotected. In these mixed purpose cases, worker activity may still be for the purpose of mutual aid and protection.¹⁵⁶ To determine whether to extend protections to activity with mixed purposes, the Board first determines the primary purpose of the activity and then affords or denies protection to the activity based on whether its primary purpose is protected or not.¹⁵⁷ Thus, under the mixed purpose doctrine, even

'concerted activity' for 'mutual aid or protection,' although the aggrieved workman is the only one of them who has any immediate stake in the outcome. The rest know that by their action each one of them assures himself, in case his turn ever comes, of the support of the one whom they are all then helping; and the solidarity so established is 'mutual aid' in the most literal sense, as nobody doubts."

130 F.2d 503, 505–06 (2d Cir. 1942). Relying on this rationale, the Board, in another case, found that workers who solicited and collected money to support striking agricultural workers—who are exempted from the NLRA's definition of employee—who were trying to organize were engaged in activity protected under the mutual aid and protection clause. *Gen. Elect. Co.*, 169 NLRB 1101, 1103 (1968), *enforced*, *NLRB v. Gen. Elect. Co.*, 411 F.2d 750 (9th Cir. 1969).

154. *See Am. Fed. For Children, Inc.*, 372 NLRB No. 137, at 8.

155. *See id.*

156. *See infra* Part II.C (discussing this principle).

157. *See, e.g., Singer Co.*, 220 NLRB 1179, 1180 (1975) (finding that workers who distributed literature that was primarily concerned with "layoffs, subcontracting, substandard health and safety conditions, and the lack of adequate union representation" were protected even though the literature contained "gratuitous remarks or 'social comment'" about "U.S. imperialism and the exploitation of workers throughout the world"); *Ford Motor Co.*, 221 NLRB 663, 668 (1975) (finding that a worker published newspaper that discussed forced overtime at the worksite and an alleged assault on an employee was protected even though it also discussed the US government's denial of a visa for an Australian leader and union leader's role in the economic conditions in the country); *Veeder-Root Co.*, 237 NLRB 1175, 1175–76 (1978) (finding that a handbill that complained about "jacked up" piece rates, people getting "throw[n] . . . out of work," worker injuries from increased production quotas, and the employer "harassing" workers was protected even though it also contained "a great deal of strident and inflammatory rhetoric directed against capitalism, oppression, South Africa, employers, and labor leaders").

if worker activity includes otherwise unprotected purposes, the activity may still be protected if the overall purpose of the activity falls under the *Eastex* Standard.

The Board first applied this mixed purpose doctrine in *Samsonite*.¹⁵⁸ At issue was whether the distribution of two newsletters was protected under the mutual aid and protection clause.¹⁵⁹ The newsletters contained articles criticizing the workers' current union for failing to adequately represent worker interests, discussing racial discrimination that occurred in the workplace, and reporting on safety concerns at the plant.¹⁶⁰ The newsletters further incorporated quotes criticizing capitalism and suggested that workers read the book *Bury My Heart at Wounded Knee*.¹⁶¹ While the latter book suggestion and quotes were, if taken alone, unprotected, the NLRB nevertheless determined that the workers' primary purpose in publishing the newsletters related to concerns about wages and safety, thereby satisfying the *Eastex* Standard.¹⁶² The Board characterized the unprotected portions as mere "gratuitous remarks or 'social comment,'" which did not detract from the workers' primary, and protected, purpose.¹⁶³

III. PROTECTING WORKPLACE CLIMATE ADVOCACY UNDER THE *EASTEX* STANDARD

As climate change worsens, workers will increasingly feel its impacts on their working conditions.¹⁶⁴ However, they are not powerless. By engaging in workplace climate advocacy, workers can confront the challenges posed by climate change head-on. This advocacy can provide workers with a sword—giving them the

158. *Samsonite Corp.*, 206 NLRB 343 (1973).

159. *See id.* at 346.

160. *See id.* at 344.

161. *See id.* *Bury My Heart at Wounded Knee* was published in 1970 and provides an account of the experiences of the struggles of Native Americans in the American West during the 1800s. *See generally* DEE BROWN, *BURY MY HEART AT WOUNDED KNEE: AN INDIAN HISTORY OF THE AMERICAN WEST* (1970); Glenn L. Swygart, *Bury My Heart at Wounded Knee by Dee Brown*, EBSCO: RSCH. STARTERS (2022), <https://www.ebsco.com/research-starters/literature-and-writing/bury-my-heart-wounded-knee-dee-brown> [<https://perma.cc/73J9-D73X>] (providing an overview of the book).

162. *See Samsonite Corp.*, 206 NLRB 343, 346 (1973) ("The text of both editions of the newsletter establishes that the employees were protesting what they considered to be inadequate wages and poor working conditions. The newsletters repeatedly made reference to the poor temperature control in the plant.").

163. *Id.*

164. *See supra* Part I.A (discussing the impacts of climate change on workers).

power to push for measures that would affect the future trajectory of climate change—as well as a shield—allowing workers to advocate for measures that would protect their interests from present and future climate change.

This Part argues that, when properly framed, workplace climate advocacy falls within the *Eastex* Standard.¹⁶⁵ This is significant for three reasons. First, workers who engage in climate advocacy can gain legal protections under the NLRA, including safeguards against retaliatory conduct by their employer.¹⁶⁶ Second, and closely related to the first, protection under the NLRA would make broader climate advocacy more feasible because workers could organize with less fear of employer reprisal. Finally, recognizing climate advocacy as protected activity acknowledges the on-the-ground reality that climate change is a labor issue that greatly shapes the workplace and is not merely an object of political debate.

165. This Part only considers the issue of *framing*—that is, how workers discuss climate change in their climate advocacy. Part IV subsequently deals with the question of *form*—that is, what shape workplace climate advocacy takes, such as literature distribution or climate strikes.

166. Retaliation could be a real threat to workers who engage in workplace climate advocacy. For example, after Amazon workers staged a walkout to protest the company's environmental practices, Amazon threatened to fire several workers who were involved. Annie Palmer, *Amazon Threatens to Fire Employees Who Speak Out on Climate Change*, CNBC (Jan. 3, 2020), <https://www.cnn.com/2020/01/02/amazon-threatens-to-fire-employees-who-speak-out-on-climate-change.html> [<https://perma.cc/8JYA-3E6F>]. Amazon later followed through on these threats, firing two workers who helped organize the walkouts and other workplace advocacy efforts. Jon Brodtkin, *Settlement Forces Amazon to Tell Workers They Can't Be Fired for Organizing*, ARS TECHNICA (Sep. 30, 2021), <https://arstechnica.com/tech-policy/2021/09/settlement-forces-amazon-to-tell-workers-they-cant-be-fired-for-organizing/> [<https://perma.cc/E3F3-9HZG>]. Around the time the two workers were fired, they had also been bringing attention to the effects of the pandemic on Amazon warehouse workers. *Id.* After being fired, the workers filed unfair labor practice claims with the NLRB. The NLRB recommended filing unfair labor practice charges against Amazon, arguing that the workers were unlawfully terminated for their activism on behalf of the warehouse workers. *See Concerning Amazon*, 2021 WL 5161957 (NLRB G.C. Mar. 12, 2021). Interestingly, the NLRB did not consider whether their involvement in workplace climate advocacy could be protected under the mutual aid and protection clause. *Id.* at 4 (“[W]e need not reach the question of whether their climate activism was protected because we find the Charging Parties’ March 2020 appeals to employees and the public to support the warehouse movement and April 2020 condemnation of the Employer’s leaked statements to be fundamental Section 7 activity . . .”). Amazon later settled the case before the NLRB made a formal determination. *See Brodtkin, supra*.

A. PROTECTED WORKPLACE CLIMATE ADVOCACY

In order for workplace climate advocacy to be protected under the *Eastex* Standard, it must relate to employees' interests as employees.¹⁶⁷ Since workplace climate advocacy is not categorically protected, workers must frame climate change as a workplace issue in their advocacy for it to be protected. Workers can achieve this by anchoring their climate advocacy in concerns about health and safety, income, and job security—the traditional core of *Eastex* protection.

First, workers who frame their advocacy around the workplace health and safety impacts of climate change are likely to receive protection under *Eastex*. As discussed in Part I, climate change directly threatens the health and safety of many workers through various mechanisms, such as increasing workers' exposure to heat and biological hazards and deteriorating air quality.¹⁶⁸ By centering health and safety impacts of climate change like these, workers can establish a clear connection between climate change and their working conditions.

Postal and package delivery workers, for example, could distribute leaflets to their coworkers explaining how climate change is heightening their risk of health problems and occupational injuries by increasing heat exposure and worsening air quality.¹⁶⁹ The materials could also urge workers to contact their legislators to pass heat¹⁷⁰ and air quality protections¹⁷¹ and

167. See *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565–68 (1978); see also *supra* Part II (discussing the *Eastex* Standard).

168. See *supra* Part I.A.1. for a discussion of how climate change is going to increase worker—particularly outdoor worker—exposure, to heat, air pollution, biological hazards and ultraviolet radiation and the associated health and safety risks.

169. Postal and delivery workers have already begun to feel these effects of climate change. See, e.g., Dharna Noor, *U.S. Delivery Drivers Swelter in Record Heat—Many Without AC in Their Vans*, THE GUARDIAN (Aug. 23, 2024), <https://www.theguardian.com/environment/article/2024/aug/23/ups-delivery-workers-air-conditioning> [https://perma.cc/E4PU-Z5KC] (documenting how UPS workers have struggled with the effects of increasing heat including serious complications like heatstroke and death); Jules Roscoe, *Delivery Drivers Share What It's Like Delivering in Hazardous Wildfire Smoke*, VICE (June 7, 2023), <https://www.vice.com/en/article/delivery-drivers-share-what-its-like-delivering-in-hazardous-wildfire-smoke/> [https://perma.cc/Z7XW-HC3H] (documenting how air pollution in the form of wildfire smoke has affected UPS drivers).

170. See *supra* Part I.B (discussing heat protection standards).

171. Some states have passed laws to help protect workers from deteriorating air quality. California law, for example, imposes certain obligations on employers to protect employees from the health effects of wildfire smoke. See 8 CAL. CODE REGS. § 5141.1. For example, if air quality becomes hazardous due to wildfire smoke, an employer may have to

legislation to reduce greenhouse gas emissions as a way to mitigate future health and safety risks. Because such a campaign creates a clear nexus between their climate demands and workplace health and safety, it would be protected under the *Eastex* Standard.¹⁷²

Second, workers who, in their climate advocacy, emphasize the ways that climate change will affect their income would also likely receive protections under the *Eastex* Standard. Income is a core term and condition of employment and therefore worker activity concerning the issue has long been protected under the mutual aid and protection clause.¹⁷³ Climate change will negatively impact the income of many workers, including by reducing labor hours.¹⁷⁴ By tying the impacts of climate change to income, workers can frame climate change as a workplace issue.

For example, as temperatures continue to soar, construction workers increasingly have to work shorter hours or take additional potentially unpaid breaks in order to avoid heatstroke or other heat-related health risks.¹⁷⁵ Because many workers in the

provide access to a ventilated structure, offer extra rest breaks, or supply personal protective equipment. *Id.*

172. As *Eastex* made clear, appeals to legislatures by workers are protected under the mutual aid and protection clause so long as they relate to employees' interests as employees. See 437 U.S. 556, 565–568 (1978) (noting that efforts to “improve working conditions through resort to administrative and judicial forums” and “appeals to legislators to protect their interests as employees” are protected under the mutual aid and protection clause). This includes concerns about workplace health and safety. See, e.g., *Miller Plastic Prods. Inc. v. NLRB*, 141 F.4th 492, 513 (3d Cir. 2025) (finding that a worker who raised concerns about COVID-19 safety measures was engaged in protected activity because his concerns related to workplace safety); see also *supra* Part II.A (discussing health and safety as a protected purpose of worker activity). Worker activity directed towards addressing the health and safety impacts of heat and air quality have previously been found to be for the purpose of mutual aid and protection. See *Blue Circle Cement Co.*, 311 NLRB 623, 624 (1993), *enforced*, *Blue Circle Cement Co. v. NLRB*, 41 F.3d 203 (5th Cir. 1994) (finding that a worker who used their employer's printer to print materials opposing the employer's plan to burn hazardous waste was protected because air pollution from the burning would harm the health and safety of the workers); *NLRB v. KDI Precision Prods., Inc.*, 436 F.2d 385, 387 (6th Cir. 1971) (holding that workers who circulated a petition expressing concern about excessive heat in the workplace were engaged in protected activity).

173. *Eastex v. NLRB*, 437 U.S. 556, 569 (1978) (“Few topics are of such immediate concern to employees as the level of their wages.”).

174. See *supra* Part I.A.2 (discussing the impacts of climate change on workers' earnings).

175. See Coral Davenport, *Heat is Costing the U.S. Economy Billions in Lost Productivity*, N.Y. TIMES (July 31, 2023), <https://www.nytimes.com/2023/07/31/climate/heat-labor-productivity-climate.html> [<https://perma.cc/QFN5-JDEE>] (discussing the impact of extreme heat on workers and documenting how the heat is forcing workers to work shorter hours); Finn Johansson, *Working Through the Heat: How Climate Change is Putting Outdoor and Low-Income Workers at Risk*, EARTHTIMES (Dec. 12, 2025),

construction industry are wage workers, reduced working hours and additional unpaid rest breaks directly equate to less take-home pay.¹⁷⁶ Recognizing this, construction workers could demand that their employers provide them paid rest breaks during extreme heat, reduce their emissions, or support state and federal laws that would reduce emissions to help mitigate the future effect of climate change on their incomes.¹⁷⁷ Such demands would likely be protected under the *Eastex* Standard because they concretely tie climate change to income, a core term and condition of employment.¹⁷⁸

Finally, workplace climate advocacy that highlights the connection between climate change and increased job insecurity would likely be protected under the *Eastex* Standard. As discussed in Part I.A.2, climate change increases job insecurity for many workers including by putting financial pressure on various industries and increasing the frequency and severity of natural disasters.¹⁷⁹ Climate advocacy that draws the connection between climate change and these risks would also likely be protected under the *Eastex* Standard.¹⁸⁰

<https://earthtimes.org/how-climate-change-is-putting-outdoor-and-low-income-workers-at-risk/> [<https://perma.cc/5EBM-UY7U>] (“Extreme heat creates a feedback loop between health and income. As temperatures climb, productivity declines—particularly in physically demanding jobs. Employers may shorten shifts or reduce output, while workers may lose wages by slowing down or taking unpaid breaks.”); *see also supra* Part I.A.1 (discussing how climate change is increasing workers’ exposure to heat and how this is affecting the health and safety of workers).

176. *See* Davenport, *supra* note 175 (“Rising heat around Detroit recently caused [a construction company’s] employees to stop working three hours early on a Ford Motors facility for several days in a row—a pattern emerging throughout [the] company’s work sites. ‘[Increasing heat] means costs go up, production goes down, we may not meet schedules, and guys and women don’t get paychecks,’ Mr. Maurer [who owns the construction company] said.”); Johansson, *supra* note 175 (mentioning that workers may increasingly take unpaid breaks to cope with extreme heat). One estimate has found that if no action is taken on climate change, the average construction worker could see a \$1,900 annual reduction in income from extreme heat. KRISTINA DAHL & RACHEL LICKER, UNION OF CONCERNED SCIENTISTS, TOO HOT TO WORK 5 (2021), https://www.ucs.org/sites/default/files/2021-09/Too-Hot-to-Work_9-7.pdf [<https://perma.cc/5EN7-RP9M>]. Twenty-five percent of construction workers would be at risk of losing \$3,000 or more annually. *Id.*

177. Likewise, ski workers could make similar demands because climate change will reduce the length of the ski season in many areas, resulting in reduced income. *See* BURAKOWSKI & MAGNUSSON, *supra* note 77, at 14–16 (discussing the economic impact of low snowpack on resorts and winter-sport related jobs).

178. *See Eastex v. NLRB*, 437 U.S. 556, 569 (1978) (“Few topics are of such immediate concern to employees as the level of their wages.”).

179. *See supra* Part I.A.2 (discussing the impacts of climate change on job insecurity).

180. *See supra* Part II.A (discussing how worker advocacy concerned with job security fails within the *Eastex* Standard).

For example, hospitality and other service workers living in Florida face a particularly high risk of job insecurity, including being furloughed or terminated altogether, due to more frequent and severe hurricanes.¹⁸¹ In the face of this, these workers could advocate for legislators to pass more generous disaster unemployment assistance¹⁸² and measures to reduce emissions. Such advocacy would likely be protected under the *Eastex* Standard, because its purpose is to protect workers' job security from the impacts of climate change.¹⁸³

To err on the side of caution, workers who engage in workplace climate advocacy should primarily frame their climate advocacy in ways that satisfy the *Eastex* Standard. However, the mixed purpose doctrine could provide workers some leeway to discuss climate change in a way that falls outside of the *Eastex* Standard.¹⁸⁴ Using an example discussed above, if construction workers distribute literature to coworkers that primarily discusses how climate change is causing more heat-related occupational injuries and deaths for construction and other outdoor workers, but also mentions the impact of climate change on biodiversity, the literature could still be protected since the overall purpose of the

181. See Thomas Frank, *Hurricanes Caused Lost Income among at Least Half of Local Residents*, SCI. AM. (May 18, 2024), <https://www.scientificamerican.com/article/hurricanes-caused-lost-income-among-at-least-half-of-local-residents/> [<https://perma.cc/Y7P8-QV2T>] (discussing how wage workers are most at risk); Laura Layden, *Hurricane Ian Wiped Out Jobs Across Southwest Florida. Here's What You Need to Know*, NAPLES DAILY NEWS (Oct. 9, 2022), <https://www.naplesnews.com/story/weather/hurricane/2022/10/07/ian-hurricanes-full-impact-sw-fl-jobs-still-unclear/8196917001/> [<https://perma.cc/4GRW-82TG>] (documenting job insecurity in southwestern Florida after Hurricane Ian); Shauna Muckle & Lauren Peace, *After Hurricanes Wreck Businesses, Workers are Desperate for Jobs*, TAMPA BAY TIMES (Oct. 25, 2024), <https://www.tampabay.com/hurricane/2024/10/25/after-hurricanes-wrecked-businesses-workers-are-desperate-jobs/> [<https://perma.cc/UB9H-39BL>] (documenting the devastating impacts that hurricanes can have on job security for hospitality and service workers).

182. Disaster unemployment insurance provides support for workers whose employment is lost or interrupted by a major disaster and who are not eligible for regular unemployment insurance through their state. See generally *Disaster Unemployment Assistance (DUA)*, EMP. & TRAINING ADMIN., U.S. DEP'T OF LAB. (Feb. 19, 2026), <https://oui.doleta.gov/unemploy/disaster.asp> [<https://perma.cc/L4BY-ZCYM>] (describing disaster unemployment insurance).

183. See *Kaiser Eng'rs*, 213 NLRB 752, 755 (1974), *aff'd*, *Kaiser Eng'rs v. NLRB*, 538 F.2d 1379 (9th Cir. 1976) ("It is concluded that the action to persuade legislators . . . was for the mutual aid or protection of the members of the Society as well as their fellow engineers in the profession.").

184. Under this doctrine, worker activity that contains some unprotected purpose can be protected if the overall purpose of the activity is one that falls within the mutual aid and protection clause. See *supra* Part II.C.

literature would be to protect workers from heat-related hazards.¹⁸⁵

By relying on the mixed purpose doctrine, workers could expand the scope of how they discuss climate change in their advocacy without falling outside of the bounds of the mutual aid and protection clause. At the same time, the more workers frame their concerns over climate change in ways that do not relate to the workplace, the more likely the Board or a court is to determine that the advocacy falls outside of the *Eastex* Standard. This concern is compounded by the fact that the line between protected mixed material and unprotected mixed material is unclear. As the NLRB has stated, “[t]here is obviously no mathematical formula” that determines when mixed purpose activity becomes protected under this doctrine; instead, it is decided on a case-by-case basis.¹⁸⁶

B. OUTER BOUNDS OF PROTECTED WORKPLACE CLIMATE ADVOCACY

Although workers can, in their climate advocacy, frame climate change in a way that falls within the *Eastex* Standard, there are also frames that would likely exclude their advocacy from protection.¹⁸⁷ Accordingly, workers should be cognizant of, and do their best to stay within, these outer bounds.

Applying the purely political tract standard developed above, if workers frame their climate advocacy in terms of supporting the election of a particular political candidate or political party, their advocacy would be unprotected under the *Eastex* Standard.¹⁸⁸ Workers may understandably be inclined to position their climate advocacy in this way,¹⁸⁹ seeing public policy as an effective means

185. See *supra* Part II.C (discussing the mixed purpose doctrine).

186. *Kay Mfg. Co.*, 1998 WL 1984995 (NLRB Div. of Judges Apr. 17, 1998).

187. See *infra* Part III.B (discussing examples of how workplace climate advocacy can fall outside of the *Eastex* Standard).

188. See *supra* Part II.B (discussing the purely political tract standard).

189. This is particularly true as climate change has evolved into an increasingly political issue—take the two major political party candidates’ views on climate change in the 2024 presidential election as an example. Before taking office, Donald Trump’s 2024 presidential campaign was hostile towards the progress the United States has taken to mitigate climate change. For example, in September 2024, Donald Trump, while campaigning in North Carolina after Hurricane Helene, referred to climate change as “one of the great scams.” James Liddell, *Trump Sparks Controversy For Calling Climate Change A ‘Scam’ As Hurricane Helene Leaves Trail Of Destruction*, THE INDEP. (Sep. 30, 2024), <https://www.independent.co.uk/news/world/americas/us-politics/trump-climate-change-scam-hurricane-helene-georgia-b2621271.html> [https://perma.cc/E25Y-H4R8]. Similarly,

to address climate change. For example, the Amazon workers who participated in the 2019 walkout explicitly demanded that Amazon stop contributing to politicians who deny climate change.¹⁹⁰ This kind of workplace climate advocacy, however appealing to workers, would not be protected.¹⁹¹

Instead of focusing on political candidates and parties, workers should focus on issues. For instance, if workers pass out leaflets that say, “Vote for Kamala Harris because she will build renewable energy and institute workplace heat protections,” their advocacy would not receive protections under the political tract standard.¹⁹² However, there is a stronger argument for protection under the *Eastex* Standard if the workers instead pass out leaflets explaining how climate change creates an increased risk of occupational injury by exacerbating heat and calling on workers to write their congressman to pass legislation creating workplace heat protections and subsidizing renewable energy as a means to reduce the workplace dangers posed by climate-influenced heat.¹⁹³

Similarly, workers should avoid framing their climate advocacy in terms of a generalized concern for the public and instead focus on climate change’s workplace impacts so as not to run afoul of

Trump vowed to repeal the Inflation Reduction Act—the largest investment in renewable energy in history—and his incoming administration is expected to slash environmental regulations enacted to help the United States reach its climate goals. See Michael Gerrard, *Trump 2.0: This Time the Stakes for Climate are Even Higher*, YALE ENV’T 360 (Nov. 18, 2024), <https://e360.yale.edu/features/trump-second-term-climate> [<https://perma.cc/WL39-W9QV>]; Molly Lempriere, *Experts: What Does a Trump Presidency Mean for Climate Action?*, CARBON BRIEF (Nov. 7, 2024), <https://www.carbonbrief.org/experts-what-does-a-trump-presidency-mean-for-climate-action/> [<https://perma.cc/3YY5-834C>]. By contrast, Kamala Harris described climate change as an “existential threat” and vowed to build on the progress made under the Biden administration. See Josh Gabbatiss, *US Election 2024: How Kamala Harris and Donald Trump Differ Starkly on Energy and Climate*, CARBON BRIEF (Sep. 6, 2024), <https://www.carbonbrief.org/us-election-2024-how-kamala-harris-and-donald-trump-differ-starkly-on-energy-and-climate/> [<https://perma.cc/ZCX8-T2XJ>].

190. See *supra* Part I.C (discussing the 2019 Amazon walkout).

191. See *infra* note 192 and accompanying text.

192. See *Mead Corp.*, 2001 WL 1598682 (NLRB Div. of Judges June 20, 2001). In *Mead Corp.*, an ALJ found that a worker who distributed literature stating that “AL GORE DOESN’T WANT TO TAKE AWAY YOUR GUN, BUT GEORGE W. BUSH WANTS TO TAKE AWAY YOUR UNION” AND URGING EMPLOYEES TO “DEFEND UNIONS. DEFEAT BUSH. VOTE NOVEMBER 7” was engaged in purely political activity unprotected by § 7. *Id.* (emphasis in original). The literature explained Bush’s stances on “overtime pay, minimum wage, prevailing wage, pension plans, and privatization of government jobs” and addressed Gore’s position on gun control. *Id.* The ALJ concluded that the tract’s electoral focus, rather than any direct connection to employees’ interests as employees, placed it outside the mutual aid or protection clause’s scope. See *id.*

193. See *supra* note 172 and accompanying text (discussing a similar hypothetical).

Eastex.¹⁹⁴ For instance, if workers in California call for action on climate change because people in their community are losing their homes to more frequent and severe wildfires, their advocacy would likely not be protected.¹⁹⁵ If instead those same workers call for action on climate change because wildfire smoke poses occupational health risks for them, their advocacy would likely be protected.¹⁹⁶

Although workers may not receive protection when their climate advocacy is framed solely in terms of generalized public concerns, that limitation does not preclude advocacy undertaken on behalf of other statutory employees, even where the advocating workers are not themselves directly affected.¹⁹⁷ As the *Eastex* decision clearly establishes, the mutual aid and protection clause covers activities undertaken for the purpose of mutual aid or protection, including efforts in support of employees of other employers.¹⁹⁸ The same logic applies to advocacy undertaken on behalf of other employees of the same employer.¹⁹⁹ Properly

194. Several scholars have criticized the “employees’ interests as employees” test for not being aligned with what actual workers understand their interests to be. See, e.g., Jacki Silbermann, *A New Voice in the Labor Movement? Organizing for Social Responsibility in the Tech Sector*, 25 EMP. RTS. & EMP. POL’Y J. 197 (2021) (criticizing American labor law’s tendency to exclusively understand employee interest in terms of material self-interest and putting forth alternative normative frameworks); Cynthia L. Estlund, *What Do Workers Want? Employee Interests, Public Interests, and Freedom of Expression Under the National Relations Act*, 140 U. PA. L. REV. 921 (1992) (arguing that defining employee interests only in terms of wages and material working conditions is at odds with the intent of the NLRA, and an issue should be deemed within employee interest when workers actually engage in concerted activity over the issue); Kelley Changfong-Hagen, Note, “*Don’t Be Evil*”: *Collective Action and Employee Prosocial Activism*, 5 COLUM. HUM. RTS. L. REV. 188, 192 (2021) (highlighting research on how workers conceive the role of work in their lives and arguing that the law has diverged from how workers conceive of their relationship to their work). A similar critique could be made here. That is, workers don’t exclusively understand their own interests in a selfish way—for example, how climate change will affect them on the job. Workers also care about climate change because its impacts will also be experienced in the communities they live in and by the people they care about.

195. See *supra* Part II.B for discussion of *Five Star Transp., Inc.*, 349 NLRB 42 (2007).

196. See *supra* Part I.A.1 (discussing how climate change is worsening air quality and the subsequent health impacts on workers); *supra* note 172 (arguing that a similar hypothetical would be fall under the *Eastex* Standard).

197. See Bateman, *supra* note 124, at 56 (“[I]f the activity addresses a workplace issue, [the activity] falls within the scope [of the mutual aid and protection clause,] even if the actors have no immediate interest in the topic.”).

198. The Court noted that the broad definition of “employee” in the NLRA demonstrated the Congressional intent to protect employees when they engage in “otherwise proper concerted activities in support of employees of employers other than their own.” *Eastex v. NLRB*, 437 U.S. 556, 564 (1978).

199. Bateman, *supra* note 124, at 56 (“[I]f the activity addresses a workplace issue, [the activity] falls within the scope [of the mutual aid and protection clause,] even if the actors have no immediate interest in the topic.”).

understood, these two principles broaden the range of workplace climate advocacy that may fall within Section 7's protection, so long as the advocacy remains tethered to employees' interests as employees and is not so attenuated as to fall outside the Act. For example, corporate Amazon or Apple workers who work in air-conditioned office buildings may nonetheless engage in protected climate advocacy aimed at addressing the effects of climate change-influenced heat on Amazon delivery drivers, because such advocacy concerns the working conditions of statutory employees. To the extent climate advocacy is framed in terms of workplace health, safety, or other employment-related conditions—rather than generalized public harms—it is more likely to fall within the mutual aid and protection clause.

Similarly, under the solidarity principle, workers could engage in climate advocacy on behalf of *non-statutory* employees. Under the solidarity principle set forth in *American Federation for Children, Inc.*, if workers engage in activity on behalf of non-statutory employees, this activity can be protected if the activity directly benefits the workers or creates the possibility of future benefit.²⁰⁰ This could empower workers to engage in climate advocacy on behalf of agricultural workers, domestic workers, and other statutorily excluded workers.²⁰¹ For instance, statutory employees could call for action to be taken on climate change because of the impacts that heat and air pollution are having on agricultural workers like Sebastian Francisco Perez, who died from working during a heatwave.²⁰² By doing this, the statutory workers create the possibility that those agricultural workers may, in return, engage in climate advocacy that would improve the statutory workers' working conditions.

200. 372 NLRB No. 137, at 12 (2023) (“The relevant question in cases like this . . . is not whether the persons that the employees seek to help are statutory employees themselves . . . [t]he question is simply whether in helping those persons, employees potentially aid or protect themselves, whether by directly improving their own terms and conditions of employment or by creating the possibility of future reciprocal support from others in their efforts to better working conditions.”). However, particularly after the reelection of President Trump, workers should be careful not to rely too heavily on *American Federation for Children, Inc.* The case was only decided in 2023. Accordingly, it is not a long-settled precedent and therefore could be at an increased risk for being overruled by a more employer-friendly NLRB.

201. Agricultural workers and domestic service workers are excluded from NLRA protections. See 29 U.S.C § 152(3) (“The term ‘employee’ . . . shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home.”).

202. See *supra* notes 3–4 and accompanying text.

In fact, the Board has already found that advocacy on behalf of agricultural workers can fall within the ambit of the mutual aid and protection clause. In *General Electric Company*, statutory employees raised money at work to support agricultural workers attempting to organize.²⁰³ The NLRB held that the solicitation of funds by statutory employees on behalf of agricultural workers was protected under the mutual aid and protection clause because the agricultural workers might one day repay the favor by offering support to the statutory employees in a dispute with their employer.²⁰⁴ This is especially meaningful given that many non-statutory employees, like agricultural workers, are most at risk from climate change related risks.

IV. WORKPLACE CLIMATE ADVOCACY IN PRACTICE

Part III explored the ways in which workers can, in their advocacy, frame the issue of climate change to fall within the *Eastex* Standard. Building off of this, this Part explores a few forms that climate advocacy could take.²⁰⁵ First, this Part argues that workplace educational campaigns that seek to inform workers of the ways that climate change will affect them as workers would likely be protected. Next, this Part considers forms of workplace climate advocacy that are directed at employers—for example, campaigns that aim to persuade employers to reduce their greenhouse gas emissions. Finally, this Part considers workplace climate advocacy that is directed at influencing policy makers—for example, worker participation in a climate strike to call for congressional action on climate change.

A. WORKPLACE EDUCATIONAL CAMPAIGNS

One of the first forms workplace climate advocacy can—and should—take is workplace climate educational campaigns. These campaigns would aim to educate coworkers and even employers on the nexus between climate change and the workplace. By educating and engaging coworkers, these campaigns could recruit

203. *Gen. Elect. Co.*, 169 NLRB 1101, 1102–03 (1968), *enforced*, NLRB v. *Gen. Elect. Co.*, 411 F.2d 750 (9th Cir. 1969).

204. *Id.* at 1103.

205. Thus, this Part primarily concerns the third element of the test for protecting worker activity under the mutual aid and protection clause. For further discussion, see *supra* note 111 and accompanying text.

more workers to participate in further climate advocacy, thereby potentially acting as an important first step in building wider worker support.²⁰⁶ The abstract and diffuse nature of climate change can create psychological barriers to individual, and therefore collective, action aimed at mitigating climate change.²⁰⁷ For example, one feature of climate change is that it plays out slowly over time.²⁰⁸ Because of this, human psychology tends to write off the threat of climate change, making inaction more likely.²⁰⁹ Similarly, polling shows that people discount the impact that climate change will have on themselves versus other people.²¹⁰

One way to help overcome these psychological barriers, and therefore make people more likely to take action on climate change, is to highlight the ways that climate change will personally affect the individual.²¹¹ An added benefit of workplace educational campaigns that fall within the *Eastex* Standard is that, to maintain protection, they would, in most cases, highlight the ways that climate change would personally affect workers, thereby personalizing the impacts of climate change and

206. See *infra* note 211 and accompanying text.

207. See, e.g., Tacianco L. Milfont, *Global Warming, Climate Change, and Human Psychology*, in *PSYCH. APPROACHES TO SUSTAINABILITY: CURRENT TRENDS IN THEORY, RSCH. & APPLICATIONS* 25–33 (Victor Corral-Verdugo, Cirilo H. Garcia-Cadena & Matha Frias-Armenta eds. 2010) (discussing different psychological barriers to human action on climate change); Matthew Wilburn King, *How Brain Biases Prevent Climate Action*, BRIT. BROAD. CORP. (Mar. 1, 2019), <https://www.bbc.com/future/article/20190304-human-evolution-means-we-can-tackle-climate-change> [<https://perma.cc/M2KB-HYXJ>] (discussing how cognitive biases hinder collective action on climate change); Nicholas Weller, *Why Our Brains Are Bad at Climate Change*, STAN. UNIV. (Apr. 25, 2024), <https://neuroscience.stanford.edu/news/why-our-brains-are-bad-climate-change> [<https://perma.cc/PME9-XFWW>] (same).

208. See King, *supra* note 207 (describing climate change as a “long term challenge”).

209. *Id.* (“We have evolved to pay attention to immediate threats. We overestimate threats that are less likely but easier to remember, like terrorism, and underestimate more complex threats, like climate change.”); Milfont, *supra* note 207, at 26.

210. See Univ. of Gothenburg, *Most People Believe Climate Change Primarily Affects Others*, PHYS.ORG (Jan. 9, 2026), <https://phys.org/news/2026-01-people-climate-primarily-affects.html> [<https://perma.cc/54EN-9S42>] (“A meta-analysis of 83 studies, involving more than 70,000 participants from 17 countries, shows that climate-related risks are systematically underestimated and perceived as more likely to affect someone else rather than oneself. Sixty-five percent of participants assessed their own risk of being affected by climate change as lower than that of others.”).

211. See, e.g., *Eight Principles for Effective and Inviting Climate Communication*, RARE, <https://rare.org/research-reports/eight-principles-for-effective-and-inviting-climate-communication/> [<https://perma.cc/D5LX-RCCL>] (discussing eight principles for effective communication about climate change, including making climate change “personal”). Similarly, other studies have found that discussions about climate change create a positive feedback loop. See generally Matthew H. Goldberg et al., *Discussing Global Warming Leads to Greater Acceptance of Climate Science*, 116 *PROCS. NAT'L ACAD. SCI.* 30 (2019).

persuading workers to act. Suppose, for instance, that postal workers, in an effort to educate their coworkers about climate change, distribute literature tying climate change to the increasing heat related safety incidents for postal and other delivery workers. Because the literature links climate change to worker safety, it should be protected under the *Eastex* Standard.²¹² Additionally, by taking climate change from the level of abstraction down to the level of the individual, the literature could potentially expand the pool of workers who will engage in future workplace climate advocacy.²¹³

Workplace educational campaigns could take a variety of forms ranging from literature distribution to conversations with coworkers. Under existing law, either of these forms would generally be protected so long as they occurred in non-work time in non-work areas²¹⁴ and satisfied the *Eastex* Standard.²¹⁵ For example, distribution of literature during a break in or near a break room would be protected.²¹⁶

B. APPEALS TO EMPLOYERS

Another way that workers can try to influence the trajectory of climate change and ensure they have adequate protections in the face of climate change is to direct demands at their employers. Workplace climate advocacy directed at influencing workers' employers can generally be placed on a spectrum, ranging from approaches that seek to persuade management—such as working with management to reduce greenhouse gas emissions and to ensure that workers have adequate protections from smoke—to

212. See *supra* Part III.A (discussing how worker advocacy aimed at worker health and safety is likely protected under *Eastex*).

213. See *supra* note 211 and accompanying text.

214. Under *Republic Aviation Corp v. NLRB*, there is a presumption that worker solicitation on employer property during non-work time is protected, unless there are unusual circumstances (for example, if prohibiting solicitation is necessary to maintain discipline). 324 U.S. 793, 803–04 (1945); see also *Mercedes-Benz U.S. Int'l, Inc. v. Int'l Union, UAW*, 838 F.3d 1128, 1131 (11th Cir. 2016) (“An employer also may not prohibit distribution of union literature by employees who are in non-working areas and not on working time. An employer may prohibit distribution in working areas, however, because “the employer’s interest in cleanliness, order, and discipline [in a working area] is undeniably greater than it is in nonworking areas.”) (quoting *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615, 621 (1962)).

215. See *supra* Part II (discussing how workers can frame their climate advocacy to come within the *Eastex* Standard).

216. See *United Parcel Serv., Inc. v. NLRB*, 228 F.3d 772, 781 (6th Cir. 2000).

more disruptive approaches—like appealing to the public in support of worker’s demands that their employer reduce its greenhouse gas emissions and provide adequate protections from heat.²¹⁷

1. *Persuasive Workplace Climate Advocacy*

Workers could, when engaging in workplace climate advocacy, take a cooperative approach toward their employer to, for example, reduce the company’s contribution to climate change and ensure that the employer provides adequate protections from the workplace effects of climate change on their workers. UPS drivers, for instance, could present a petition to management that highlights UPS’ contribution to climate change, discusses the impacts of climate change on the working conditions of delivery workers, and calls for UPS to reduce its greenhouse gas emissions and provide more heat and smoke protections to its workers. This form of climate advocacy would likely be protected under the NLRA.²¹⁸

Workplace climate advocacy that seeks to persuade employers can be an effective approach for workers to confront climate change head-on. For example, 500 hospital workers formed Clinicians for Climate Action to encourage the University of Pittsburgh hospital system to reduce its greenhouse gas emissions.²¹⁹ Since its founding, the group has successfully worked with the hospital

217. See Forrest Briscoe & Abhinav Gupta, *Business Disruption from the Inside Out*, STAN. SOC. INNOVATION REV. (Winter 2021), https://ssir.org/articles/entry/business_disruption_from_the_inside_out [<https://perma.cc/U2XW-LTXX>]. Briscoe and Gupta distinguish between “disruptive” tactics—those intended to unsettle an organization’s internal routines and public reputation to pressure executives—and “persuasive” tactics, which instead seek to influence employees and executives through less visible and less aggressive internal communications. *Id.*

218. As a general rule, the NLRA protects workers who bring grievances to their employer, including in the form of a petition, when workers’ grievances relate to working conditions. See, e.g., *Joanna Cotton Mills Co. v. NLRB*, 176 F.2d 749, 753 (4th Cir. 1949) (finding that “circulation and presentation” of a petition was not protected because the subject of the petition “had no relation to collective bargaining, hours or conditions of work or any sort of mutual aid or protection of employees, but was simply and solely an effort . . . to get rid of or humiliate” a supervisor); *Fivecap, Inc. v. NLRB*, 294 F.3d 768, 783 (6th Cir. 2002) (finding that the circulation of a petition was protected because it related to “working conditions”).

219. Reid Frazier, *Health Care Has a Massive Carbon Footprint. These Doctors Are Trying to Change That*, NAT’L PUB. RADIO (Oct. 2, 2023), <https://www.npr.org/2023/10/02/1202389187/hospitals-climate-change> [<https://perma.cc/N5A4-J2S6>].

system to reduce their greenhouse gas emissions.²²⁰ Likewise, Microsoft workers formed the Sustainability Connected Community, a group that has grown to 10,000 Microsoft workers and worked with management to address climate change.²²¹ As a result of the group's pressure on Microsoft, the company committed to becoming carbon negative by 2030.²²² Similarly, pressure from the Sustainability Connected Community led Microsoft to publicly support the Inflation Reduction Act, a major piece of legislation providing hundreds of billions of dollars for renewable energy.²²³

Ultimately, whether taking a persuasive approach to workplace climate advocacy would be effective is context dependent. A persuasive approach might be particularly effective if workers believe that their employer would be sympathetic to their requests.²²⁴ Alternatively, workers may decide that it is safer to try to persuade their employer before opting for more disruptive measures.²²⁵ Particularly in this latter situation, if workers are concerned that their employer may respond to their requests in a

220. *Id.*

221. DEGREES: *How a Punk-Rocking Paralegal Harnessed Employee Power to Green Microsoft* (Simplecast, Sep. 13, 2023), <https://degrees.simplecast.com/episodes/how-a-punk-rocking-paralegal-harnessed-employee-power-to-green-microsoft/transcript> [<https://perma.cc/5YG5-RJ5Q>].

222. *Id.*

223. Maddie Stone, *Microsoft Employees Spent Years Fighting the Tech Giant's Oil Ties. Now, They're Speaking Out*, DRILLED MEDIA (May 8, 2024), <https://drilled.media/news/microsoft-employees> [<https://perma.cc/D8RQ-NWY3>]. The group has also been actively pushing for Microsoft to cut its contracts with oil and gas companies, though these attempts have been unsuccessful so far. *Id.* Since returning to office in 2025, President Trump has significantly weakened the Inflation Reduction Act through the passage of the One Big Beautiful Bill Act. See generally *What Survived? An Update on Inflation Reduction Act Programs*, BLUEGREEN ALL. (Aug. 2025), <https://www.bluegreenalliance.org/site/what-survived-an-update-on-inflation-reduction-act-programs/> [<https://perma.cc/YUC7-AJL7>] (discussing how the One Big Beautiful Bill Act impacted the Inflation Reduction Act).

224. For example, even before Microsoft workers founded the Sustainability Connected Community, the company had publicly shown an interest in addressing its contributions to climate change. See Andrew Winston, *Microsoft Taxes Itself*, HARV. BUS. REV. (May 8, 2012), <https://hbr.org/2012/05/microsoft-taxes-itself> [<https://perma.cc/YJ2D-CLM2>]. For example, in 2012, the company announced that it would impose an internal carbon tax and use the proceeds for renewable energy credits and carbon offsets. *Id.*; see also *Microsoft—An Internal Carbon Tax to Cut Scope 3 Emissions*, WORLD ECON. F. (Dec. 12, 2023), <https://initiatives.weforum.org/industry-net-zero-accelerator/case-study-details/microsoft--an-internal-carbon-tax-to-cut-scope-3-emissions/aJYTG0000001Dp4AI> [<https://perma.cc/SA8P-C263>] (noting that in 2020, Microsoft expanded the scope of its internal carbon tax to cover scope 3 emissions).

225. See Briscoe & Gupta, *supra* note 217 (“Although news stories often focus on headline-grabbing actions, such as worker walkouts, a growing body of research suggests that employee activists are much more likely to pursue quieter tactics that they believe to be less risky and more effective.”).

hostile manner, they should ensure they frame their requests in a way that brings it within the *Eastex* Standard to gain protections under the mutual aid and protection clause.²²⁶

2. *Disruptive Workplace Climate Advocacy*

Alternatively, workers could choose to take a more disruptive posture when engaging in workplace climate advocacy aimed at their employers. Workers could, for example, appeal to the public in order to build public support for their demands. A disruptive workplace climate advocacy campaign could involve publicizing workers' demands—for instance, that an employer provide additional protections or reduce their greenhouse gas emissions—through traditional media (e.g., television, newspapers) or social media.²²⁷ Because consumers increasingly care about the environmental impact of the goods and services they purchase, public appeals could be an effective means to influence an employer's workplace and environmental policies.²²⁸ Accordingly, appeals to a sympathetic public could result in further pressure on the employer to adopt the worker's position.

Disruptive climate advocacy could be protected under the NLRA; however, workers should be careful to not run afoul of the disloyalty doctrine.²²⁹ If a particular instance of workplace climate

226. See *supra* Part II (discussing how workers can frame workplace climate advocacy to fall within the *Eastex* Standard).

227. For example, in the leadup to the walkout campaign organized by Amazon workers, workers published an open letter to Jeff Bezos and the board of directors calling for the company to cut its emissions on the website Medium. See Amazon Employees for Climate Justice, *Open Letter to Jeff Bezos and the Amazon Board of Directors*, MEDIUM (Apr. 10, 2019), <https://amazonemployees4climatejustice.medium.com/public-letter-to-jeff-bezos-and-the-amazon-board-of-directors-82a8405f5e38> [<https://perma.cc/6WRR-9JFF>].

228. See Anne Field, *Study Finds an Inflection Point In Consumers' Green-Buying Behavior*, FORBES (Apr. 26, 2023), <https://www.forbes.com/sites/annefield/2023/04/26/study-finds-an-inflection-point-in-consumers-green-buying-behavior/> [<https://perma.cc/5WJA-AG5X>] (reporting that most U.S. consumers are willing to pay more for environmentally friendly products, remain skeptical of corporate environmental efforts, and—particularly among Gen Z—are increasingly pressuring companies to improve).

229. The disloyalty doctrine has its roots in *NLRB v. Loc. Union No. 1229* (“Jefferson Standard”), 346 U.S. 464 (1953). There, television workers, who had reached an impasse in collective bargaining negotiations with their employer, distributed flyers to the public disparaging the quality of their employer's television programming. *Id.* at 466–67. According to the Court, because the literature did not reference an ongoing labor dispute and it constituted a “sharp, public, disparaging attack upon the quality of the company's product and its business policies, in a manner reasonably calculated to harm the company's reputation and reduce its income,” the flyers were not protected under the NLRA. *Id.* at 471, 476. The NLRB has refined the disloyalty doctrine into a two-pronged test. First, the communication must be related to a labor dispute. *In re Am. Golf Corp.*, 330 NLRB 1238,

advocacy is found to be disloyal, then the advocacy is not protected under the mutual aid and protection clause even if their advocacy falls within the *Eastex* Standard.

The NLRB has refined the disloyalty doctrine into a two-pronged test.²³⁰ Courts, although agreeing on the elements of this test, have applied and understood it in differing ways.²³¹ These two approaches can lead to conflicting outcomes under the same test. The first view, epitomized by the case *MikLin Enterprises, Inc. v. NLRB*,²³² adopts a broad view of worker disloyalty. Under this view, the critical question in determining whether worker activity fails the second prong of the disloyalty test is “whether employee public communications reasonably targeted the employer’s labor practices, or indefensibly disparaged the quality of the employer’s products or services.”²³³ Conversely, the second view of the disloyalty doctrine, epitomized by *DIRECTV, Inc. v. NLRB*,²³⁴ adopts a narrower view of worker disloyalty. This approach incorporates a subjective intent element to determine if worker activity runs afoul of the second prong of the disloyalty test.²³⁵ Accordingly, under this view, if the workers’ intent is to harm their employer, their activity would likely run afoul of the disloyalty doctrine.²³⁶ In contrast, if the workers’ intent is to appeal to the public for support in their labor dispute, then their activity likely does not run afoul of the disloyalty doctrine, even if it disparages their employer.²³⁷

1240 (2000); see also *Oncor Elec. Delivery Co., LLC*, 373 NLRB No. 80, at *4 (2024) (noting that the standard laid out in *American Golf Corp* is the applicable standard for worker communications to third parties). Second, the communication must not be “so disloyal, reckless, or maliciously untrue as to lose the Act’s protection.” *Am. Golf Corp.*, 330 NLRB at 1240.

230. *Am. Golf Corp.*, 330 NLRB at 1240 (laying out the two-prong test for the disloyalty doctrine).

231. These differing views can largely be explained by differing interpretations of the *Jefferson Standard* decision and differing understandings of the underlying purposes of the NLRA. See generally Matthew Knowles, *Biting the Hand That Feeds: Third Party Appeals and NLRA Objectives*, 45 *FORDHAM URB. L.J.* 761 (2018).

232. 861 F.3d 812 (8th Cir. 2017).

233. *Id.*

234. 837 F.3d 25 (D.C. Cir. 2016).

235. *Id.* at 37–39.

236. *Id.* (“[A]n employee’s intentions can . . . shed meaningful light on whether, when a third-party appeal is related to an ongoing grievance, [the third party appeal] is protected—in particular, on whether the employee primarily aimed to draw the public’s support in the dispute or instead intended to go further by gratuitously causing harm to the company (i.e., ‘wholly incommensurate’ with the grievance).”).

237. *Id.* at 37 (noting that under a prior D.C. Circuit decision, the court found that “third-party appeals, even if amounting to disloyalty, can be protected concerted activity

Applying this to workplace climate advocacy, suppose, for instance, a group of workers went to a local news station and aired a segment in which they discussed their employer's contributions to climate change; highlighted the ways that climate change is affecting the occupational health and safety of the employer's delivery drivers; argued that the company was misleading its customers in its pledge to reduce its emissions; and mentioned that workers have been trying to push the company to reduce its carbon emissions and adopt policies which protect the workers from climate influenced heat. In this scenario, the first prong of the disloyalty doctrine would likely be satisfied because the news segment directly relates to workers' concerns about their occupational health, safety, and economic wellbeing and describes the ways the employees have tried to address the problem with their employer.²³⁸ Whether the advocacy violates the second prong of the disloyalty test, however, could turn on which view of the disloyalty doctrine the Board or a court applies.

Under the broad view, if the third-party communication is related to a labor dispute, the communication must also not disparage the reputation or product of the employer.²³⁹ In the above scenario, the workers' comments about how the employer is misleading its customers arguably disparages the employer's reputation. Accordingly, under this view, the news segment would likely be disloyal and therefore unprotected under the mutual aid and protection clause.

In contrast, under the narrow view, the fact that the third-party communication is disparaging to the employer is not dispositive of disloyalty.²⁴⁰ Instead, the Board or a court would determine the intent of the workers in airing the segment. Assuming the workers intended to garner support for their cause, and not to harm their employer, their activity would likely not run afoul of the disloyalty doctrine.

when connected to an ongoing labor dispute") (citing *Endicott Interconnect Techs., Inc. v. NLRB*, 453 F.3d 532, 536 (D.C. Cir. 2006)).

238. See *MikLin Enterprises, Inc. v. NLRB*, 861 F.3d 812, 824 (8th Cir. 2017).

239. See *id.* at 824–25 ("Even communications connected to a labor dispute are unprotected when they constitute a 'sharp, public, disparaging attack upon the quality of the company's product and its business policies.'") (quoting *NLRB v. Loc. Union No. 1229*, 346 U.S. 464, 471 (1953)).

240. *DIRECTV, Inc. v. NLRB*, 837 F.3d 25, 36 (D.C. Cir. 2016) ("[I]t is well-established that third-party appeals can fall within the zone of protected activity even if indisputably disloyal.").

As the above scenario shows, differing interpretations of the disloyalty doctrine could lead to the same form of workplace climate advocacy being classified as disloyal or not disloyal.²⁴¹ Given the relative uncertainty of this doctrine, workers engaging in third-party appeals should generally refrain from communicating messages that could be interpreted as disparaging their employer's product or reputation. For instance, if the workers in the news station example omitted the comments about their employer misleading customers, their advocacy would be less likely to be construed as disparaging their employer, and therefore, the disloyalty doctrine would likely not apply.

C. APPEALS TO POLICYMAKERS

Beyond appealing to employers, workers could also appeal to policymakers in their workplace climate advocacy. Workers could, for example, appeal to Congress to pass legislation reducing greenhouse gas emissions or to the Department of Labor to promulgate regulations to better protect outdoor workers from increased wildfire smoke. There is some history to suggest that worker appeals to policymakers could be effective. In the 20th century, workers from the local level all the way to the leadership of major unions—like the UAW—advocated for Congress to address the environmental problem of air pollution.²⁴² In fact, major unions, including the UAW and USW, were involved in the ultimate passage of the Clean Air Act amendments of 1972.²⁴³

After *Eastex*, it is clear that appeals to policymakers are protected, so long as they bear a nexus with employees' interests as employees.²⁴⁴ This includes testifying in front of legislative bodies²⁴⁵ and writing letters to legislators.²⁴⁶ Accordingly, so long as workers frame climate change in a way that satisfies the *Eastex*

241. See *supra* notes 232–237 and accompanying text (discussing the two divergent views).

242. Scott Dewey, *Working for the Environment: Organized Labor and the Origins of Environmentalism in the United States, 1948-1970*, 3 ENV'TL HIST. 45, 52–58 (1998).

243. *Id.* at 58.

244. *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565–68 (1978).

245. See *GHR Energy Corp.*, 249 NLRB 1011 (1989) (finding that an employee who testified before a state environmental protection committee and a United States Senate committee about the impacts of his employer's environmental pollution on workers' health was protected).

246. See *Kaiser Eng'rs*, 213 NLRB 752, 755 (1974) (determining that workers writing a letter to Congressmembers was protected activity).

Standard, these kinds of appeals to legislators would likely be protected.

A more complicated legal question arises in the context of so-called climate strikes—that is, if workers engage in a climate strike to call for governmental actors to act on climate change, could their participation in the protest be protected under the act?²⁴⁷ The answer, however unsatisfying, is that worker participation in a climate strike should be legally protected, though this has yet to be put to the test. An analogous context where this issue has come up is the 2006 and 2017 “Day Without Immigrants Strikes.”²⁴⁸ During these protests, thousands of workers, both immigrants and non-immigrants, called out of work to participate in the demonstrations, forcing many businesses to close for the day.²⁴⁹ As a result of the protests, some employers fired workers,²⁵⁰ raising the question of whether worker participation in these protests could be protected under the mutual aid and protection clause. The Board never directly decided the

247. This Note only considers whether a climate strike with the purpose of influencing policy makers could be protected under the mutual aid and protection clause. It does not consider whether a climate strike directed towards an employer could be protected. This kind of climate strike would likely implicate the doctrine surrounding mandatory and permissive subjects of bargaining, which is not considered here. See *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958) (holding that parties must bargain in good faith over mandatory subjects of employment but may not insist to impasse over permissive subjects).

248. Randal C. Archibold, *Immigrants Take to the U.S. Streets in Show of Strength*, N.Y. TIMES (May 2, 2006), <https://www.nytimes.com/2006/05/02/us/02immig.html> [<https://perma.cc/78D8-7879>]; Liz Robbins & Annie Correal, *On a ‘Day Without Immigrants,’ Workers Show Their Presence by Staying Home*, N.Y. TIMES (Feb. 15, 2017), <https://www.nytimes.com/2017/02/16/nyregion/day-without-immigrants-boycott-trump-policy.html>. [<https://perma.cc/NRV2-Q7WK>]. Similar actions took place in 2026 in reaction to the Trump Administration’s immigration crackdowns. See Connor Greene, *Businesses Close and Demonstrators March in Cities Across the U.S. in Anti-ICE General Strike*, TIME (Jan. 30, 2026), <https://time.com/7362842/ice-strike-trump-immigration-protest-general-minneapolis-nyc-los-angeles/> [<https://perma.cc/V6EY-VCCE>] (reporting on a nationwide Anti-ICE protest that occurred on January 30, 2026); Connor Greene, *Minnesotans Shutter Businesses and Call Off Work in Economic Blackout Day to Protest ICE*, TIME (Jan. 23, 2026), <https://time.com/7357523/minnesota-ice-protest-business-immigration-minneapolis/> [<https://perma.cc/X7FG-W6SG>] (reporting on the ICE Out of Minnesota: Day of Truth and Freedom protest in Minnesota).

249. Archibold, *supra* note 248; Robbins & Correal, *supra* note 248.

250. Dan DiMaggio & Sonia Singh, *Tens of Thousands Strike on Day Without Immigrants*, LAB. NOTES (Feb. 23, 2017), <https://labornotes.org/2017/02/tens-thousands-strike-day-without-immigrants> [<https://perma.cc/RX4S-G7T8>].

issue.²⁵¹ However, the General Counsel during the 2006 and 2017 protests took conflicting positions on the question.²⁵²

The General Counsel in 2006 took the position that participation in the protests in the form of a work stoppage was not protected under the mutual aid and protection clause.²⁵³ Citing to a footnote in *Eastex*,²⁵⁴ the General Counsel concluded that because the employer had no control over the subject of the protest, the employees could not exert economic pressure on the employer.²⁵⁵ Phrased differently, because the employer could not control federal immigration policy, workers could not withhold their labor over the issue.

In contrast, the General Counsel in 2017 asserted that participation in the protests in the form of a work stoppage was protected under the mutual aid and protection clause.²⁵⁶ Relying

251. Jeffery M. Hirsch, *Labor Law's Impact on the Post-Dobbs Workplace*, 27 EMP. RTS. & EMP. POL'Y J. 360, 380 (2024).

252. Both General Counsel's took their respective positions in what are called General Counsel Memos. It is important to note that these memos are not binding law; however, they can be persuasive authority. *Id.* at 380 n.110 (“[B]ecause of the General Counsel’s prosecutorial power, [their] opinion can be quite important and is often persuasive when issues come before the Board.”).

253. *Concerning Reliable Maintenance*, 2006 WL 5054728, at *1 (NLRB G.C. Oct. 31, 2006) (“Even assuming, without deciding, that the employee’s participation in, or support for, such demonstrations would have been conduct protected by the ‘mutual aid or protection’ clause of Section 7, missing work without permission simply to participate in Section 7 activity is not protected. Moreover, economic pressure directed at an employer that has no control over the demonstration’s subject matter is also not protected. Thus, we conclude that the Employer lawfully terminated the employee, and the Region should dismiss the charge, absent withdrawal.”); *see also* Michael C. Duff, *Days Without Immigrants: Analysis and Implications of the Treatment of Immigration Rallies Under the National Labor Relations Act*, 85 DEN. U. L. REV. 93, 103 (2007) (interpreting the 2006 memo to mean that “immigration protests involving work stoppages are not protected as a matter of law”).

254. *Eastex v. NLRB*, 437 U.S. 556, 568 n.18 (1978) (“In addition, even when concerted activity comes within the scope of the ‘mutual aid or protection’ clause, the forms such activity permissibly may take may well depend on the object of the activity. ‘The argument that the employer’s lack of interest or control affords a legitimate basis for holding that a subject does not come within ‘mutual aid or protection’ is unconvincing. The argument that economic pressure should be unprotected in such cases is more convincing.’”) (quoting Julius G. Getman, *The Protection of Economic Pressure by Section 7 of the National Labor Relations Act*, 115 U. PA. L. REV. 1195, 1221 (1967)). That reading of *Eastex* is contestable. *See* Duff, *supra* note 253 (arguing that “a nuanced reading of the balance of Professor Getman’s article supports the view that the General Counsel was overreaching in his interpretation of the [*Eastex*] footnote”).

255. *Eastex*, 437 U.S. at 568 n.18. *See also* *Reliable Maintenance*, 2006 WL 5054728, at *2 (citing *Eastex, Inc. v. NLRB*, 437 U.S. 556, 568 n.18 (1978)).

256. *Concerning Int’l Warehouse Grp., Inc.*, 2017 WL 10086376, at *1 (NLRB G.C. Oct. 5, 2017) (“We conclude that the employees’ participation in the ‘Day Without Immigrants’ was for their mutual aid or protection and constituted a protected strike.”).

on *Nellis Cab Company*,²⁵⁷ the General Counsel found that, although the employer did not have *complete* control over the subject of the worker's work stoppage, the employer had enough control over the subject to permit the workers to engage in a work stoppage over the subject.²⁵⁸ As the General Counsel put it, "[a]lthough the [employer] does not personally control the [Trump] administration's immigration agenda," the employer could take steps to alleviate workers' concerns about the administration's policies, such as designating itself as a "sanctuary employer," "publicly denouncing the administration's actions," or "advocat[ing] for more liberal immigration policies."²⁵⁹

Both memos agree, based on the *Eastex* footnote, that in order for workers to engage in a work stoppage over a political subject, their employer needs to have control over that political subject.²⁶⁰ The differing outcomes can be explained by differing understandings of "control." The 2006 memo seems to understand control to require employers have direct control over the political subject.²⁶¹ Conversely, the 2017 memo seems to understand control to only require the employer to have the potential to influence policymakers who ultimately have direct control over the subject.²⁶²

Applying these competing definitions of control to the workplace climate advocacy context, there is a strong argument under the 2017 memo that a climate strike would be protected under the mutual aid and protection clause. For example, if

257. 362 NLRB 1587 (2015). In that case, the NLRB held that taxicab drivers who engaged in a work stoppage to protest a state agency's decision to increase the number of taxis on the road were engaged in protected activity under the mutual aid and protection clause. *Id.* at 1587. In coming to this conclusion, the Board rejected the employer's argument that, because the employer lacked control over what the state agency did, the work stoppage was unprotected. *Id.* at 1588. The Board determined that the employer did have control over what the state agency did because they could try to influence the state agency to adopt the taxi drivers' position. *Id.*

258. *Int'l Warehouse Grp., Inc.*, 2017 WL 10086376, at *9 (conceding that "although the Employer does not personally control the administration's immigration agenda," the employer could try to influence immigration policy).

259. *Id.*

260. *Compare Concerning Reliable Maintenance*, 2006 WL 5054728, at *2 (NLRB G.C. Oct. 31, 2006) (quoting *Eastex* footnote), with *Int'l Warehouse Grp., Inc.*, 2017 WL 10086376, at *8 ("[I]n *Nellis Cab Company*, the Board acknowledged the Supreme Court's dicta in [the] *Eastex* [footnote] that an employer should have some degree of control over the outcome of a political dispute for economic pressure in support of that dispute to be protected.").

261. *Reliable Maintenance*, 2006 WL 5054728 at *2.

262. *Concerning Int'l Warehouse Grp., Inc.*, 2017 WL 10086376, at *9 (NLRB G.C. Oct. 5, 2017).

workers engage in a work stoppage for the purpose of calling on Congress to take action on climate change because of climate change's impact on worker health, safety, and economic wellbeing, participation in the work stoppage could be protected.²⁶³ First, to be protected, participation in the work stoppage would need to satisfy the *Eastex* Standard.²⁶⁴ The above example would satisfy this requirement as it frames climate change as an issue that affects worker health, safety, and economic wellbeing.²⁶⁵ Second, under *Nellis Cab Company* and the 2017 memo, worker participation in a work stoppage can be protected even if the employer lacks direct control over the subject matter of the work stoppage.²⁶⁶ So, in the context of a climate strike, the fact that employers do not have absolute control over federal climate policy is not dispositive of whether participation in work stoppage is protected. Instead, as the 2017 memo put it, the question is whether the employer has the power to "alleviate" the concerns at the heart of the work stoppage.²⁶⁷ In the context of a climate strike, employers do have this power. First, as in the 2017 memo and *Nellis Cab Company*, employers could publicly support and advocate for action on climate change. Second, employers themselves could reduce their contributions to climate change by cutting their own greenhouse gas emissions.

Although there is a strong argument for protecting climate strikes under *Nellis Cab Company* and the 2017 memo, there is a real risk the NLRB could adopt the view of the 2006 memo and determine that participation in a climate strike in the form of a work stoppage is unprotected. This is particularly true given the recent reelection of President Trump. During Trump's first term,

263. It is important to note that union workers who have a negotiated no-strike clause in their collective bargaining agreement may not be able to engage in a climate strike in the form of a work stoppage, even under the 2017 memo and *Nellis Cab Company*.

264. *Nellis Cab Co.*, 362 NLRB 1587, 1588 (2015) (finding that participation in the work stoppage was for the purpose of mutual aid and protection); *Int'l Warehouse Grp., Inc.*, 2017 WL 10086376, at *9 (finding that participation in the work stoppage was for the purpose of mutual aid and protection); *Reliable Maintenance*, 2006 WL 5054728 at *1 (assuming that participation in the work stoppage was for the purpose of mutual aid and protection).

265. Advocacy that aims to protect worker health and safety is protected under the *Eastex* Standard. See *supra* Part II.A.

266. *Nellis Cab Co.*, 362 NLRB at 1588; *Int'l Warehouse Grp., Inc.*, 2017 WL 10086376, at *8 ("[I]n *Nellis Cab Company*, the Board acknowledged the Supreme Court's dicta in [the] *Eastex* [footnote] that an employer should have some degree of control over the outcome of a political dispute for economic pressure in support of that dispute to be protected.") (quoting *Nellis Cab Co.*, 362 NLRB at 1588).

267. *Int'l Warehouse Grp., Inc.*, 2017 WL 10086376, at *9.

the NLRB took a narrow view of the protections afforded to workers under the NLRA and weakened, if not entirely rolled back, many NLRA protections.²⁶⁸ Given this history, it is possible that the NLRB under his second term could take a similar posture.²⁶⁹ Accordingly, if faced with the question of whether a climate strike in the form of a work stoppage could be protected under the NLRA, the Trump NLRB could overrule *Nellis Cab Company* and adopt an understanding of control that is more in line with the 2006 memo. Under this interpretation of control, which seems to require that the employer have direct control over the subject of a work stoppage for the stoppage to be protected,²⁷⁰ it would be much harder for participation in a climate strike in the form of a work stoppage to be protected. Although one could argue that the employer does have the ability to directly control the impacts of climate change on the health, safety, and economic wellbeing of workers by mitigating their own greenhouse emissions, it is unclear if this would satisfy the 2006 memo's view of control. Additionally, as in the immigration context, the employer has no direct control over federal climate policy.

D. LIMITATIONS: BOARD POLITICS AND *LOPER BRIGHT*

As this Note has argued, under existing labor law, there are strong legal arguments for protecting workplace climate advocacy under the mutual aid and protection clause of the NLRA. However, whether protections are *actually* extended to any individual case of worker climate advocacy is ultimately up to the NLRB to determine—at least in the first instance.

268. See, e.g., Celine McNicholas et al., *Unprecedented: The Trump NLRB's Attack on Workers' Rights*, ECON. POL. INST. (Oct. 16, 2019), <https://www.epi.org/publication/unprecedented-the-trump-nlrbs-attack-on-workers-rights/> [https://perma.cc/QK7C-PPFR] (“The Trump board and [General Counsel] have elevated corporate interests above those of working men and women and have routinely betrayed the statute they are responsible for administering and enforcing.”); Paul Prescod, *Trump's Anti-Worker Labor Board*, LAB. NOTES (Oct. 8, 2020), <https://labornotes.org/2020/10/trumps-anti-worker-nlrbs> [https://perma.cc/XPG7-KZG6] (discussing how the NLRB under President Trump's first term undermined worker protections under the NLRA).

269. See, e.g., Margaret Poydock, *Here Are the Ways the Trump Administration is Already Trampling on Workers' Rights*, ECON. POLY INST. (Feb. 18, 2025), <https://www.epi.org/blog/here-are-the-ways-the-trump-administration-is-already-trampling-on-workers-rights-weeks-into-trumps-second-term-one-thing-is-clear-billionaires-are-being-prioritized-over-working/> [https://perma.cc/X7M5-3EKA] (noting that President Trump fired an NLRB Board member for “unduly disfavoring employers”).

270. *Concerning Int'l Warehouse Grp., Inc.*, 2017 WL 10086376, at *2 (NLRB G.C. Oct. 5, 2017); see also note 212 and accompanying text.

The political nature of the Board, and therefore labor law more generally, will likely influence the NLRB's resolution of any cases involving worker climate advocacy that may come before the Board. Over time, the NLRB has become increasingly partisan. Democratic presidents tend to appoint Board members who have practiced labor law on the union side, steering labor law in a more union- and worker-friendly direction.²⁷¹ In contrast, Republican presidents tend to appoint Board members who have worked on labor law from the employer side, causing labor law to become more friendly to employers.²⁷² These dynamics would likely have an impact on whether any individual instance of workplace climate advocacy is actually protected under the mutual aid and protection clause. A Democratic-majority Board would likely be more inclined to protect a particular instance of worker climate advocacy than a Republican-majority Board.²⁷³ This is especially true given the relative uncertainty surrounding the intersection between worker activity that implicates arguably political topics, like climate change, and the *Eastex* Standard.²⁷⁴

271. Emma Barudi, Note, *An Assumed Tradition: How the 3-2 Balance of the NLRB is More Than the Sum of Its Appointments and an Argument for its Continuation*, 26 NYU J. LEGIS. & PUB. POL'Y 817, 831–34 (2024).

272. *Id.* at 829–30, 833.

273. Recently, the independence of the NLRB has come under attack. In January 2025, President Trump removed the then-chair of the NLRB, Gwynne A. Wilcox, despite the existence of statutory for cause removal protections for NLRB board members. See Rebecca David O'Brien, *Trump's Cuts to U.S. Labor Board Leave Festering Disputes and a Power Struggle*, N.Y. TIMES (Dec. 15, 2025), <https://www.nytimes.com/2025/12/15/business/labor-law-nlr-trump.html> [<https://perma.cc/2286-YEUF>] (discussing Wilcox's removal); Alex Smith, *Labor Regulation and Agency Independence*, THE REG. REV. (Feb. 22, 2026), <https://www.theregreview.org/2026/02/22/spotlight-labor-regulation-and-agency-independence/> [<https://perma.cc/NEM3-3RQP>] (same). In December 2025, the D.C. Circuit upheld Wilcox's removal, finding that the statutory for cause removal protection for NLRB board members is unconstitutional. See *Harris v. Bessent*, 160 F.4th 1235, 1242 (D.C. Cir. 2025) (holding that Congress may not restrict the President's removal of principal officers wielding substantial executive power, including members of the NLRB). If the judgment stands, and the President is given the power to remove NLRB board members at will, the legal status of workplace climate advocacy under the NLRA would likely become more unstable. A Board with a Democratic majority might recognize such advocacy as protected activity, only for a subsequent Republican-majority Board to reverse course with relative ease. See Smith, *supra* (quoting Lauren McFerran, a former chair of the NLRB, arguing that that if the president is given at will removal powers over the NLRB "[t]here would be few constraints left on a new Board's ability to essentially wipe the labor law slate clean with each new administration."). That instability would, in turn, chill workers' willingness to engage in workplace climate advocacy by rendering the scope of protection difficult to predict. See *infra* note 284 and accompanying text.

274. See, e.g., Bateman, *supra* note 124, at 57 ("Until the Board gives further critical analysis and guidance . . . as to how different political activity effectuates the stated policy

Similarly, the Supreme Court's recent *Loper Bright Enterprises v. Raimondo* decision will likely also have implications for whether worker climate advocacy can be protected.²⁷⁵ *Loper Bright* overturned *Chevron* deference, which served as a cornerstone of administrative law.²⁷⁶ The *Chevron* regime, in practice, tended to favor administrative agency interpretations of their own organic statutes. Now, under *Loper Bright*, when a court reviews agency action, they "must exercise their independent judgement in deciding whether an agency has acted within its statutory authority."²⁷⁷ However, other forms of deference—for example, *Skidmore* deference—survive *Loper Bright*.²⁷⁸ Under this form of deference, courts, when reviewing an agency interpretation, could give weight to an agency's own interpretation.²⁷⁹ Ultimately, it is unclear what effects *Loper Bright* will have on administrative law generally and labor law specifically.²⁸⁰ But what is certain is that

goals of the Act, unions, employers, and employees alike are left to a case-by-case determination of the scope of Section 7's coverage of political activities.”).

275. 603 U.S. 369 (2024).

276. *Id.* at 412 (“*Chevron* is overruled.”). Under *Chevron*, when courts reviewed agency action (for example, an NLRB determination that a particular instance of worker climate advocacy is protected under the mutual aid and protection clause), they would apply a two-step inquiry. Thomas W. Merrill, *The Demise of Deference—and the Rise of Delegation to Interpret?*, 138 HARV. L. REV. 227, 228 (2024). First, the Court would determine whether Congress spoke directly to the issue in the case. If the answer was no, the Court would then determine whether the agency's interpretation of the statute was reasonable. If the agency's interpretation was reasonable, the Court would defer to the agency's interpretation. *Id.* *Loper Bright* followed a series of other recent decisions that also limited agency power, including the Court's holding that when agencies regulate major questions of political or economic importance, they must demonstrate that Congress explicitly and specifically authorized them to do so. See *W. Va. v. EPA*, 597 U.S. 697, 720–24 (2022); see also Daniel T. Deacon & Leah M. Litman, *The New Major Questions Doctrine*, 109 VA. L. REV. 1009, 1012 (2023) (“[T]he ‘new’ major questions doctrine operates as a clear statement rule. It directs courts not to discern the plain meaning of a statute using the normal tools of statutory interpretation, but instead to require explicit and specific congressional authorization for certain agency policies.”).

277. *Loper Bright Enters.*, 603 U.S. at 413.

278. Merrill, *supra* note 276, at 260–64 (discussing the ways in which *Skidmore* deference survives *Loper Bright*).

279. *Id.* at 266–67.

280. Cary Coglianese & Daniel E Walters, *The Great Unsettling: Administrative Law After Loper Bright*, 77 ADMIN. L. REV. 101, 104 (2024) (“*Loper Bright* has dramatically shaken up legal discourse in administrative law. Speculation abounds among legal scholars and lawyers about the possible future impacts of the Court's decision But we also see *Loper Bright* as unsettling in another key respect: We cannot know, at least for some time, whether or how much *Loper Bright* will matter to what administrative agencies are able to deliver by way of public value.”); see also Tascha Shahriari-Parsa, *How to Save the NLRA From Loper Bright*, LAB. NOTES (July 12, 2024), <https://onlabor.org/how-to-save-the-nlra-from-loper-bright/> [<https://perma.cc/7GSJ-LDGW>] (arguing that in the labor law context, the effect of *Loper Bright* will “in all likelihood modest”).

Loper Bright, at least when compared to *Chevron*, envisions a more active role for courts in reviewing agency determinations.

While considerable uncertainty remains about *Loper Bright*'s scope and application, the decision could affect whether climate advocacy is protected under the mutual aid and protection clause. First, if the Board determines that a particular instance of workplace climate advocacy is or is not protected under the mutual aid and protection clause, *Loper Bright* makes it easier for courts to overturn the NLRB's decision.²⁸¹ Second, and closely related to the first, *Loper Bright* makes it easier for a court to ignore *previous* Board decisions.²⁸² This is significant because it could alter the legal framework that a reviewing Court applies when determining whether worker climate advocacy is protected under the mutual aid and protection clause. For example, if the Board, relying on its *Nellis Cab Company* decision, determines that a group of workers who participated in a climate strike were engaged in protected activity, a reviewing court could exercise its own independent judgement and reject this interpretation. The court might instead conclude that the best reading of the mutual aid and protection clause and *Eastex* requires that an employer have direct control over the subject matter of a work stoppage before such activity can be protected under the NLRA.²⁸³

The political nature of the NLRB and the fast-changing nature of administrative law will likely impact whether an individual case

281. Merrill, *supra* note 276, at 266 (“*Loper Bright* is correct that judicial review that evaluates agency interpretations by considering the traditional canons or the *Skidmore* persuasion factors does not compel acceptance of agency interpretations to the same extent as did step two of *Chevron*.”). *Loper Bright* seems to suggest that Courts should determine whether Congress implicitly or expressly delegated interpretative authority to the particular administrative agency. See 603 U.S. at 395. Some scholars have suggested that if the Court determines Congress created such a delegation, then *Loper Bright* would constrain judges to accept the agency's interpretation unless it was unreasonable. See, e.g., Merrill, *supra* note 276, at 266 (“[A]gency decisions rendered pursuant to express or implicit delegations are ‘binding’ in roughly the same sense as an agency interpretation reviewed under step two of *Chevron*.”). Under this reading of *Loper Bright*, if a federal court determines that Congress delegated to the Board the interpretive authority to define the mutual aid and protection clause, the court could be more constrained in overturning a Board decision involving climate advocacy.

282. This is true, at least, for NLRB decisions that were not affirmed or otherwise upheld by a reviewing court. Board decisions that were affirmed by a reviewing court are still subject to *stare decisis*. See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024) (“[By overruling *Chevron*,] we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite our change in interpretive methodology.”).

283. See *supra* Part IV.C (discussing the 2006 memo's view of control).

of workplace climate advocacy is protected under the mutual aid and protection clause. Given this, workers who engage in workplace climate advocacy face significant legal uncertainty. This could have a chilling effect, making workers more hesitant to engage in this kind of activity.²⁸⁴

CONCLUSION

In a speech announcing the release of a United Nations report on global emissions, United Nations Secretary-General Antonio Guterres gave a stark prognosis: “We are teetering on a planetary tightrope. Either leaders bridge the emissions gap, or we plunge headlong into climate disaster . . . there can be no more playing for time. We’re out of time.”²⁸⁵ Climate change is one of the most urgent problems facing the world, if not the most urgent. Workers and unions, recognizing how climate change will adversely impact their interests, are becoming more active and vocal on the issue.²⁸⁶ As the climate continues to warm to dangerous levels, we will likely see even more workers begin to organize to protect themselves from climate change’s effects. Given this, it is crucial that the NLRA is applied in a way that helps, not hinders, the constituency the Act was intended to protect—workers.

284. However, this concern is not unique to workplace climate advocacy. Scholars have long criticized the ways that uncertainty in American labor law produces a chilling effect for worker activity. See, e.g., Joseph R. Landry, Note, *Fair Responses to Unfair Labor Practices: Enforcing Federal Labor Law Through Nontraditional Forms of Labor Action*, 116 COLUM. L. REV. 147, 152 (2016) (discussing how the legal ambiguity between intermittent strikes and partial strikes “chills the activity as though it were unprotected”).

285. ‘We’re Out of Time,’ Secretary-General Declares at Launch of Environment Programme Emissions Gap Report, Calling for Government to Take Action at Climate Conference, U.N. (Oct. 24, 2024), <https://press.un.org/en/2024/sgsm22422.doc.htm> [<https://perma.cc/YT83-ANW5>].

286. See *supra* Part I.B (discussing union and worker responses to climate change).