

THE TRUE “REALITY” FOR REALITY TELEVISION STARS: WHY
THEY DESERVE FEDERAL PROTECTION UNDER THE NATIONAL
LABOR RELATIONS ACT

*Bailee Gibbs**

INTRODUCTION

On September 3, 2024, the season finale of the reality dating television show *The Bachelorette* premiered live on American Broadcasting Company (ABC).¹ During the finale, both the live audience and those watching from home witnessed Jenn Tran—the season’s star—decide who to give her final rose to. Before the final rose ceremony and proposal to Devin Strader—the “winner” of the season—took place, viewers learned that after filming ended, but before the season finale aired, the couple had broken off their engagement. At the live finale, the couple faced each other in person for the first time, and viewers got a front row seat to Jenn’s heartbreak. Jenn appeared very upset by Devin’s actions and broke down several times on stage. After Jenn confronted Devin, Jesse Palmer, the show’s host, asked her whether she wanted to watch the engagement footage. She replied, “Do I have a choice?”² The producers then aired the footage and recorded Jenn sobbing while she watched back what was supposed to have been the happiest day of her life.³

Although Jenn later stated she knew the producers planned to show the footage that night, Jenn still felt very emotional during the moment.⁴ Reality television shows often create moments similar to this in which they exploit

* J.D. Candidate at the University of Louisville Brandeis School of Law, 2026; Senior Notes Editor, *University of Louisville Law Review*, Vol. 64. Bachelor of Arts in History and International Studies, University of Kentucky, 2023. Thank you to everyone who edited my Note and provided me with helpful feedback, especially my Vol. 63 Notes Editor, Alex Herm. Thank you to my dear friend, Megan Ryan, who never stops providing me with advice and support, and thank you to Nicole Childers and Brendan Lewis for always making me laugh in our “silly little club.” Also, I want to give a big shoutout to my reality television-obsessed friends, including Renee Probst, Emma Poole, Piper Eades, Rilee Bone, and Jessica Valiani, who continue to fuel my own obsession with reality television. I want to give a special thanks to my parents, Mickie and Eric Gibbs, and my younger brother, Barrett Gibbs, who have always been my number one cheerleaders. I love you all dearly. Finally, I want to dedicate this Note to Jenn Tran, the former *Bachelorette*, whose publicly televised heartbreak sent me down a rabbit hole and inspired this Note. I am always rooting for you and hoping you find your happily ever after!

¹ THE BACHELORETTE: *Finale & After the Final Rose* (ABC television broadcast, aired Sep. 3, 2024).

² *Id.*

³ *Id.*

⁴ Sarah Hearon, *Jenn Tran Says She Knew ABC Was Going to Air Her Proposal, Reacts to Devin Strader’s Lack of Emotion (Exclusive)*, US WEEKLY (Sep. 4, 2024), <https://www.usmagazine.com/entertainment/news/jenn-tran-wanted-devin-strader-to-have-to-watch-bachelorette-proposal/> [<https://perma.cc/QJ9W-4GD6>].

and profit off stars' trauma and emotions for entertainment purposes.⁵ Like most seasons of *The Bachelorette*, season 21 of the show allowed viewers to watch Jenn as she spent several weeks dating multiple men to find her forever partner.⁶ Throughout her journey, Jenn sent multiple men home each week, and viewers watched their breakups on the show.⁷ Jenn's ending on the show, however, felt different from past seasons, leaving many fans outraged and appalled that the producers subjected Jenn to publicly rewatching her proposal to Devin, even after the couple had made it clear that they had severed ties.⁸ Fans voiced their outrage online, commenting their frustrations about the producers' actions.⁹ Ben Higgins, a former Bachelor on season 20 of *The Bachelor*, voiced his opinion on the platform X, stating that it was "[a]bsolutely cruel and unnecessary to make her watch that back. Cannot believe it."¹⁰ Steve Carbone, known as Reality Steve, also voiced his opinion on the platform, stating that "[t]his is literally the worst thing this show has ever done."¹¹

Jenn's question to Jesse Palmer about whether she had a choice raises an interesting question: What rights and protections do reality television stars have?¹² During the 2023 Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) strike, Bethenny Frankel—a former *Real Housewives of New York* star—voiced her concerns regarding major discrepancies between protections afforded to scripted actors and those working on unscripted shows.¹³ She expressed that many unscripted stars, like scripted stars striking in the SAG-AFTRA strike, deserve full union protections in order to fight for more rights, and she campaigned for change

⁵ See discussion *infra* Part II.A.

⁶ THE BACHELORETTE: *Season 21* (ABC television broadcast, aired 2024).

⁷ *Id.*

⁸ Kristen Baldwin, *Bachelorette Fans Blast Producers for Making Jilted Jenn Watch Her Proposal*, ENTERTAINMENT WEEKLY (Sep. 4, 2024, at 13:32 ET), <https://ew.com/the-bachelorette-fans-blast-show-making-jenn-tran-watch-proposal-8705412> [<https://perma.cc/U496-5SU7>].

⁹ *Id.*

¹⁰ Benjamin Higgins (@benhiggi), X (Sep. 3, 2024, at 23:54 ET), <https://x.com/benhiggi/status/1831179105192300753> [<https://perma.cc/N2VX-SBJN>].

¹¹ Reality Steve (@RealitySteve), X (Sep. 3, 2024, at 22:41 ET), <https://x.com/RealitySteve/status/1831160551046549652> [<https://perma.cc/L45W-W4K2>].

¹² Throughout this Note, the terms "unscripted" and "reality" may be used interchangeably. However, the word "unscripted" is used as a more general term to describe all categories of the unscripted genre and to reference those who work on and for these shows. The terms "reality" and "reality television star" are used more to reference specific shows in which its stars are constantly filmed and recorded, often in controlled environments, and the content is edited later by producers who directly manipulate the stories and exploit the lives of those appearing on the shows.

¹³ See Lisa Respers France, *SAG-AFTRA Working to Cover Reality Stars in its Contract, with Bethenny Frankel Taking Charge*, CNN (Aug. 11, 2023, at 16:57 ET), <https://www.cnn.com/2023/08/11/entertainment/sag-reality-stars/index.html> [<https://perma.cc/W5CB-MX85>].

within the reality television realm of the entertainment industry.¹⁴ Frankel stated, “Just because you can exploit young, doe-eyed talent desperate for the platform TV gives them, it doesn’t mean you should.”¹⁵ She further explained the differences between reality stars and scripted stars on the social media platform TikTok, discussing the exploitation reality stars face and stating that “reality stars are the stepchildren, the losers, the mules, the pack horses. The ones that the entertainment industry is going to rely on, right now, to carry the water and do the heavy lifting when real stars, real A-list Hollywood, is on strike.”¹⁶

Other former reality television stars, like former *Love is Blind* contestant Jeremy Hartwell, have broken their silence on issues that reality television stars face, highlighting a need for further protections.¹⁷ For example, Hartwell alleged several labor-law violations that he and other contestants endured at the hands of the show’s producers, stating they fostered “inhumane working conditions” and paid the show’s cast members less than minimum wage.¹⁸

These violations occur, in part, because the federal government does not afford unscripted stars the same protections as those working in scripted television.¹⁹ The reasoning behind this difference is that reality television shows do not classify unscripted stars as “employees” under their contracts.²⁰ Rather, these shows classify them as independent contractors, often referring to them as participants or contestants.²¹ The National Labor Relations Act (NLRA), which guarantees employees the right to form unions and to bargain collectively, excludes independent contractors from any federally protected rights.²²

¹⁴ Ree Hines, *Is Bethenny Frankel’s Fight for a Union a Hit with Other Reality Stars?*, FORBES (Aug. 2, 2023, at 14:05 ET), <https://www.forbes.com/sites/reehines/2023/08/02/is-bethenny-frankels-fight-for-a-union-a-hit-with-other-reality-stars/> [https://perma.cc/J2FR-F6T9].

¹⁵ Marc Malkin, *Bethenny Frankel Calls for Reality Stars Union: ‘Networks and Streamers Have Been Exploiting People for Too Long’ (EXCLUSIVE)*, VARIETY (July 20, 2023, at 07:59 PT), <https://variety.com/2023/tv/news/bethenny-frankel-reality-union-strike-1235674531/> [https://perma.cc/6NXX-DNFV].

¹⁶ Video posted by Bethenny Frankel (@bethennyfrankel), TIKTOK (July 20, 2023), <https://www.tiktok.com/@bethennyfrankel/video/7257963592526646574> [https://perma.cc/YGP9-3UPC].

¹⁷ *‘Love Is Blind’ Contestant Lawsuit: Cast Members Denied Water, Plied with Alcohol, Underpaid*, AOL (July 14, 2022), <https://www.aol.com/news/love-blind-contestant-lawsuit-cast-131233213.html> [https://perma.cc/W7KU-J8ZE].

¹⁸ *Id.*

¹⁹ See Hannah Finnie, *The Sexism Behind Reality TV Performers’ Lack of Workers’ Rights*, ONLABOR (Jan. 17, 2025), <https://onlabor.org/the-sexism-behind-reality-tv-performers-lack-of-workers-rights/> [https://perma.cc/YB5F-EB3H].

²⁰ *Id.*

²¹ *Id.*

²² National Labor Relations Act (NLRA), 29 U.S.C. §§ 151–69.

This Note argues that those participating in modern reality television shows—who are constantly filmed and recorded, often in controlled environments, with the producers later editing the content to directly manipulate the storylines and exploit their lives for entertainment—deserve federal protection within the entertainment industry. Specifically, these types of reality television stars should be classified as “employees” rather than “independent contractors” in their contracts in order to receive labor protections and rights under the NLRA.²³

Part I of this Note provides background to help readers understand why reality television stars deserve protection under the NLRA. Part I.A provides the NLRA’s history and describes the newer and more pro-employee independent contractor classification test. Part I.B gives a brief history of the unionization of actors in Hollywood, drawing attention to the fact that actors forming unions is not a new concept. Then, Part I.C breaks down the history of reality television and the various categories within the genre, acknowledging the need for more federal protection for those working in modern reality television today.

Part II of this Note analyzes how reality stars are currently disadvantaged in the entertainment industry and deserve legal protection under the NLRA. Part II.A distinguishes the differences in treatment by the entertainment industry towards unionized scripted television actors and reality television stars, despite the similarities in their work. Part II.B then analyzes how reality stars receive little federal protection, specifically under the NLRA. They do not receive protection under the NLRA because reality television shows classify them as independent contractors instead of employees in their contracts. Part II.C acknowledges the counterarguments and major obstacles that reality television stars face while still maintaining the Note’s main argument that reality television stars deserve employment classification and protection and rights under the NLRA.

Part III then provides resolutions and suggestions. Part III.A provides two model amendments to the NLRA to establish a standard independent contractor classification test. Part III.A.1. provides a model amendment based on the ABC test, and Part III.A.2. provides a model amendment based on the *FedEx Home Delivery* test. Part III.B. focuses on the need for SAG-AFTRA to expand its union coverage to include reality television stars. Part III.C. discusses the importance of continued activism by reality television stars and their allies regarding union protection and the right to participate in collective bargaining.

The Note concludes by emphasizing the importance that reality stars receive the same rights and protections as most scripted actors receive under

²³ *Id.*

the NLRA, particularly their federal right to unionize and participate in collective bargaining.

I. BACKGROUND

First, this part discusses the NLRA, highlighting its history and purpose, and explains the current test for classifying as an independent contractor. Then, this part will focus on the history of actor unionization in Hollywood, highlighting the formation of SAG and AFTRA and discussing how the fight for rights and unionization of actors is common in Hollywood. Lastly, this part gives a general overview of reality television in the United States, providing a brief history and breaking down various formats within the reality television genre of the entertainment industry.

A. *The National Labor Relations Act*

At the federal level, Congress has passed many laws that provide workers with federal protection, including the NLRA.²⁴ Although this Note specifically focuses on the lack of NLRA protection for reality stars, these actors also deserve protection under other federal laws. Like the NLRA, the Fair Labor Standards Act (FLSA)—establishing standards like minimum wage and regulating overtime pay for employees²⁵—also has an employee classification test that most unscripted stars fail to satisfy, placing them at a disadvantage in the workforce.²⁶ While the FLSA is beyond the scope of this Note, acknowledging it before analyzing it is important to prevent any confusion between the two, especially because each has its own employee classification test.²⁷

1. NLRA: History and Purpose

During the 1930s, the United States dealt with the effects of the Great Depression.²⁸ At the start of the New Deal, President Franklin D. Roosevelt (FDR) believed that by putting better labor laws and regulations into place,

²⁴ *Id.*

²⁵ Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219.

²⁶ Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 89 Fed. Reg. 1638, 1743 (Jan. 10, 2024) (to be codified at 29 C.F.R. pts. 780, 788, 795) [<https://perma.cc/ZGG3-9U29>].

²⁷ *Id.*; Office of Public Affairs, *Board Modifies Independent Contractor Standard Under National Labor Relations Act*, NLRB (June 13, 2023), <https://www.nlr.gov/news-outreach/news-story/board-modifies-independent-contractor-standard-under-national-labor> [<https://perma.cc/3UUG-UM9S>].

²⁸ *See generally* Gary Riccharson, *The Great Depression*, FEDERAL RESERVE HISTORY (Nov. 22, 2013), <https://www.federalreservehistory.org/essays/great-depression> [<https://perma.cc/Q5PM-H6YB>] (explaining the various effects that the United States felt from the Great Depression).

American workers would not need or have to rely on unions.²⁹ This belief was the basis of the National Industrial Recovery Act (NIRA), which “sought to bring management, labor, and consumers together to create industrial codes that produced goods at a fair price, under fair working conditions, and resulted in a fair profit.”³⁰ In May of 1935, however, the United States Supreme Court struck down the NIRA, reasoning that the industrial codes within the Act were unconstitutional.³¹ All that remained after the ruling was a “weak Section 7(a),” a provision which “guaranteed workers the right of collective bargaining.”³²

U.S. Senator Robert F. Wagner believed in FDR’s New Deal and its goals.³³ After revising some of his previous labor dispute bills, Wagner introduced the NLRA, also known as the Wagner Act, in February 1935.³⁴ To Senator Wagner, he saw “the Act as a weapon against the Depression.”³⁵ Specifically, the Act restated Section 7(a) of the NIRA, which guaranteed the right of workers to collective bargaining.³⁶ Collective bargaining is “a process by which a labor organization...negotiates on behalf of employees with the employer over wages and other terms and conditions of employment (like health and safety, working hours, leave, anti-discrimination and anti-harassment policies, and health insurance).”³⁷ Senator Wagner thought that collective bargaining “would both restore an element of fairness and industrial democracy to the workplace, and redistribute wealth in such a way as to reinvigorate the economy.”³⁸ The Act also established the National Labor Relations Board (NLRB) to protect the right to collective bargaining, and the Act protected employees’ right to join and form unions.³⁹ Further, “[t]he measure endorsed the principles of exclusive representation and

²⁹ *FDR and the Wagner Act*, FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBRARY AND MUSEUM <https://www.fdrlibrary.org/wagner-act> [<https://perma.cc/UDL5-VXK9>] (last visited Aug. 13, 2025).

³⁰ *Id.*

³¹ *Id.*; A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935); see DOUGLAS E. RAY, ROBERT N. STRASSFELD & ARIANA R. LEVINSON, UNDERSTANDING LABOR LAW 12–13 (6th ed. 2025) (discussing the “ill-fated” NIRA).

³² *FDR and the Wagner Act*, *supra* note 29; see RAY, STRASSFELD & LEVINSON, *supra* note 31, at 12–14 (explaining that, even though the Supreme Court struck down the NIRA, the NLRA’s origins trace back to Section 7(a) of the NIRA).

³³ *FDR and the Wagner Act*, *supra* note 29; see RAY, STRASSFELD & LEVINSON, *supra* note 31, at 12–14 (explaining the history and purpose of the NLRA).

³⁴ *FDR and the Wagner Act*, *supra* note 29; 1935 *Passage of the Wagner Act*, NLRB, <https://www.nlr.gov/about-nlr/who-we-are/our-history/1935-passage-of-the-wagner-act> [<https://perma.cc/45QS-PA3B>] (last visited Aug. 13, 2025).

³⁵ RAY, STRASSFELD & LEVINSON, *supra* note 31, at 13.

³⁶ *FDR and the Wagner Act*, *supra* note 29; RAY, STRASSFELD & LEVINSON, *supra* note 31, at 13.

³⁷ *GC Collective Bargaining Resources*, NLRB, <https://www.nlr.gov/guidance/key-reference-materials/gc-collective-bargaining-resources> [<https://perma.cc/4BJD-5WM3>] (last visited Aug. 13, 2025).

³⁸ RAY, STRASSFELD & LEVINSON, *supra* note 31, at 13.

³⁹ *FDR and the Wagner Act*, *supra* note 29; RAY, STRASSFELD & LEVINSON, *supra* note 31, at 13–14.

majority rule, provided for enforcement of the Board's rulings, and covered most workers in industries whose operations affected interstate commerce.”⁴⁰

In May 1935, the United States Senate passed the NLRA.⁴¹ Then, in June 1935, the United States House of Representatives passed it.⁴² Finally, on July 5, 1935, FDR signed the Act, and the NLRA became law.⁴³ Following the passage of the NLRA, Congress has passed multiple acts to amend the NLRA, such as the Taft-Hartley Act and the Landrum-Griffin Act.⁴⁴

Since the formation of the NLRB under the NLRA, the agency has worked to “guarantee the rights of employees to bargain collectively, if they choose to do so,”⁴⁵ and to “prevent and remedy unfair labor practices committed by private sector employers and unions, as well as conducts secret-ballot elections regarding union representation.”⁴⁶ The NLRB’s decisions are crucial to enforcing the NLRA.⁴⁷

2. NLRA: Independent Contractor Classification Test

A person must be an employee to receive statutory protection under the NLRA.⁴⁸ A person with the “independent contractor” status does not receive statutory protection under the NLRA.⁴⁹ Although the NLRA does not provide a specific definition for an employee, the NLRB provides guidance as to whether a person qualifies as an employee or an independent contractor under the NLRA.⁵⁰ In 2023, the NLRB modified its independent contractor standard under the NLRA.⁵¹ In *The Atlanta Opera, Inc.*, the NLRB overruled its previous standard for determining a person’s independent contractor status established in *SuperShuttle DFW, Inc.*,⁵² returning to the standard established in *FedEx Home Delivery*.⁵³ In *FedEx Home Delivery*, the NLRB:

⁴⁰ *1935 Passage of the Wagner Act*, *supra* note 34.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *FDR and the Wagner Act*, *supra* note 29.

⁴⁴ RAY, STRASSFELD & LEVINSON, *supra* note 31, at 14–15 (providing details about amendments).

⁴⁵ *Our History*, NLRB, <https://www.nlr.gov/about-nlr/who-we-are/our-history> [<https://perma.cc/BD2L-Y8QG>] (last visited Aug. 13, 2025).

⁴⁶ *Who We Are*, NLRB, <https://www.nlr.gov/about-nlr/who-we-are> [<https://perma.cc/5MRX-8QSH>] (last visited Aug. 13, 2025).

⁴⁷ *See id.* (explaining the NLRB’s functions and responsibilities under the NLRA).

⁴⁸ *See* 29 U.S.C. § 152(3) [<https://perma.cc/9FGW-GC5J>] (explaining what the term “employee” includes and does not include under the NLRA).

⁴⁹ *See id.* (“The term ‘employee’...shall not include...any individual having the status of an independent contractor.”).

⁵⁰ Office of Public Affairs, *supra* note 27 (discussing the most recent decision by the NLRB to modify the NLRA’s independent contractor standard).

⁵¹ *Id.*

⁵² *The Atlanta Opera, Inc.*, 372 NLRB No. 95 (June 13, 2023) [<https://perma.cc/P8KA-TZHA>]; *see SuperShuttle DFW, Inc.*, 367 NLRB No. 75 (Jan. 25, 2019) [<https://perma.cc/X42N-ATXG>].

⁵³ *The Atlanta Opera, Inc.*, 372 NLRB No. 95 (June 13, 2023) [<https://perma.cc/P8KA-TZHA>]; *see FedEx Home Delivery*, 361 NLRB 610 (2014) [<https://perma.cc/32T2-7CU6>].

[R]eaffirmed longstanding principles—consistent with the previous instructions of the Supreme Court—and asserted that its inquiry would be guided by the nonexhaustive common-law factors enumerated in the Restatement (Second) of Agency, Section 220 (1958), and that “all of the incidents of the relationship must be assessed and weighed with no one factor being decisive.”⁵⁴

The list of factors from Section 220(2) of the Restatement is to be considered “[i]n determining whether one acting for another is a servant or an independent contractor.”⁵⁵ The Restatement states:

[T]he following matters of fact, among others, are considered:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work;

(b) whether or not the one employed is engaged in a distinct occupation or business;

(c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

d) the skill required in the particular occupation;

e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

(f) the length of time for which the person is employed;

(g) the method of payment, whether by the time or by the job;

(h) whether or not the work is a part of the regular business of the employer;

(i) whether or not the parties believe they are creating the relation of master and servant; and

(j) whether the principal is or is not in business.⁵⁶

⁵⁴ The Atlanta Opera, Inc., 372 NLRB No. 95, at 1 (June 13, 2023) (citing FedEx Home Delivery, 361 NLRB 610, at 168 (2014)) [<https://perma.cc/P8KA-TZHA>].

⁵⁵ The Atlanta Opera, Inc., 372 NLRB No. 95, at 2 (June 13, 2023) (citing RESTATEMENT (SECOND) OF AGENCY § 220(2) (A.L.I. 1958)) [<https://perma.cc/P8KA-TZHA>].

⁵⁶ *Id.*

The NLRB also stated it would consider entrepreneurial opportunity, along with the common-law factors.⁵⁷ The NLRB would:

(a) give weight only to actual, not merely theoretical, entrepreneurial opportunity; and (b) consider the “full constellation of considerations that the Board has addressed under the rubric of entrepreneurialism” by asking whether the evidence tends to show that a putative independent contractor is, in fact, rendering services as part of an independent business.⁵⁸

By reverting to the *FedEx Home Delivery* standard, the NLRB “rejected a Trump-era standard and reestablished a more worker-friendly legal test for determining who is an employee and who is an independent contractor under the NLRA.”⁵⁹ Currently, the NLRB still follows the *FedEx Home Delivery* standard,⁶⁰ but it may once again change under the second Trump Administration.⁶¹ For now, though, the *FedEx Home Delivery* standard is applicable, and the “worker-friendly” test favors classifying reality television stars as employees rather than independent contractors.⁶²

B. *Brief History of the Unionization of Actors in Hollywood*

Today, the labor union SAG-AFTRA represents approximately 160,000 entertainers, including actors, in the United States.⁶³ However, actors did not always receive union protection that they do now.⁶⁴ In fact, scripted actors had to come together and advocate for rights within the entertainment

⁵⁷ Office of Public Affairs, *supra* note 27; The Atlanta Opera, Inc., 372 NLRB No. 95, at 1 (June 13, 2023) [<https://perma.cc/P8KA-TZHA>].

⁵⁸ The Atlanta Opera, Inc., 372 NLRB 95, at 1 (June 13, 2023) (citing *FedEx Home Delivery*, 361 NLRB 619–21) [<https://perma.cc/P8KA-TZHA>].

⁵⁹ *Breaking Down the NLRB Decision in Atlanta Opera and Its Potential Impact on App-Based Ridehail and Delivery Workers*, NAT’L EMP. L. PROJECT (Oct. 10, 2023), <https://www.nelp.org/insights-research/breaking-down-the-nlrb-decision-in-atlanta-opera-and-its-potential-impact-on-app-based-ridehail-and-delivery-workers/> [<https://perma.cc/Z5KN-DX5F>].

⁶⁰ RAY, STRASSFELD & LEVINSON, *supra* note 31, at 23.

⁶¹ Michael J. Volpe et al., *Prepare for Pro-Employer Shift in Labor Law under the Trump Administration*, VENABLE LLP (Jan. 08, 2025), <https://www.venable.com/insights/publications/2025/01/prepare-for-pro-employer-shift-in-labor-law> [<https://perma.cc/7U4Z-292S>].

⁶² See Finnie, *supra* note 19 (“I’ve studied this issue from a legal perspective for years. No matter what production companies argue, the answer is clear: ‘Love Is Blind’ cast members are absolutely employees. They pass both prevailing tests for employee classification.”).

⁶³ *About*, SAG-AFTRA, <https://www.sagaftra.org/about> [<https://perma.cc/F6FF-K2XF>] (last visited Aug. 13, 2025).

⁶⁴ See generally *About: Our History*, SAG-AFTRA, <https://www.sagaftra.org/about/our-history> [<https://perma.cc/5EA7-B9V2>] (last visited Aug. 13, 2025) (providing the history of SAG-AFTRA).

industry, which is similar to what many unscripted actors are trying to do today.⁶⁵

In 1933, a group of actors founded the SAG, and Eddie Cantor and Ralph Morgan led the union as its first two presidents.⁶⁶ Actors formed SAG as a result of their disaffection with the Academy of Motion Picture Arts and Sciences (the Academy).⁶⁷ Producers originally created the Academy to represent their employees, and from 1927 to 1933, the Academy “functioned as the chief bargaining agent for screen actors.”⁶⁸ In 1933, though, the Academy failed actors by not protesting drastic salary pay cuts for studio and freelance actors.⁶⁹ Additionally, the Academy “approved the National Recovery Administration’s code for film industry, which was written by producers and included salary control and agency licensing provisions which the actors resented.”⁷⁰ In response, six actors—Berton Churchill, Grant Mitchell, Ralph Morgan, Charles Miller, Kenneth Thomson, and Alden Gay—met to discuss forming a self-governing union for film actors.⁷¹ On June 30, 1933, actors filed the articles of incorporation in Sacramento, California, and, on July 12, 1933, SAG incorporated in downtown Los Angeles, California.⁷² Eddie Cantor legitimized SAG when he convinced FDR “to suspend the salary control and agency licensing provisions” of the National Recovery Administration’s Motion Picture Code.⁷³ However, it was not until 1937 that producers recognized SAG and signed the first official SAG contract, which, among many things, established minimum pay for actors.⁷⁴ In June of that same year, radio artists started organizing, creating the Radio Artists Guild and the Radio Equity Division under Actors’ Equity.⁷⁵

⁶⁵ See generally *id.* (providing the history of SAG-AFTRA); *About: Mission Statement*, SAG-AFTRA, <https://www.sagaftra.org/about/mission-statement> [<https://perma.cc/7AWQ-S5PN>] (last visited Aug. 13, 2025) (explaining the mission statement of SAG-AFTRA).

⁶⁶ *About: 1930s*, SAG-AFTRA, <https://www.sagaftra.org/about/our-history/1930s> [<https://perma.cc/364C-LAZE>] (last visited Aug. 13, 2025).

⁶⁷ *Screen Actors Guild, New York Branch Records*, N.Y.U. LIBRARIES, https://findingaids.library.nyu.edu/tamwag/wag_178/ [<https://perma.cc/4A45-XKBT>] (last visited Aug. 13, 2025); Zhucheng Ding, *Labor Unions in the Entertainment Industry: WGA and SAG-AFTRA Strikes*, 15 MOD. ECON. 650, 657 (2024), https://www.scrip.org/pdf/me2024156_27203644.pdf [<https://perma.cc/6XNN-B47L>].

⁶⁸ *Screen Actors Guild, New York Branch Records*, *supra* note 67.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *About: 1930s*, *supra* note 66.

⁷² *Id.*

⁷³ *Screen Actors Guild, New York Branch Records*, *supra* note 67.

⁷⁴ *About: 1930s*, *supra* note 66.

⁷⁵ *American Federation of Television and Radio Artists (AFTRA) National Office Records*, N.Y.U. LIBRARIES, https://findingaids.library.nyu.edu/tamwag/wag_281/#:~:text=The%20union%20traces%20its%20origins,guilds%20and%20federations%20for%20performers [<https://perma.cc/F4U6-XC4B>] (last visited Aug. 13, 2025).

In August, the two organizations combined to form the American Federation of Radio Artists (AFRA) with Eddie Cantor as the first national president.⁷⁶

Jumping to 1950, the Associated Actors and Artistes of America adopted a resolution in which it vested all television jurisdiction in its trusteeship: the Television Authority (TVA).⁷⁷ In 1952, SAG defeated the TVA in “a final NLRB election over the jurisdiction of motion pictures filmed for television,” and then its “jurisdiction over filmed TV is acknowledged and ratified by the Associated Actors and Artistes of America.”⁷⁸ In response, the TVA merged with AFRA, becoming the American Federation of Television and Radio Artists (AFTRA) and gaining jurisdiction over live television.⁷⁹

In 1974, both SAG and AFTRA announced that each union appointed committees to study a possible merger of the unions in the future, and in 1978, meetings began to study the possibility of a merger.⁸⁰ It was not until 1998 that both SAG and AFTRA mailed the “first-ever SAG/AFTRA merger referendum to their respective memberships,” but in 1999, the merger referendum failed.⁸¹ In 2003, though, the SAG and AFTRA National Boards of Directors met and approved “a resolution to adopt a plan to consolidate the unions.”⁸² In 2011, the AFTRA National Board approved a resolution authorizing the union’s leadership to work with SAG to further explore a future merger of the unions.⁸³ Finally, on March 30, 2012, after members of both SAG and AFTRA received ballots regarding the potential merger, the members approved the merger of the two unions, creating SAG-AFTRA.⁸⁴

SAG-AFTRA’s history shows that scripted actors were not always protected in Hollywood.⁸⁵ Instead, they fought and eventually gained union protection, and SAG-AFTRA continually fights for their rights in today’s entertainment industry.⁸⁶ Therefore, the concept of actors fighting for rights and union protection is not new, and attempts by people like Bethenny Frankel to extend union protection to stars working in unscripted television

⁷⁶ *Id.*; see *About: 1930s*, *supra* note 66.

⁷⁷ *About: 1950s*, SAG-AFTRA, <https://www.sagaftra.org/about/our-history/1950s> [<https://perma.cc/AK23-DD2M>] (last visited Aug. 13, 2025).

⁷⁸ *Id.*

⁷⁹ *Id.*; *American Federation of Television and Radio Artists (AFTRA) National Office Records*, *supra* note 75.

⁸⁰ *About: 1970s*, SAG-AFTRA, <https://www.sagaftra.org/about/our-history/1970s> [<https://perma.cc/5TRS-UMSY>] (last visited Aug. 13, 2025).

⁸¹ *About: 1990s*, SAG-AFTRA, <https://www.sagaftra.org/about/our-history/1990s> [<https://perma.cc/8KJV-V28C>] (last visited Aug. 13, 2025).

⁸² *About: 2000s*, SAG-AFTRA, <https://www.sagaftra.org/about/our-history/2000s> [<https://perma.cc/Q85Z-RGS4>] (last visited Aug. 13, 2025).

⁸³ *About: 2010s*, SAG-AFTRA, <https://www.sagaftra.org/about/our-history/2010s> [<https://perma.cc/PX9L-G5KU>] (last visited Aug. 13, 2025).

⁸⁴ *Id.*

⁸⁵ See generally *About*, *supra* note 63 (showing the evolution of actors’ labor protections).

⁸⁶ See *About: Mission Statement*, *supra* note 65.

should not be considered unachievable.⁸⁷ In fact, SAG-AFTRA supports Bethenny Frankel’s fight for union coverage and clarified that some reality performers are actually covered under their Network Code Agreement; however, not all reality performers are currently covered under the Agreement.⁸⁸ Whether or not coverage exists under the SAG-AFTRA Network Code Agreement depends on the structure of the production and the performers involved.⁸⁹ Currently, shows under the Agreement include, “*Good Morning America, The Young and the Restless, Jeopardy, Saturday Night Live, The Masked Singer, The Voice, Dancing With the Stars, Last Week Tonight With John Oliver, the Academy Awards, and the Super Bowl, to name a few.*”⁹⁰ So, not all unscripted shows are covered under the Agreement, leaving many unscripted actors without union protection.⁹¹ Without protection from either SAG-AFTRA or the NLRA,⁹² many unscripted actors are left vulnerable in the entertainment industry.⁹³ The level of vulnerability and issues that unscripted actors face depend largely on the type of unscripted television show the actor is working on.⁹⁴

C. Unscripted Television

This part of the Note gives a condensed history of how the unscripted television genre, including the subgenres and categories, developed over time. Although there is no single, clear definition for the unscripted format of television, Pulitzer Prize winner Emily Nussbaum provides a great description of the genre.⁹⁵ She writes:

I conceive the genre [reality programming] as “dirty documentary”: It’s cinéma vérité filmmaking that has been cut with commercial contaminants, like a street drug, in order to slash the price and intensify the effect. Reality

⁸⁷ See Bethenny Frankel (@bethennyfrankel), *supra* note 16.

⁸⁸ Wendy Lee, *Will Reality TV Stars Unionize? SAG-AFTRA Throws Support Behind Bethenny Frankel*, L.A. TIMES (Aug. 10, 2023, at 09:17 PT), <https://www.latimes.com/entertainment-arts/business/story/2023-08-10/sag-aftra-bethenny-frankel-reality-tv-stars-actors-strike> [<https://perma.cc/WAA3-YLCU>].

⁸⁹ *SAG-AFTRA Statement on the Representation and Protection of Reality Performers*, SAG-AFTRA (Aug. 9, 2023), <https://www.sagaftra.org/sag-aftra-statement-representation-and-protection-reality-performers> [<https://perma.cc/U2WA-QKF8>].

⁹⁰ *SAG-AFTRA and Producers Agree to a One-Year Extension of the Network Television Code*, SAG-AFTRA (Aug. 16, 2024), <https://www.sagaftra.org/sag-aftra-and-producers-agree-one-year-extension-network-television-code-0> [<https://perma.cc/EYQ9-Z84C>].

⁹¹ *Id.*

⁹² See discussion *supra* Part I.A.

⁹³ See Bethenny Frankel (@bethennyfrankel), *supra* note 16.

⁹⁴ See discussion *infra* Part I.C.

⁹⁵ *My Story*, OFFICIAL WEBSITE OF WRITER EMILY NUSSBAUM, <https://www.emilynussbaum.com> [<https://perma.cc/4WCP-28CC>] (last visited Aug. 13, 2025).

programs are shows that merge documentary techniques with some more rigid, easily repeatable approach to storytelling, like the game show or the soap opera, the talent contest or the sports competition—old-school episodic structures that were native to serialized radio and television. Cast real people, in other words—then put a tight frame around them, and squeeze.⁹⁶

This part of the Note does not provide an all-inclusive list of every unscripted show or type of unscripted show, but it describes the more popular formats and describes the evolution of the unscripted genre into the modern-day reality television format.

1. History

Despite unscripted television in the U.S. gaining the most momentum in the early 2000s, the concept of unscripted entertainment began in the late 1940s with radio shows.⁹⁷ Some radio shows invited regular people onto their shows, sparking a new audience participation format.⁹⁸ Audience participation radio shows like *Queen for a Day* (1945) became so popular that the programs later transitioned to television.⁹⁹ Early audience participation radio shows like *Candid Microphone* (1947)—which later became *Candid Camera* after jumping to television—might have even “provided a blueprint for future reality producers.”¹⁰⁰ Early producers and creators helped develop future reality television techniques and tools, such as Allen Funt inventing “the hidden-camera stunt and the producer-provocateur.”¹⁰¹

Starting with *Queen for a Day*—which transitioned to television in 1956—game show programming became one of the earliest popular forms of unscripted television.¹⁰² An early favorite in this category was *The Dating Game* (1965), which became an “instant smash hit.”¹⁰³ In the show, an eligible bachelor or bachelorette asked a series of questions to three different single contestants who all hid behind a wall, and at the end of the episode,

⁹⁶ EMILY NUSSBAUM, CUE THE SUN!: THE INVENTION OF REALITY TV xv (2024).

⁹⁷ See *id.* at 1–28 (providing the basic history of unscripted entertainment).

⁹⁸ *Id.* at 5–6.

⁹⁹ *Id.* at 8. See generally Amber Watts, ‘Queen for a Day’: Remaking Consumer Culture, *One Woman at a Time*, in THE GREAT AMERICAN MAKEOVER: TELEVISION, HISTORY, NATION 141–57 (Dana Heller ed., 2006) (providing further background about *Queen for a Day*).

¹⁰⁰ See NUSSBAUM, *supra* note 96, at 12, 14.

¹⁰¹ *Id.* at 13.

¹⁰² *Id.* at 8, 49.

¹⁰³ *Id.* at 32.

the bachelor or bachelorette chose who they wanted to take on a date.¹⁰⁴ The show's most famous contestant was serial killer Rodney Alcala, who participated on the show in the middle of his killing spree and was a convicted sex offender, highlighting the lack of background checks in early unscripted television.¹⁰⁵ Chuck Barris, creator of *The Dating Game*, produced many other popular game shows during this period of time—e.g., *The Newlywed Game*, *The Family Game*, *The Parent Game*—and also developed *The Gong Show* (1976), which was a popular talent contest.¹⁰⁶

Even as these shows gained traction, the show that really transformed the unscripted television landscape was *An American Family* (1973).¹⁰⁷ According to Emily Nussbaum, “[i]f *Candid Camera* had launched the prank show, and *Queen for a Day* the game show, *An American Family* would initiate the third, and maybe the most powerful, thread of reality programming: the real-life soap opera.”¹⁰⁸ One season long, the show followed the lives of the Loud Family—Bill Loud, Pat Loud, and their five children—from Santa Barbara, California.¹⁰⁹ The show's filmmakers, Alan and Susan Raymond, followed the cinéma vérité approach to filming the show, which is a filmmaking philosophy that if, “you recorded with your camera and microphone for long enough, with enough patience, eventually, the truth would emerge.”¹¹⁰ Most of *An American Family*'s episodes did not have any narration, and the episodes' pacing often felt “slow and dreamy, even meditative.”¹¹¹ Still, the editors of *An American Family* included some devices—e.g., using a voiceover by the eldest son, Lance Loud, and including home movies from Pat Loud's childhood—to help guide the show's viewers.¹¹² The most vulnerable and impactful scenes in *An American Family* included the divorce scene between Bill and Pat Loud and the eldest son

¹⁰⁴ *Id.* at 31–33.

¹⁰⁵ *Id.* at 44; see also Michael Levinson & Eduardo Medina, *Rodney Alcala, the 'Dating Game' Serial Killer, Dies*, N. Y. TIMES (July 24, 2021) (providing further details about the life of Rodney Alcala).

¹⁰⁶ See NUSSBAUM, *supra* note 96, at 36–41. See generally CHUCK BARRIS, *CONFESSIONS OF A DANGEROUS MIND: AN UNAUTHORIZED AUTOBIOGRAPHY* (1984) (providing a more in-depth, personal account by Chuck Barris about his career).

¹⁰⁷ See generally Jason Landrum & Deborah Carmichael, *Jeffrey Ruoff's An American Family: A Televised Life, Reviewing the Roots of Reality Television*, 32 *FILM & HIST: INTERDISC. J. FILM & TELEVISION STUD.* 66 (2002) (discussing the show's significance for the unscripted television genre).

¹⁰⁸ NUSSBAUM, *supra* note 96, at 49.

¹⁰⁹ *Id.* at 51–52.

¹¹⁰ *Id.* at 53. See generally Shelley Gabert, *2010 IDA Pioneer Award-- Reality TV's Original Tag Team: Alan and Susan Raymond*, INT'L DOCUMENTARY ASS'N (Dec. 02, 2010), <https://www.documentary.org/feature/2010-ida-pioneer-award-reality-tvs-original-tag-team-alan-and-susan-raymond> [<https://perma.cc/LPK5-VQ5K>] (giving further background information about the careers of Alan and Susan Raymond).

¹¹¹ NUSSBAUM, *supra* note 96, at 62.

¹¹² *Id.*

Lance Loud’s “coming out” scene to his mother, Pat.¹¹³ Although the show was short-lived, drawing both praise and criticism,¹¹⁴ *An American Family* played an important part in the history of reality television.¹¹⁵

Despite the popularity of unscripted shows throughout the decades, the reality genre still did not actually exist.¹¹⁶ Rather, each program that aired—like *The Dating Game* and *An American Family*—was “viewed as its own thing, a one-off fad, a gimmick that came and went,” and “[t]hese shows had left no legacy—and, more crucially, no institutional structure.”¹¹⁷ In the late 1980s, during the 1988 Writers Guild of America (WGA) labor strike, *Cops* and *America’s Funniest Home Videos (AFHV)* each made its debut on television as “clip shows.”¹¹⁸ These shows “jump-started the reality genre, which had been static for nearly a decade.”¹¹⁹ Still, the show that really pioneered reality television was MTV’s *The Real World*.¹²⁰ In the first season of the show, which debuted in 1992, six cast members—“Adam Wacht, a long-haired rocker; Dizzy, a pork-pie-swearing rapper; Eamee, a ‘free spirit’; and Peter Reisfeld, a bartender at the divey Raccoon Lodge...Janel Scarborough, a *Club MTV* dancer, and Tracy Grandstaff, a twenty-two-year-old MTV employee,”—moved into an loft-style apartment together.¹²¹ Cameras recorded the group, and in addition to the microphones placed throughout the apartment to pick up the sound, each cast member wore microphones.¹²² This show was different than anything that came before it because the show was not “pure cinéma vérité,” yet it was not true scripted television—the show implemented “a form of puppeteering, of social

¹¹³ *Id.* at 54–56.

¹¹⁴ *See id.* at 65–81 (discussing both the praise and criticism the show received).

¹¹⁵ Landrum & Carmichael, *supra* note 107, at 68 (“Indeed, the hybrid formal style of *An American Family* provides the model for subsequent reality based television shows.”).

¹¹⁶ NUSSBAUM, *supra* note 96, at 89.

¹¹⁷ *Id.* at 90.

¹¹⁸ *Id.* at 89. *See generally* *America’s Funniest Home Videos: Audience-Generated Content That Is Curated To Bring The Most Humorous Real-Live Moments To Viewers Around The World*, NAB HALL OF FAME, <https://nab.org/hof/inductees/americasFunniestHomeVideos.asp> [<https://perma.cc/H6F2-CVKA>] (last visited Aug. 14, 2025) (providing a brief premise of the show and explaining how *AFHV* viewers can watch “humorous real-life moments” on the show); Sophie Gilbert, *The Unreality of ‘Cops’*, THE ATLANTIC (June 13, 2020), <https://www.theatlantic.com/culture/archive/2020/06/cops-was-reality-show-cherry-picked-reality/613012/> [<https://perma.cc/N2DP-YZGW>] (providing details of the nature and premise of *Cops*).

¹¹⁹ NUSSBAUM, *supra* note 96, at 98.

¹²⁰ Emily Nussbaum, *How ‘The Real World’ Created Modern Reality TV*, THE NEW YORKER (June 15, 2024), <https://www.newyorker.com/culture/the-weekend-essay/how-the-real-world-created-modern-reality-tv#:~:text=> [<https://perma.cc/2AYT-BQ6Q>]; *see also* Randee Dawn, *It’s been 30 years since ‘The Real World’ Introduced Reality TV. How things have Changed*, L.A. TIMES (June 20, 2022), <https://www.latimes.com/entertainment-arts/awards/story/2022-06-20/reality-tv-has-changed-since-real-world> [<https://perma.cc/YH3C-Y93L>] (explaining how reality television has evolved over the years since the start of *The Real World*).

¹²¹ NUSSBAUM, *supra* note 96, at 118–19.

¹²² *Id.* at 119; Benjamin Svetkey, *A Look Inside MTV’s ‘Real World,’* ENT. WKLY. (June 5, 1992), <https://ew.com/article/1992/06/05/look-inside-mtvs-real-world/> [<https://perma.cc/4TUL-VKPR>].

engineering.”¹²³ Some producers wanted to create drama, while others on the show’s crew did not agree with tainting reality, including co-director Bill Richmond, who felt their ideas were “f***ing with reality.”¹²⁴ Despite the show’s fabrication of true reality, the show became a massive hit and kickstarted the now dominant format of modern reality television: “a composite of fly-on-the-wall scenes and cast members’ one-on-one interviews with producers, selectively edited to create a coherent narrative with clearly define characters.”¹²⁵ The show’s creators, Mary-Ellis Bunim and Jonathan Murray, through Bunim/Murray Productions, later launched spin-offs of *The Real World* and produced more experimental reality programs like *Keeping Up with the Kardashians* and *The Simple Life*.¹²⁶ Jon Murray saw that “his biggest accomplishment wasn’t helping to invent a new kind of television, it was creating a new type of viewer...[r]eality was what they preferred.”¹²⁷

This preference became evident as the surplus of reality shows started airing on television in the 1990s and particularly in the 2000s.¹²⁸ Some shows like *Who Wants to Marry a Millionaire* flopped,¹²⁹ which some critics believed to be an indication of the demise of the reality genre.¹³⁰ However, one show changed the reality genre forever: *Survivor* (2000).¹³¹ The show was “the first to take the reality genre mainstream in the United States, turning the fringe, faddish phenomenon of ‘dirty documentary’ into a legitimate institution. If *The Real World* had modernized the genre, *Survivor* supersized it.”¹³² The premise of the show is that castaways are dropped off on an island and divided into different tribes, leaving them to face the challenges both the island and the show throw at them.¹³³ Drawing inspiration

¹²³ NUSSBAUM, *supra* note 96, at 125.

¹²⁴ *Id.*

¹²⁵ Judy Berman, *Reality TV Has Reshaped Our World, Whether We Like It or Not*, TIME (Aug. 4, 2022), <https://time.com/collection/reality-tv-most-influential-seasons/6199108/reality-tv-influence-on-world/> [<https://perma.cc/H2BG-FUZL>].

¹²⁶ NUSSBAUM, *supra* note 96, at 144; see Mike Flaherty, *Mary-Ellis Bunim and Jonathan Murray*, TELEVISION ACAD., <https://www.televisionacademy.com/features/news/hallfame/mary-ellis-bunim-and-jonathan-murray> [<https://perma.cc/BW4L-9FQ3>] (last visited Aug. 14, 2025).

¹²⁷ NUSSBAUM, *supra* note 96, at 145–46.

¹²⁸ See generally *id.* at 147–387 (giving an in-depth background to reality television in the 1990s and 2000s).

¹²⁹ *Id.* at 162–68 (discussing *Who Wants to Marry a Millionaire*); see also Ty Burr, *Why Marrying a Millionaire on TV Is a Lousy Idea*, ENT. WKLY. (Feb. 23, 2000), <https://ew.com/article/2000/02/23/why-marrying-millionaire-tv-lousy-idea/> [<https://perma.cc/BY5G-KC3R>] (explaining why *Who Wants to Marry a Millionaire* flopped).

¹³⁰ NUSSBAUM, *supra* note 96, at 170 (“[T]he press gleefully celebrated the death of reality TV...[t]o the casual observer, it looked like the genre was flat-lining, at last.”).

¹³¹ See *About Survivor*, CBS, <https://www.cbs.com/shows/survivor/about/> [<https://perma.cc/G3Z5-NHFV>] (last visited Aug. 14, 2025) (providing the basic premise of the show).

¹³² NUSSBAUM, *supra* note 96, at 171.

¹³³ See *About Survivor*, *supra* note 131.

from an international reality phenomenon,¹³⁴ the show was unique because it combined the game show, prank, and soap opera categories of unscripted television into programming that captured the attention of American viewers.¹³⁵ The show was also a breakthrough for the genre due to its unique “situationism” approach to manipulating reality, in which the creators built “an artificial setting so self-contained, a story was forced to blossom inside it.”¹³⁶ However, there are some allegations of producer interference early in the show’s history.¹³⁷

Around the same time that *Survivor* began, the U.S. version of *Big Brother* (2000) aired after originally debuting in 1999 in the Netherlands.¹³⁸ The premise of the show is that contestants, cut off from the outside world, live together in a house where cameras and microphones record and pick up everything, and each week, someone is voted off the show until the last person left in the house wins the grand prize.¹³⁹ What differentiates the *Big Brother* concept from the *Survivor* concept is that the cameras on *Big Brother* live-stream content 24 hours a day, and the show runs on television a few times a week.¹⁴⁰

As the 21st century kicked into gear, the entertainment industry developed more variations and sub-genres of unscripted television, “cracking the foundations of Hollywood.”¹⁴¹ More notable shows from the early to mid-2000s include the following: *American Idol* and *Dancing with the Stars* (talent competition); *The Osbournes*, *Keeping Up with the Kardashians* (*KUWTK*), and *The Simple Life* (celebrity); *The Amazing Race* (travel competition); and *The Bachelor* and *The Bachelorette* (dating show).¹⁴² Reality shows also started to define television channels like Bravo.¹⁴³ Bravo made the reality genre a part of its brand, airing shows like *Queer Eye*, *Project Runway*, and the *Real Housewives* franchise.¹⁴⁴ Additionally, reality television gave big names even bigger platforms, allowing the Kardashians

¹³⁴ NUSSBAUM, *supra* note 96, at 172.

¹³⁵ *Id.* at 171.

¹³⁶ *Id.* at 209. See generally Martin Holmes, *Birth of a Phenomenon — An Oral History of Survivor: Borneo*, INSIDE SURVIVOR (May 29, 2020), <https://insidesurvivor.com/birth-of-a-phenomenon-an-oral-history-of-survivor-borneo-43932> [<https://perma.cc/8SNZ-5F7S>] (providing a more in-depth history of *Survivor*).

¹³⁷ See NUSSBAUM, *supra* note 96, at 225–29.

¹³⁸ *Id.* at 234, 237; see also *About Big Brother*, CBS, https://www.cbs.com/shows/big_brother/about/ [<https://perma.cc/B854-YDPF>] (last visited Aug. 14, 2025) (providing the basic premise to *Big Brother*).

¹³⁹ See Jen. A. Hughes, *25 Seasons of Big Brother: An Ode to the Unexpected*, THE HARV. CRIMSON (Nov. 10, 2023), <https://www.thecrimson.com/article/2023/11/10/big-brother-25-seasons-retrospective-thinkpiece-cultural-time-capsule/> [<https://perma.cc/K9GN-Z5E7>].

¹⁴⁰ *Id.*

¹⁴¹ See NUSSBAUM, *supra* note 96, at 268.

¹⁴² *Id.* at 267–73.

¹⁴³ *Id.* at 356.

¹⁴⁴ See generally *id.* at 333–60 (explaining how Bravo created its brand through reality television shows).

to build their empire through *KUWTK*¹⁴⁵ and Donald Trump to develop his businessman persona through *The Apprentice*, helping him pave the path for his eventual political endeavors.¹⁴⁶

Today, unscripted television is just as popular, with new reality television shows continually developing, like *The Golden Bachelor*, *Love Island USA*, and *Love Is Blind*.¹⁴⁷ The continual popularity has a lot to do with this new generation of fans: “A new audience, which had grown up watching these franchises, had fully embraced the genre, as a genre, without expecting it to be something it wasn’t.”¹⁴⁸ Whether people favor *The Bachelor* or prefer *Survivor*, there is one commonality between all the fans:

Reality [television] had become a shared language, a way to talk about who they were and what they valued, what was fair and what was authentic, a debate conducted in in-jokes and memes, podcasts and charticles, and through group text and office talk. Like all gossip, it was a coded way to talk about politics, large and small.¹⁴⁹

Even though reality television sparked a new, shared language, the genre has greatly expanded and offers a wide array of different formats.¹⁵⁰

2. Unscripted Television Formats

There is no defined list of unscripted television categories; however, Emily Nussbaum breaks down the genre into a few basic styles, and she also shows how many of the initial styles of reality programming began to overlap

¹⁴⁵ See Lisette Voytko-Best, *How Kris Jenner Made The Kardashians Famous, Rich And Insanely Influential*, FORBES (Oct. 14, 2022), <https://www.forbes.com/sites/lisettevoytko/2022/10/14/how-kris-jenner-made-the-kardashians-famous-rich-and-insanely-influential/> [https://perma.cc/42JZ-CKQN].

¹⁴⁶ See James Poniewozik, *Donald Trump Was the Real Winner of ‘The Apprentice’: Critic’s Notebook*, N. Y. TIMES (Sep. 28, 2020), <https://www.nytimes.com/2020/09/28/arts/television/trump-taxes-apprentice.html> [https://perma.cc/4NV7-U454]; NUSSBAUM, *supra* note 96, at 360–87 (discussing how Donald Trump build his brand through this show).

¹⁴⁷ See *About: The Golden Bachelor*, ABC, <https://abc.com/show/2f373056-b668-40aa-b653-009d1c3cc055/about-the-show> [https://perma.cc/NF3R-SMXJ] (last visited Aug. 14, 2025) (providing the basic premise of *The Gold Bachelor*); Yana Grebenyuk, *All the Behind-the-Scenes Secrets and Production Revelations You Didn’t Know About ‘Love Island’*, US WEEKLY (June 7, 2025), <https://www.usmagazine.com/entertainment/news/love-island-rules-and-behind-the-scenes-secrets-you-didnt-know/> [https://perma.cc/RZ2G-B7G8] (providing the basic premise and details about the *Love Island* shows); Meredith Woerner, *How Netflix’s New Reality Series ‘Love Is Blind’ Works*, VARIETY (Feb. 14, 2020), <https://variety.com/2020/tv/news/netflix-love-is-blind-pods-rules-1203504741/> [https://perma.cc/9PYR-5NFN] (providing the basic premise of *Love Is Blind*).

¹⁴⁸ NUSSBAUM, *supra* note 96, at 392.

¹⁴⁹ *Id.*

¹⁵⁰ *See id.*

over time.¹⁵¹ The basic reality formats that Nussbaum mentions include the game show (e.g., *Queen for a Day*), the prank show (e.g., *Candid Camera*), and the soap opera (e.g., *An American Family*).¹⁵² As time went on and as producers began to manipulate reality more, hybrids of the three basic formats began to develop, including *Survivor*, *The Bachelor*, and *The Real World*.¹⁵³ Although some new shows embodied the hybrid format, others developed their own subgenres and subcategories, including, but certainly not limited to, the celebrenity genre (e.g., *The Osbornes*),¹⁵⁴ the talent contest genre (e.g., *American Idol*),¹⁵⁵ the militainment genre (e.g., *Military Diaries*),¹⁵⁶ and the meta reality genre (e.g., *Jury Duty*).¹⁵⁷

The biggest development in the unscripted television genre is the modern reality television format: Reality stars are constantly filmed and recorded, often in controlled environments, and producers edit the content at a later time.¹⁵⁸ Depending on the show, producers have much control over manipulating the storyline, which can ultimately impact its stars both physically and mentally.¹⁵⁹ For instance, producer Ben Hatta “compared his work with the cast members to the movie *Inception*, to ‘planting seeds’ ‘doing therapy,’ and also ‘doing a little puppeteering.’”¹⁶⁰ He often urged cast members to echo his words, capturing what they said and making the words seem like they were the cast members’ own words.¹⁶¹ Hatta explained, “You created television!... You don’t have that power in any other genre.”¹⁶²

As a genre, unscripted television has greatly expanded beyond the three “original categories”—the game show, the prank show, and the soap opera¹⁶³—and has produced many shows that portray a warped reality yet still appeal to audiences as reality television.¹⁶⁴ Despite the evolution of the

¹⁵¹ See generally NUSSBAUM, *supra* note 96 (explaining throughout the entirety of the book the different styles).

¹⁵² *Id.* at 49.

¹⁵³ *Id.* at 125, 171.

¹⁵⁴ *Id.* at 283.

¹⁵⁵ *Id.* at 279.

¹⁵⁶ *Id.* at 281.

¹⁵⁷ *Id.* at 296, 301.

¹⁵⁸ See generally NUSSBAUM, *supra* note 96 (showing throughout the entire book how modern reality television developed and evolved into what it is today).

¹⁵⁹ See Samantha Karpman, *Sign Your Name on the Dotted Line...Is Netflix's Squid Game Something More than Mere Child's Play?*, 39 *TOURO L. REV.* 449, 452 (2024) (comparing *Squid Games* to reality television, explaining that “[w]hile the various forms of reality television are not tantamount to an actual death game, viewers of these shows sit back in their homes and watch participants subject themselves to physical and/or emotional harm for pure entertainment—just like the *Squid Games* VIPS.”).

¹⁶⁰ NUSSBAUM, *supra* note 96, at 327–28.

¹⁶¹ *Id.* at 328.

¹⁶² *Id.*

¹⁶³ *Id.* at 49.

¹⁶⁴ *Id.* at 393 (comparing reality television viewers to viewers in *The Truman Show*: “If something on a reality show looked fake, well, that was part of the fun, since they were in on it. If something looked genuine, that was wonderful, too. For these viewers, there was no controversy—any qualms

genre, the law has failed to keep up—in fact, federal labor laws have generally never truly protected reality television stars.¹⁶⁵ This is detrimental for unscripted actors, particularly those working on shows where producers actively manipulate the storylines and directly influence their personal lives.¹⁶⁶ Although federal protections are greatly needed across the entire genre of unscripted television, including protections for those working behind the scenes, the remainder of this Note will focus on the modern reality television format and the reality stars working on those shows.

II. ANALYSIS: REALITY TELEVISION STARS ARE DISADVANTAGED IN THE ENTERTAINMENT INDUSTRY AND DESERVE STATUTORY PROTECTION UNDER THE NATIONAL LABOR RELATIONS ACT

First, this part will discuss the ways in which the entertainment industry treats reality stars, calling attention to the abuse reality television stars face despite the modern reality television format sharing similarities to the scripted television format. Then, this part will highlight the lack of federal laws—specifically federal labor laws—protecting reality television stars, arguing that reality stars deserve protection under the NLRA. Lastly, this part acknowledges the criticism and obstacles that reality stars face in achieving federal protection under the NLRA, maintaining that reality stars still deserve labor rights guaranteed by the NLRA—particularly, the right to unionize and participate in collective bargaining.

A. *How the Entertainment Industry Treats Reality Television Stars Compared to Unionized Actors*

In 2023, when the SAG-AFTRA union could not reach a new collective bargaining agreement with the Alliance of Motion Picture and Television Producers for more than its 160,00 members, SAG-AFTRA went on strike.¹⁶⁷ SAG-AFTRA president Fran Drescher made the following statement:

about the medium had faded, long ago. The most successful reality show had it all: a titillating flash of authentic, framed by the dark glitter of the fake, like a dash of salt in dark chocolate. No taste was harder to resist.”)

¹⁶⁵ See Finnie, *supra* note 19.

¹⁶⁶ See discussion *infra* Part II.

¹⁶⁷ See Samantha Delouya, *Why Celebrities Are Striking: The Average Pay for Actors May Surprise You*, CNN (July 17, 2023, at 09:58 ET), <https://www.cnn.com/2023/07/17/business/hollywood-actors-sag-aftra-strike-by-the-numbers/index.html> (July 17, 2023, at 09:58 ET) [<https://perma.cc/BZ6K-V4LX>]; Katherine Imp & Sergio Ingato, *SAG-AFTRA Strike: The Strike Rules, and the Exceptions*, DLA PIPER (July 18, 2023), <https://www.dlapiper.com/en-us/insights/publications/2023/07/sag-aftra-strike-the-strike-rules-and-the-exceptions> [<https://perma.cc/2QLR-UYTL>].

We stand in solidarity in unprecedented unity. Our union and our sister unions and the unions around the world are standing by us, as well as other labor unions. Because at some point, the jig is up. You cannot keep being dwindled and marginalized, disrespected and dishonored. The entire business model has been changed by streaming, digital, AI. This is a moment of history that is a moment of truth. If we don't stand tall right now, we are all going to be in trouble. We are all going to be in jeopardy of being replaced by machines and big business who cares more about Wall Street than you and your family.¹⁶⁸

On November 9, 2023, the SAG-AFTRA strike ended after 118 days.¹⁶⁹ The new contract that SAG-AFTRA approved provided for streaming bonuses and pay raises for its members.¹⁷⁰ Specifically, the contract stipulated that performers would earn a seven percent increase in wages immediately, followed by smaller increases in 2024 and 2025.¹⁷¹ The contract also stipulated that actors working on streaming projects would earn “a success payment” on top of residual payments if the projects gained significant viewership.¹⁷²

This deal, orchestrated by SAG-AFTRA, represents the power of collective bargaining and the lengths the union would go to prevent further exploitation of its union members in the changing entertainment industry.¹⁷³ Yet, there is no powerful intermediary like SAG-AFTRA for most reality television stars.¹⁷⁴ More often than not, the entertainment industry exploits reality television stars for all they are worth—“they’re going to get as much

¹⁶⁸ YAHOO FINANCE, *Hollywood Actors Union Holds News Conference Following SAG-AFTRA National Board Meeting* (YouTube, July 13, 2023), <https://www.youtube.com/watch?v=m9oj02dVe0Y> [<https://perma.cc/3EKV-W3V4?type=standard>].

¹⁶⁹ Lindsay Lowe & Candice Williams, *The SAG-AFTRA Strike in Hollywood, Explained*, TODAY, (Nov. 11, 2023, at 11:54 ET) <https://www.today.com/popculture/hollywood-actors-sag-strike-2023-explained-rcna94122> [<https://perma.cc/A34M-HEWT>]; Yasmin Rufo, *Hollywood Actors’ Union SAG-AFTRA Ratifies Strike-Ending Contract*, BBC (Dec. 6, 2023), <https://www.bbc.com/news/entertainment-arts-67613609> [<https://perma.cc/U96K-G3CS>].

¹⁷⁰ Danielle Broadway & Lisa Richwine, *Actors Ratify Three-Year Contract, Ending Hollywood’s Labor Turmoil*, REUTERS (Dec. 6, 2023, at 4:43 ET), <https://www.reuters.com/business/media-telecom/hollywood-actors-union-ratifies-three-year-contract-after-strike-2023-12-06/> [<https://perma.cc/8X88-7SM9>].

¹⁷¹ Megan Cerullo, *The SAG-AFTRA Strike is over. Here Are 6 Things Actors Got in the New Contract.*, CBS NEWS (Nov. 14, 2023, at 11:09 ET), <https://www.cbsnews.com/news/sag-aftra-contract-deal-agreement-actors-ai/> [<https://perma.cc/TB4U-2T2G>].

¹⁷² *Id.*

¹⁷³ See *Member Benefits: Benefits of Membership: Contracts/Collective Bargaining*, SAG-AFTRA [hereinafter *Benefits of Membership*], <https://www.sagaftra.org/membership-benefits/member-benefits> [<https://perma.cc/S829-7JGC>] (“SAG-AFTRA negotiates wages and working conditions in order to maintain minimum standards for its members.”).

¹⁷⁴ See discussion *supra* Part I.B.

milk out of the cows as they [can] because it's legal.”¹⁷⁵ SAG-AFTRA President Fran Drescher's chilling words to its members—that “[y]ou cannot keep being dwindled and marginalized, disrespected and dishonored”—have always applied to the way the entertainment industry has treated reality television stars.¹⁷⁶

Today's modern reality television format—the way it's filmed, the story editing, the casting style—is like scripted television, yet the entertainment industry still treats reality television stars differently than scripted actors.¹⁷⁷ The true reality for reality television stars is that these shows exploit them and subject them to abuse that physically and mentally impacts them during both filming and after production concludes.¹⁷⁸ Thus, these stars deserve union protection just like scripted actors receive under SAG-AFTRA.

1. Modern Reality Television is Similar to Scripted Television

The modern reality television format has certainly evolved far from the *cinéma vérité* style of filmmaking present in *An American Family*.¹⁷⁹ In fact, many early reality television shows like *The Real World* never truly utilized the pure *cinéma vérité* style.¹⁸⁰ Similar to scripted shows, the casting stage of reality television shows is crucial, and shows cast people to fill certain character roles.¹⁸¹ Producers and casting directors may look for people who fit the “villain” role or similar, adversarial roles like the “slacker, to ensure there is enough conflict in the show.”¹⁸² For instance, in *The Bachelor* franchise, every season seems to have a villain.¹⁸³ Some of the villains, like Luke Parker from Hannah Brown's season of *The Bachelorette*, receive much hate and criticism from the fans, while other villains, like Corinne Olympios from Nick Viall's season of *The Bachelor*, are villainized but still liked by

¹⁷⁵ Malkin, *supra* note 15.

¹⁷⁶ YAHOO FINANCE, *supra* note 168.

¹⁷⁷ See discussion *supra* Part I.C.

¹⁷⁸ MORE PERFECT UNION, *Inside Love Is Blind's Brutal Conditions on Set* (YouTube, Aug. 3, 2023), <https://www.youtube.com/watch?v=DaMOpPBNqbs> [[https://perma.cc/5HHN-497S?type=standard](https://perma.cc/5HHN-497S)]; THE JOURNAL, “*Love Is Blind*” Is Back. Not All the Drama Is On-Screen., WALL ST. J. (Feb. 12, 2025, at 16:52 ET), <https://www.wsj.com/podcasts/the-journal/love-is-blind-is-back-not-all-the-drama-is-on-screen/34EAE025-FADB-42B2-9FEB-17C040768DC8> [<https://perma.cc/LC23-B7J7>].

¹⁷⁹ NUSSBAUM, *supra* note 96, at 53.

¹⁸⁰ *Id.* at 125.

¹⁸¹ Nikki Cole, *TV/Film Production Realities in the Scripted and Unscripted Worlds: Part 3, Casting*, PRO VIDEO COALITION (June 26, 2020), <https://www.provideocoalition.com/tv-film-production-realities-casting-in-the-scripted-and-unscripted-worlds/> [<https://perma.cc/P926-KAUK>].

¹⁸² *Casting Secrets for Reality TV: Finding Compelling Personalities*, C&I (Jan. 19, 2024), <https://c-istudios.com/casting-secrets-for-reality-tv-finding-compelling-personalities/> [<https://perma.cc/E3U8-2EE2>].

¹⁸³ See Gabbi Shaw, *22 of the Most Dastardly “Bachelor” and “Bachelorette” Villains, Ranked*, BUSINESS INSIDER (Mar. 8, 2022, at 12:48 ET), <https://www.businessinsider.com/biggest-bachelor-villains-ranked-2019-1> [<https://perma.cc/FT4L-H2KM>].

the fans.¹⁸⁴ While some seem to naturally fill the villain role, others like Lea Cayan—one of the mean girls from Joey Graziadei’s season of *The Bachelor*—seem to be a ““producer plant.””¹⁸⁵

This type of casting existed from the very start of *The Real World*—e.g., some of the character types in the first season included the rapper, the free-spirit, the bartender, and the dancer.¹⁸⁶ Even though *The Real World* found its season one stars through posted flyers,¹⁸⁷ the casting process for most modern reality television shows is very controlled.¹⁸⁸ For example, Pat from *The Real World: Cancun* stated that casting directors sat those applying to the show in “groups of ten, asking questions like ‘Describe yourself in one word.’ People clearly knew what the producers were looking for.”¹⁸⁹ Some cast members really understand “reality TV-making better than others,” and some, like Omarosa Manigault from *The Apprentice*, embraced their specific roles from the start.¹⁹⁰

Modern reality television show producers continue to maintain much control by overly editing the shows and nudging reality stars to speak or act in certain ways, going beyond cinéma vérité and entering a realm of direction and manipulation.¹⁹¹ A lot of the dialogue they capture is not natural, but it instead comes about from producers “guiding” the direction of the dialogue by, as Michael Carroll, a former producer on *The Bachelor*, explained, “nudging to keep them within the guide rails and on the street of where we’re going.”¹⁹² Carroll further stated that it was all about “asking them the question that I wanted to hear back because that made it very simple, direct, and expeditious for me to get what I wanted. Otherwise, we’d have been watching paint dry for 24 hours and we’d have been like, we got nothing today, you know?”¹⁹³ An anonymous, former cast member of a reality television show stated that if the producers “want you to talk about something that makes you super uncomfortable, which they most likely will, you’re

¹⁸⁴ *Id.*; see also EYES WIDE OPEN WITH NICK THOMPSON, *My Reality TV Villain Edit Destroyed My Life with Olivia Frazer* (YouTube, Dec. 12, 2023), <https://www.youtube.com/watch?v=x-d7WXuaRZU> [<https://perma.cc/HU7N-X5DZ>] (discussing another reality star who received the villain edit, which negatively impacted her life).

¹⁸⁵ Inga Parkel, *Bachelor Fans Accuse Producers of “Manufacturing Drama” with “Mean Girl” Contestant*, INDEPENDENT (Feb. 15, 2024, at 17:26 ET), <https://www.the-independent.com/arts-entertainment/tv/news/the-bachelor-lea-joey-b2496954.html> [<https://perma.cc/CG4E-N6VW>].

¹⁸⁶ NUSSBAUM, *supra* note 96, at 118.

¹⁸⁷ *Id.*

¹⁸⁸ George Chrysostomou, *MTV’s The Real World: 10 Fakest Things About the Show, According to Cast & Crew*, SCREEN RANT (Dec. 7, 2022), <https://screenrant.com/mtv-the-real-world-fakest-things-about-according-to-cast-crew/> [<https://perma.cc/ZWT3-A9JV>].

¹⁸⁹ *Id.*

¹⁹⁰ NUSSBAUM, *supra* note 96, at 367 (“Like Richard Hatch and Dr. Evil before her, Omarosa Manigault embraced the role of troublemaker from the start.”).

¹⁹¹ See discussion *supra* Part I.C.2.

¹⁹² THE JOURNAL, *supra* note 178.

¹⁹³ *Id.*

going to be talking about that.”¹⁹⁴ Even though reality television does not produce scripted dialogue, the dialogue is fabricated because producers want to “make good TV.”¹⁹⁵ So, producers guide reality stars to act and speak in certain ways, then they edit “storylines to drum up drama for the season.”¹⁹⁶

Even the sets are highly controlled by producers, similar to scripted television.¹⁹⁷ For instance, cameras and microphones are placed throughout sets to capture as much footage and dialogue as possible.¹⁹⁸ In *The Real World*, star Tracy Grandstaff found “the process unsettling: Every two hours, a sound guy would tap her on the shoulder, then take her into the bathroom, lift her shirt, and change her mic’s battery pack . . . [s]he worried about hidden cameras.”¹⁹⁹ An anonymous, former reality television star commented that “[t]here were just cameras in your face constantly.”²⁰⁰ Some stars, though, forget the cameras are even there.²⁰¹ Leslie Hughes from Sean Lowe’s season of *The Bachelor* revealed that their mics were “on [them] all the time. As soon as you wake up in the morning, your mic is put on you . . . [w]hen you go to bed, it’s taken off.”²⁰²

Some shows control the set by cutting people off from the real world.²⁰³ In *Love Is Blind*, the show takes the stars’ phones, wallets, IDs, and passports.²⁰⁴ In *The Bachelor*, producers take their phones away to cut them off from the real world to curate a perfect “bubble,” which is supposed to be “an atmosphere that was intended to focus the women’s emotions entirely on the bachelor.”²⁰⁵ Producers also select or develop spaces for their shows that they can easily manipulate and control—for *Survivor*, the space is the island;²⁰⁶ for *Big Brother*, the space is the *Big Brother* House;²⁰⁷ for *Love Is Blind*, the spaces are separate pods.²⁰⁸

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Karpman, *supra* note 159, at 510.

¹⁹⁷ THE JOURNAL, *supra* note 178

¹⁹⁸ See discussion *supra* Part I.C.

¹⁹⁹ NUSSBAUM, *supra* note 96, at 119.

²⁰⁰ THE JOURNAL, *supra* note 178.

²⁰¹ NUSSBAUM, *supra* note 96, at 309.

²⁰² Mehera Bonner & Gretty Garcia, *61 Wild Rules You Didn’t Know ‘Bachelor’ and ‘Bachelorette’ Contestants Have to Follow*, COSMOPOLITAN (Jan. 23, 2025), <https://www.cosmopolitan.com/entertainment/tv/g30851505/bachelor-contestant-rules/> [<https://perma.cc/34JC-UTC7>].

²⁰³ See MORE PERFECT UNION, *supra* note 178.

²⁰⁴ *Id.*

²⁰⁵ NUSSBAUM, *supra* note 96, at 309.

²⁰⁶ See discussion *supra* Part I.C. (“[A]n artificial setting so self-contained, a story was forced to blossom inside it.”)

²⁰⁷ Sabrina Picou & Kevin Quinitchett, *Home Sweet Studio? Where Is the Big Brother USA House?*, U.S. SUN (July 16, 2024, at 12:26 ET), <https://www.the-sun.com/tv/5716580/where-is-the-big-brother-house/> [<https://perma.cc/4LE7-B2XN>] (“The *Big Brother USA* house is actually Sound Stage 18 in the CBS Studios Center.”)

²⁰⁸ MORE PERFECT UNION, *supra* note 178.

It is evident that, through producers’ control of the shows’ casting processes, edits, storylines, and sets, modern reality television is more like scripted television than pure cinéma vérité filmmaking. Yet, the entertainment industry still differentiates reality television from scripted television,²⁰⁹ allowing exploitation to occur and exposing reality television stars to abuse that unionized actors are protected from.²¹⁰

2. Reality Television Stars Are Subjected to Abuse & Unethical Practices

As previously mentioned, networks are “going to get as much milk out of the cows as they could because it’s legal.”²¹¹ Yet, the way these shows’ producers treat reality television stars is not always legal or ethical, as evidenced by past reality television stars’ efforts to sue the television shows and networks.²¹² Reality television stars have alleged many types of abuse and unethical practices that they have been or are still subjected to by producers and production companies.²¹³ Much of the abuse and unethical practices involve unsafe working conditions, sexual misconduct, and inadequate pay.²¹⁴

For instance, in a recent lawsuit—settled for around \$1.4 million—Jeremy Hartwell alleged unpaid wages and various labor violations pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* against himself and other *Love Is Blind* castmates.²¹⁵ Additionally, *The Bachelor* franchise and *Below Deck Down Under* have dealt with their fair share of sexual misconduct allegations.²¹⁶ Nick

²⁰⁹ See Lee, *supra* note 88 (discussing how reality television stars are treated differently).

²¹⁰ Malkin, *supra* note 15.

²¹¹ *Id.*

²¹² See Hillel Aron, ‘*Love is Blind*’ Cast Member Reaches \$1.4 Million Settlement with Netflix in Class Action over Unpaid Wages, COURTHOUSE NEWS SERV. (May 10, 2024), <https://www.courthousenews.com/love-is-blind-cast-member-reaches-1-4-million-settlement-with-netflix-in-class-action-over-unpaid-wages/> [<https://perma.cc/25ZY-K6TE>]; Amanda Cort, *Get Real: The Tension Between Stardom and Justice for Reality Television Participants*, 13 NYU J. INTELL. PROP. & ENT. L. 421, 436–444 (July 8, 2024), <https://jipel.law.nyu.edu/get-real-the-tension-between-stardom-and-justice-for-reality-television-participants/#IIIB1> [<https://perma.cc/AS6K-BRQ5>].

²¹³ See generally Cort, *supra* note 212 (providing many examples of alleged abuses and unethical practices).

²¹⁴ *Id.* at 429.

²¹⁵ Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and Certification for a Settlement Class, at 1–2, *Hartwell v. Kinetic Content, LLC*, No. 22STCV21223 (Cal. Super. Ct. County of Los Angeles May 8, 2024), <https://www.courthousenews.com/wp-content/uploads/2024/05/Hartwell-Netflix-motion-approval-settlement.pdf> [<https://perma.cc/68X2-EAZD>].

²¹⁶ See Tierney Bricker, “*Bachelor in Paradise*” Shocking Scandal: Everything We Know, E! NEWS (June 20, 2017), <https://www.eonline.com/news/860463/bachelor-in-paradise-shocking-scandal-everything-we-know> [<https://perma.cc/D9QX-HXBJ>]; Gina Ragusa, *Captain Jason Reveals “Below Deck Down Under” Season 3 Changes After Attempted Sexual Assault by Crew Member*, ENTERTAINMENT WEEKLY (Feb. 3, 2025, at 16:39 ET), <https://ew.com/below-deck-down-under-captain->

Thompson alleged that while on *Love Is Blind*, he was not “getting adequate food or water despite asking,” and that he had “lost like 15 pounds over the course of a couple weeks.”²¹⁷ He noticed the weight loss about two weeks into the show when he put on his newly tailored suit, and it was very loose.²¹⁸ Producer Michael Carroll admitted that there were times on *The Bachelor* that they should have probably fed the girls more, but they were trying to stay on schedule.²¹⁹ So, stopping for food would interfere with keeping on schedule.²²⁰

Further, producers provide alcohol on many of these shows, which they use to their advantage to get great content, despite seeming unethical at times—Braunwyn Windham-Burke from *The Real Housewives of Orange County* stated that although the “producers ‘don’t force you to drink,’ alcoholic beverages were ‘readily available’ and that sometimes during scenes, cast members were discouraged from eating.”²²¹ Producer Michael Carroll stated that alcohol was like “truth serum,” and that “[t]hey’re a little more apt to speak their mind and to say what they feel, and they’ll probably be a little more emotional when there’s alcohol involved.”²²²

These abuses and unethical practices can negatively impact reality television stars during filming and after it wraps.²²³ The nature of reality television filming can also leave lasting effects on reality television stars.²²⁴ Lauren Speed Hamilton explained that she went through “‘Phantom Mic and Camera Syndrome,’” and that she thought she was still “being filmed and recorded, so it could be a lot.”²²⁵ Additionally, the way producers edit the storylines and the stars’ personas may lead to backlash and harassment from viewers towards the reality stars, impacting them mentally and also creating a legitimate safety issue.²²⁶ Sydney Gordon from Joey’s season of *The Bachelor* shared that she received much harassment after the show aired,

jason-season-3-changes-after-attempted-sexual-assault-by-crew-member-8784467
[<https://perma.cc/7383-4GN6>].

²¹⁷ THE JOURNAL, *supra* note 178.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Cort, *supra* note 212, at 430.

²²² THE JOURNAL, *supra* note 178.

²²³ Abby Wargo, Opinion, *Reality Television Is Harmful to Participants’ Mental Health*, THE ELM (Mar. 5, 2020), <https://blog.washcoll.edu/wordpress/theelm/2020/03/reality-television-is-harmful-to-participants-mental-health/> [<https://perma.cc/N8DR-SMKE>].

²²⁴ See Olivia Jakiel & Kelsey Barberio, ‘*Love Is Blind’s* Lauren Speed Hamilton Shares Her Thoughts on 24-Hour Camera Surveillance (Exclusive)’, PARADE (Feb. 13, 2025, at 09:52 ET), <https://parade.com/entertainment/love-is-blind-lauren-speed-hamilton-thoughts-24-hour-camera-surveillance-exclusive> [<https://perma.cc/FZC2-HXUW>].

²²⁵ *Id.*

²²⁶ See ‘*The Bachelor Drama*’ Between Maria, Sydney, and Lea: Everything You Need to Know, GLAMOUR (Feb. 19, 2024), <https://www.glamour.com/story/the-bachelor-drama-maria-sydney-lea-joey> [<https://perma.cc/YY92-VHBJ>]; EYES WIDE OPEN WITH NICK THOMPSON, *supra* note 184.

stating that she didn’t know she “could feel this low in [her] entire life.”²²⁷ For example, she was told by one fan that she would “be better off dead.”²²⁸ She went on to state that “[w]hen you are sending hate to me or another cast member, you may hate the character that was created on the show but who’s actually receiving that hate is a real human being.”²²⁹

Although there are some efforts on behalf of the shows and production companies to make changes,²³⁰ many of these abuses and unethical practices still occur.²³¹ Producer Michael Carroll explained that as a producer, he is a “compassionate human being,” and that producers are not evil.²³² At times, he could see that he was “really messing with these girls,” and was “manipulating them and tricking them.”²³³ Yet, reality television stars are still subjected to abuse and unethical practices, all in the name of creating good television.²³⁴

Despite reality television shows and producers subjecting stars to abuse and unethical practices, there are few lawsuits because many “potential plaintiffs would rather stay quiet than risk their careers.”²³⁵ Many lawsuits fall short due to mandatory arbitration contract clauses or courts refraining from “‘examining contracts for unconscionability’ to avoid encroaching on the parties’ freedom of contract.”²³⁶ Similarly, suits that may have some merit and “would result in the most damage to production companies” often will settle outside the courtroom, so “potential future plaintiffs are harmed by these settlements because they do not have any precedent to rely on in future litigation.”²³⁷ Thus, reality television shows continue to operate as they always have, and without the union protection afforded to reality television stars like SAG-AFTRA affords to scripted actors, the reality television genre continues to occupy “its own weird, lawless corner of the entertainment industry where anyone without the resources of a *Real Housewife* is legally allowed to be screwed.”²³⁸ If it took SAG-AFTRA one hundred days to strike a fair deal for its members back in 2023,²³⁹ then how are reality television

²²⁷ Video posted by Sydney Gordon (@syd_gord), INSTAGRAM (Feb. 12, 2024), <https://www.instagram.com/p/C3RZBTgMmH6/> [<https://perma.cc/E4H5-28RK>].

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ See Ragusa, *supra* note 216.

²³¹ *Id.*; THE JOURNAL, *supra* note 178.

²³² THE JOURNAL, *supra* note 178.

²³³ *Id.*

²³⁴ See generally Cort, *supra* note 212 (discussing the abuse and unethical practices in reality television).

²³⁵ Cort, *supra* note 212, at 436.

²³⁶ *Id.* at 439.

²³⁷ *Id.* at 444.

²³⁸ Kathleen Walsh, *Reality TV Stars aren’t Paid like Employees, and That’s Practically Fraud*, IN STYLE (Mar. 10, 2020, at 19:30 ET), [<https://perma.cc/9WDH-CHUP>].

²³⁹ Lowe & Williams, *supra* note 169.

stars expected to fight for better working conditions and wages without any union protection? Although SAG-AFTRA does cover some reality performers,²⁴⁰ it is crucial that reality television stars gain federal protection under the NLRA.²⁴¹

B. The NLRA Must Cover Modern Reality Television Stars

Unlike scripted actors, reality television stars do not receive much protection under federal labor and employment laws because reality television shows intentionally fail to classify them as employees.²⁴² In the stars' contracts, the shows and production companies classify them as independent contractors, participants, or contestants.²⁴³ Although this small difference in classification may not seem like much, it “can mean a world of difference in the rights of reality TV performers on set.”²⁴⁴ The NLRA states that it does not cover independent contractors.²⁴⁵ So, gaining employment status under the NLRA guarantees reality television stars statutory protection to form unions and collectively bargain.²⁴⁶ Additionally, “[b]eing an employee under the NLRA means that they can discuss their working conditions with each other without fearing retaliation,” and an employment classification would limit the “scope of non-disclosure agreements (“NDAs”) and other confidentiality terms.”²⁴⁷ “Receiving an employment classification is crucial, especially because many reality television stars lack these rights and protections guaranteed by the NLRA; in fact, some contracts state that, as non-employees, reality television stars are not covered by union or collective bargaining agreements and are limited in what they can discuss due to confidentiality clauses.”²⁴⁸

Although the thought of reality television stars receiving employment classification may seem outlandish to some,²⁴⁹ the NLRB seems to find merit in the argument.²⁵⁰ In fact, the NLRB filed a complaint against Delirium TV, LLC, and Kinetic Content, LLC, in December 2024, stating that *Love Is Blind*

²⁴⁰ See discussion *supra* Part I.C.2.

²⁴¹ 29 U.S.C. §§ 151–69 [https://perma.cc/9FGW-GC5J].

²⁴² Finnie, *supra* note 19.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ 29 U.S.C. § 152(3) [https://perma.cc/9FGW-GC5J].

²⁴⁶ 29 U.S.C. §§ 151–69 [https://perma.cc/9FGW-GC5J].

²⁴⁷ Emma Bowman, “*Love Is Blind*” Cast Are Employees, Labor Board Says. Could a Reality TV Union Be Next?, NPR (Dec. 17, 2024, at 05:00 ET), <https://www.npr.org/2024/12/17/nx-s1-5229111/love-is-blind-housewives-reality-labor-union> [https://perma.cc/L9FC-Z9HC].

²⁴⁸ Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, NLRB v. Delirium TV, LLC and Kinetic Content, LLC, No. 18-CA-322098 (2024), [https://perma.cc/EU87-L8WN]; THE JOURNAL, *supra* note 178.

²⁴⁹ See discussion *contra* Part II.C.

²⁵⁰ Bowman, *supra* note 247.

employees had been misclassified as participants in their contracts and should be reclassified as employees.²⁵¹ This NLRB complaint came about after “[f]ormer *Love Is Blind* contestants Nick Thompson and Renee Poche filed separate unfair labor practice complaints to the board last year.”²⁵² In the answer to the complaint, the production companies argued their participants were not employees, so the NLRA had not been violated.²⁵³ The case was supposed to have been heard in April 2025, but the judge recently approved a motion to reschedule the hearing.²⁵⁴ Industry experts believe, though, that if a judge does rule in favor of the reality television stars in this case, then “it could totally transform the way reality TV gets made.”²⁵⁵

Even though a settlement can take place before a judge ever hears the case,²⁵⁶ there is a good chance that a judge would rule in favor of modern reality television stars like *Love Is Blind* contestants Nick Thompson and Renee Poche in light of the current, pro-employee independent contractor test used to evaluate cases under the NLRA.²⁵⁷ Consider the following analysis based on the NLRB’s current complaint against Delirium TV, LLC, and Kinetic Content, LLC, which applies the *FedEx Home Delivery* independent contractor test to *Love Is Blind* reality television stars.²⁵⁸

Based on Section 220(2) of the Restatement (Second) of Agency factors, *Love Is Blind* performers have grounds to argue that they are employees rather than independent contractors.²⁵⁹ Regarding factors (a) and (e), they do not have a lot of control over the creation of the show.²⁶⁰ For instance, producers take away their personal items like passports and phones when they arrive, and they are locked in hotel rooms without the keys.²⁶¹ They do not have readily available access to food or water, and they are filmed eighteen to twenty hours a day.²⁶² In fact, producers have the right to “videotape, film, portray, photograph and otherwise record” the *Love Is Blind*

²⁵¹ Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, NLRB v. Delirium TV, LLC and Kinetic Content, LLC, No. 18-CA-322098 (2024), [https://perma.cc/EU87-L8WN].

²⁵² Bowman, *supra* note 247.

²⁵³ Respondents’ Amended Answer to Consolidated Complaint, NLRB v. Delirium TV, LLC and Kinetic Content, LLC, No. 18-CA-322098 (2024), [https://perma.cc/LHK8-68LG].

²⁵⁴ *Delirium TV, LLC and Kinetic Content, LLC, Single and/or Joint Emps.*, NLRB, https://www.nlr.gov/case/18-CA-322098 [https://perma.cc/2TFF-96TE] (last visited Aug. 14, 2025).

²⁵⁵ THE JOURNAL, *supra* note 178.

²⁵⁶ Bowman, *supra* note 247.

²⁵⁷ See Finnie, *supra* note 19 (“No matter what production companies argue, the answer is clear: “Love Is Blind” case members are *absolutely* employees.”); see also *Breaking Down the NLRB Decision in Atlanta Opera and Its Potential Impact on App-Based Ridehail and Delivery*, *supra* note 59 (discussing how the current independent contractor classification test is more “worker-friendly”).

²⁵⁸ See discussion *contra* Part I.A.2.

²⁵⁹ The Atlanta Opera, Inc., 372 NLRB No. 95 (June 13, 2023) (citing RESTATEMENT (SECOND) OF AGENCY § 220(2) (A.L.I. 1958)) [https://perma.cc/P8KA-TZHA].

²⁶⁰ See THE JOURNAL, *supra* note 178; MORE PERFECT UNION, *supra* note 178.

²⁶¹ See THE JOURNAL, *supra* note 178; MORE PERFECT UNION, *supra* note 178.

²⁶² See THE JOURNAL, *supra* note 178; MORE PERFECT UNION, *supra* note 178.

performers “on, and up to, a 24-hours-a-day, 7-days-a-week basis” in the course of their actual lives.²⁶³ Producers keep them in this state where they “have no idea how much time has transpired.”²⁶⁴ Despite the show being unscripted, producers often manufacture the way scenes play out and exert full control over the editing process in post-production.²⁶⁵ On *Love Is Blind*, explained by Jeremy Hartwell, “They have a product they’re trying to make and a product they’re trying to sell, and we are the raw materials that they’re crafting to create that product.”²⁶⁶

Analyzing factors (b), (c), (d), (h), and (j) together, the *Love Is Blind* performers are hired to work as the talent on the reality television show,²⁶⁷ and viewers watch *Love Is Blind* to see couples fall in love in unique scenarios.²⁶⁸ *Love Is Blind* performers do not work in roles that are distinct from the show, but instead, they work in main roles under the supervision of producers,²⁶⁹ helping create one of the most popular dating shows around the globe.²⁷⁰ Although some performers may have more awareness as to what makes good television and how the genre works, that does not necessarily mean they have specific, specialized skills or independence that make them independent contractors.²⁷¹ The performers are still subject to the control of the producers.²⁷²

Although the *Love Is Blind* performers have a strong case, there are some of the Restatement factors that may potentially hurt their argument: factors (f), (g), and partially (i).²⁷³ Since *Love Is Blind* normally casts new people for each of its seasons, some may argue that the job is too temporary to justify employment classification.²⁷⁴ Additionally, production companies do pay the *Love Is Blind* performers for their time on the show, and the performers sign contracts that classify them as independent contractors, so some may argue

²⁶³ Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, NLRB v. Delirium TV, LLC and Kinetic Content, LLC, No. 18-CA-322098 (2024), [https://perma.cc/EU87-L8WN].

²⁶⁴ MORE PERFECT UNION, *supra* note 178.

²⁶⁵ *Id.*; see Molly Bradley, *These ‘Love Is Blind’ Edits Are Unbelievably Manipulative*, DIGG, [https://perma.cc/9257-U65E] (last visited Feb. 26, 2025).

²⁶⁶ MORE PERFECT UNION, *supra* note 178.

²⁶⁷ *See id.*

²⁶⁸ Dana Feldman, *How ‘Love Is Blind’ Made Netflix the Hub for Finding Love*, FORBES (Apr. 1, 2024), https://www.forbes.com/sites/danafeldman/2024/03/31/netflix-has-become-the-hub-for-finding-love/ [https://perma.cc/A63E-D9YV].

²⁶⁹ *See* THE JOURNAL, *supra* note 178; MORE PERFECT UNION, *supra* note 178.

²⁷⁰ Feldman, *supra* note 268.

²⁷¹ *See* NUSSBAUM, *supra* note 96, at 367.

²⁷² *See* MORE PERFECT UNION, *supra* note 178; THE JOURNAL, *supra* note 178; Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, NLRB v. Delirium TV, LLC and Kinetic Content, LLC, No. 18-CA-322098 (2024), [https://perma.cc/EU87-L8WN].

²⁷³ The Atlanta Opera, Inc., 372 NLRB No. 95 (June 13, 2023) (citing RESTATEMENT (SECOND) OF AGENCY § 220(2) (A.L.I. 1958)) [https://perma.cc/P8KA-TZHA].

²⁷⁴ Cort, *supra* note 212, at 453.

that the performers were on notice.²⁷⁵ A counterargument for the *Love Is Blind* performers, though, is that once the show began, they reasonably believed they were employees given the amount of control the producers exerted over them.²⁷⁶

The Restatement factors are nonexhaustive, and “all of the incidents of the relationship must be assessed and weighed with no one factor being decisive.”²⁷⁷ Additionally, entrepreneurial opportunity is considered along with the Restatement factors.²⁷⁸ The *Love Is Blind* stars have a compelling argument that they do not have an actual entrepreneurial opportunity and are not rendering services as part of an independent business.²⁷⁹ Primarily, there is a lack of entrepreneurial opportunity due to the nature of filming, the control of the producers, and the aspects of the role.²⁸⁰

In view of the relationship between the *Love Is Blind* stars and the production companies and producers, the Restatement factors, and the lack of entrepreneurial opportunities, *Love Is Blind* stars have a strong case that they were misclassified as independent contractors and should be considered employees pursuant to the NLRA. Although this analysis was applied to *Love Is Blind* stars, more modern reality television stars also likely qualify as employees under the *FedEx Home Delivery* independent contractor test. For instance, many of the Restatement factors favoring *Love Is Blind* stars as employees are also applicable to other reality television stars, like those on *The Bachelor* franchise shows.²⁸¹ Despite many reality television stars likely qualifying as employees under the test, there are many critics who do not believe reality television stars should qualify as employees, and there are also many obstacles that reality television stars face to achieve protection under the NLRA.

C. *Despite Pushback and Obstacles, Federal Protection is Still Crucial*

Although modern reality television stars face much pushback and many obstacles, they still deserve federal protection under the NLRA. However, it

²⁷⁵ See Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, NLRB v. Delirium TV, LLC and Kinetic Content, LLC, No. 18-CA-322098 (2024), [https://perma.cc/EU87-L8WN]; MORE PERFECT UNION, *supra* note 178.

²⁷⁶ See, e.g., MORE PERFECT UNION, *supra* note 178 (describing instances where producers exerted much control over the reality television stars).

²⁷⁷ FedEx Home Delivery, 361 NLRB 610, 618 (2014).

²⁷⁸ Office of Public Affairs, *supra* note 27; The Atlanta Opera, Inc., 372 NLRB No. 95 (June 13, 2023).

²⁷⁹ See THE JOURNAL, *supra* note 178; MORE PERFECT UNION, *supra* note 178.

²⁸⁰ THE JOURNAL, *supra* note 178; MORE PERFECT UNION, *supra* note 178; Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, NLRB v. Delirium TV, LLC and Kinetic Content, LLC, No. 18-CA-322098 (2024), [https://perma.cc/EU87-L8WN]; see Finnie, *supra* note 19.

²⁸¹ See discussion *supra* Part II.A.

is important to briefly acknowledge some of the counterarguments and major obstacles.

1. The Counterarguments

One of the biggest counterarguments is that people who sign up for reality television shows know what they are getting into.²⁸² Some argue that although the original, “crucial ingredient of reality shows had been naïveté,” that naïveté has dissolved with time.²⁸³ Now, some critics argue that “doing this kind of television wasn’t a naive misstep at all—it was a conscious choice” to join these shows.²⁸⁴ Thus, reality television stars cannot get upset with how they are portrayed on the television shows or how they are treated while filming since they know what they are getting into.²⁸⁵ Those who suggest this “tend to operate with the assumption that reality TV sets should, by nature, be permitted to operate with different guidelines than other work environments – that things such as pressure to drink and keeping the cameras rolling in increasingly dire situations are okay by virtue of tradition” in the reality television genre.²⁸⁶ Other critics question whether it would “threaten the secret sauce that makes these shows popular if reality TV shows had to treat participants as employees.”²⁸⁷

Although there are those who doubt that reality television shows could be as successful or entertaining without “drunken antics and shocking moments,” their doubts neither “negates reality stars’ rights to a legally compliant workplace nor has much grounding in what fans actually tend to appreciate seeing on reality TV.”²⁸⁸ Labor laws are in place to protect employees.²⁸⁹ Under the NLRA, that protection includes protecting employees’ right to unionize and participate in collective bargaining.²⁹⁰ Producers and production companies cannot continue to misclassify reality television stars as independent contractors to avoid compliance with federal labor laws, like the NLRA, or to continue exploitative and manipulative

²⁸² Eric Deggans & Eleana Tworek, *Are Reality TV Stars Employees? The National Labor Relations Board Says Yes*, NPR (Jan. 4, 2025, at 08:07 ET), <https://www.npr.org/2025/01/04/nx-s1-5243964/are-reality-tv-stars-employees-the-national-labor-relations-board-says-yes> [<https://perma.cc/WB6K-SFUT>].

²⁸³ NUSSBAUM, *supra* note 96, at 390–91.

²⁸⁴ *Id.* at 391.

²⁸⁵ *Id.*; Louisa Ballhaus, *What Are the Legal Rights of Reality TV Stars, Really?*, BBC (Mar. 12, 2024), <https://www.bbc.com/culture/article/20240311-legal-rights-of-reality-tv-stars> [<https://perma.cc/R55L-T8A6>].

²⁸⁶ Ballhaus, *supra* note 285.

²⁸⁷ Deggans & Tworek, *supra* note 282.

²⁸⁸ Ballhaus, *supra* note 285.

²⁸⁹ *Id.* See generally RAY, STRASSFELD & LEVINSON, *supra* note 31 (explaining various labor laws and how they protect employees).

²⁹⁰ 29 U.S.C. §§ 151–69 [<https://perma.cc/9FGW-GC5J>].

practices.²⁹¹ Just because reality television stars sign up or apply for these shows does not make it acceptable for producers and production companies to take advantage of them.²⁹² Thus, NLRA protection is crucial for reality television stars to receive union protection and collectively bargain for better working conditions and wages like their fellow scripted actors.²⁹³

Another major counterargument is that because the unscripted television genre includes a wide variety of different shows, it is difficult to classify all unscripted actors as employees.²⁹⁴ For instance, critics question how this will work for people who are only on a show for a single day or season, arguing that it may be difficult for those working for shorter periods to have bargaining power to advocate for better working conditions and pay.²⁹⁵ Some people also question how this will work for people on a show that embodies a more *cinéma vérité* style of filmmaking, in which producers have less control over the narrative and storytelling.²⁹⁶

Although all unscripted television shows do not look the same, that should not automatically bar all reality television stars from statutory protection under the NLRA. Although appearing on different types of shows, many reality television stars—like those on *Love Is Blind*—are constantly filmed and recorded in controlled sets, with producers directly manipulating and exploiting their lives; they deserve employment classification and protection under the NLRA just as the NLRB contends the *Love Is Blind* stars do.²⁹⁷ Interesting, too, is the fact that the NLRB is unpersuaded by some of the critics’ concerns, like the fact that the *Love Is Blind* stars appear for single seasons.²⁹⁸ Thus, just because modern reality television shows fall under the larger umbrella of the unscripted genre should not automatically block reality television stars from receiving protection and rights under the NLRA.

Some critics also argue that, given the nature of reality television, if reality television stars are considered employees, then it would be more difficult for networks to cheaply and quickly produce these shows.²⁹⁹ Producer Michael Carroll stated that if reality television stars are considered employees under

²⁹¹ See THE JOURNAL, *supra* note 178; MORE PERFECT UNION, *supra* note 178.

²⁹² See THE JOURNAL, *supra* note 178; MORE PERFECT UNION, *supra* note 178; NUSSBAUM, *supra* note 96, at 391.

²⁹³ THE JOURNAL, *supra* note 178; *Benefits of Membership*, *supra* note 173.

²⁹⁴ See Deggans & Tworek, *supra* note 282; Bowman, *supra* note 247; see also discussion *supra* Part I.C. (discussing the various types of reality television shows).

²⁹⁵ See Finnie, *supra* note 19; Deggans & Tworek, *supra* note 282; Bowman, *supra* note 247.

²⁹⁶ See Finnie, *supra* note 19.

²⁹⁷ See discussion *supra* Part I.C.

²⁹⁸ See Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, NLRB v. Delirium TV, LLC and Kinetic Content, LLC, No. 18-CA-322098 (2024), <https://www.nlr.gov/case/18-CA-329487> [<https://perma.cc/EU87-L8WN>].

²⁹⁹ Mariah Espada, *Why it's So Hard for Reality Stars to Get Protection from Exploitation*, TIME (Sep. 18, 2023, at 15:29 ET), <https://time.com/6314118/reality-tv-unions-protection/> [<https://perma.cc/3BJU-UVN7>].

the NLRA, it would have made his job a lot more difficult because “I wouldn't have been able to have them under my thumb or in my world or my web the entire time.”³⁰⁰ Unlike scripted actors who have limits as to how long they can legally work, producers can continually film reality television stars;³⁰¹ however, if reality television stars are classified as employees, then the shows’ “budgets are going to go crazy and it's going to make for the networks and the production companies to make a lot less television because they couldn't afford it.”³⁰² The business of reality television would slow down exponentially.³⁰³

Even though classifying reality television stars as employees would change the entertainment industry and impact how cheaply reality television shows are made, the change would ultimately benefit the reality television stars, who are the ones currently disadvantaged despite making the shows profitable in the first place.³⁰⁴ Producer Michael Carroll agrees and thinks that “it would be a great thing for the cast. I think it would be an awful thing for the producers and the production company and the networks.”³⁰⁵ The entertainment industry already adheres to various labor and employment laws for scripted actors, like “time limits to how long you can make someone work for,”³⁰⁶ and negotiates wages and working conditions with SAG-AFTRA for them.³⁰⁷ Yet, these laws and obligations do not seem to have deterred production companies and producers from working with and creating entertainment using scripted actors. Thus, classifying reality television stars as employees is not an outlandish reality, nor should it be hindered by producers’ argument that the genre would not be as successful.³⁰⁸

Although critics do offer compelling reasons as to why reality television stars should not receive an employment classification, modern-day reality television stars deserve this classification and federal protection under the NLRA. However, reality television stars still face obstacles in achieving protection under the NLRA.

2. Major Obstacles

There are some major and more recent obstacles that reality television stars face in their fight to achieve protection under the NLRA. Specifically,

³⁰⁰ THE JOURNAL, *supra* note 178.

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*; MORE PERFECT UNION, *supra* note 178; *see* Malkin, *supra* note 15.

³⁰⁵ THE JOURNAL, *supra* note 178.

³⁰⁶ *Id.*

³⁰⁷ *Benefits of Membership*, *supra* note 173.

³⁰⁸ *See* THE JOURNAL, *supra* note 178.

there are concerns about the general authority the NLRB has in issuing rulings and protecting employees in light of the *Loper Bright Enterprises v. Raimondo* decision and the actions of the second Trump Administration.³⁰⁹

In *Loper Bright Enterprises*, the U.S. Supreme Court went against long-standing precedent by overruling *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*³¹⁰ *Chevron* established that federal judges were to defer to the interpretations of ambiguous statutes by agencies, like the NLRB, if the interpretations were reasonable.³¹¹ However, *Loper Bright* overruled this deference, and federal courts now must exercise independent judgment when interpreting ambiguous statutes.³¹² Agencies can still interpret statutes, but their interpretations will only be persuasive.³¹³

There are still questions as to how the *Loper Bright* decision will impact the NLRB and its discretionary rule-making authority.³¹⁴ Specifically, it is still unclear how the decision will affect the NLRB’s authority to protect workers’ rights to join unions and bargain collectively.³¹⁵ Even though there is much precedent that “suggests the NLRB could retain most of its power to issue and enforce rules, the recent history of a Supreme Court that has shown little favor toward workers or government intervention suggests a narrower reading of the NLRB’s authority may be coming.”³¹⁶ Thus, it is still unclear how the decision will impact the fight for reality television stars to receive protection under the NLRA.

Another very recent obstacle is the Trump Administration, specifically its actions towards the NLRB and American workers.³¹⁷ During his campaign, Donald Trump “repeatedly promised to battle for US workers,” but since his inauguration on January 20, 2025, he has taken a “large number of anti-worker actions.”³¹⁸ For instance, he fired Gwynne Wilcox, a member of the

³⁰⁹ See *Loper Bright Enter. v. Raimondo*, 603 U.S. 369 (2024).

³¹⁰ *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

³¹¹ *Id.*

³¹² *Loper*, 603 U.S. at 413 (2024).

³¹³ *Id.*

³¹⁴ Sharon Block, *How Loper Bright and the End to the Chevron Doctrine Impact the NLRB*, PROMARKET (Sep. 3, 2024), <https://www.promarket.org/2024/09/03/how-loper-bright-and-the-end-to-the-chevron-doctrine-impact-the-nlr/> [https://perma.cc/7MMN-PRPU].

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ See Steven Greenhouse, *Trump Vowed to Champion US Workers - The Reality Has Been a Relentless Assault*, THE GUARDIAN (Feb. 16, 2025, at 07:00 ET), <https://www.theguardian.com/us-news/2025/feb/16/trump-anti-worker-actions-unions> [https://perma.cc/VR29-FPYL].

³¹⁸ *Id.*

NLRB.³¹⁹ Thus, the NLRB “has been without a quorum—and therefore unable to issue decisions” for several months now.³²⁰

As to the NLRB complaint stipulating that *Love Is Blind* contestants should be classified as employees, the Trump administration may negatively hurt the *Love Is Blind* performers’ chances of success.³²¹ After the hearing is rescheduled and takes place, and once the judge makes a decision, either party will have the opportunity to appeal the decision.³²² If the case is appealed, the case would reach the NLRB board in Washington, D.C., but as of now, the board is “paralyzed” and “adjudicatively out of business” because Trump fired Wilcox.³²³ Trump also can impact the case through his NLRB General Counsel replacement.³²⁴ On February 3, 2025, Trump appointed William B. Cowen as acting general counsel of the NLRB.³²⁵ The NLRB counsel can choose to drop the complaint.³²⁶

Further, the Trump Administration may work to change the independent contractor test established in *The Atlanta Opera, Inc.*³²⁷ The Board in *The Atlanta Opera, Inc.* “rejected a Trump-era standard and reestablished a more worker-friendly legal test for determining who is an employee and who is an independent contractor under the NLRA.”³²⁸ So, the Trump Administration may “likely return to a previous standard that analyzes whether the arrangement between the ‘employer’ and the alleged employee provided an ‘entrepreneurial opportunity’ to the individual.”³²⁹

Much uncertainty currently exists regarding the future of labor law, specifically workers’ rights to unionize and participate in collective bargaining as protected under the NLRA. Despite the uncertainty, critics, and

³¹⁹ Nick Niedzwiadek, *Trump Fired This Independent Labor Regulator. Now, She’s Suing.*, POLITICO (Feb. 5, 2025, at 11:33 ET), <https://www.politico.com/news/2025/02/05/ex-nlr-member-challenges-trumps-firing-00202585> [<https://perma.cc/T8ND-F86X>].

³²⁰ David Kelly, *NLRB Quorum Lapse Creates Uncertainty in Labor Law Enforcement*, NAT’L L. REV. (Aug. 7, 2025), <https://natlawreview.com/article/nlr-quorum-lapse-creates-uncertainty-labor-law-enforcement> [<https://perma.cc/7MP4-N486>].

³²¹ See Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, NLRB v. Delirium TV, LLC and Kinetic Content, LLC, No. 18-CA-322098 (2024), [<https://perma.cc/EU87-L8WN>]; Bowman, *supra* note 247; THE JOURNAL, *supra* note 178.

³²² Bowman, *supra* note 247.

³²³ *Id.*; Greenhouse, *supra* note 332.

³²⁴ Bowman, *supra* note 247.

³²⁵ Office of Public Affairs, *President Trump Appoints William B. Cowen Acting General Counsel of the National Labor Relations Board*, NLRB (Feb. 3, 2025), <https://www.nlr.gov/news-outreach/news-story/president-trump-appoints-william-b-cowen-acting-general-counsel-of-the> [<https://perma.cc/2NHL-J5QA>].

³²⁶ Bowman, *supra* note 247.

³²⁷ Michael J. Volpe et al., *supra* note 61; *The Atlanta Opera, Inc.*, 372 NLRB No. 95 (June 13, 2023).

³²⁸ *Breaking Down the NLRB Decision in Atlanta Opera and Its Potential Impact on App-Based Ridehail and Delivery Workers*, *supra* note 59.

³²⁹ Michael J. Volpe et al., *supra* note 61.

obstacles, one thing is certain: Reality television stars still deserve protection under the NLRA.

III. RESOLUTIONS

A. Amending the NLRA to Establish an Independent Contractor Test

As previously discussed, reality television producers and production companies often misclassify reality television stars as independent contractors, excluding them from NLRA coverage.³³⁰ Although the NLRB has an independent contractor classification test in place—currently the *FedEx Home Delivery* test³³¹—there is no official test actually in the NLRA.³³² So, the independent contractor test has changed throughout the years depending on which presidential administration is in charge.³³³ Recognizing that a continually changing test makes it difficult for both employees and employers to understand the different classifications, and in light of the *Loper Bright* decision,³³⁴ Congress must amend the NLRA to include an official test to identify independent contractors properly. Congress has made previous attempts to add an official test to the NLRA— for instance, the House more recently passed the Protecting the Right to Organize Act of 2021 (PRO Act).³³⁵ If passed by the Senate, the Act would have adopted the ABC test to distinguish employees and independent contractors.³³⁶ The ABC test is not a new test—it is implemented in about half the U.S. states “under their state unemployment insurance law,” and it is implemented in several other states “under their state wage and hour law.”³³⁷

Although the Republican Party currently holds the majority in Congress and may not support an amendment to the NLRA,³³⁸ Congress should nevertheless attempt to pass one, as it is important to establish a standard test that will withstand changes in political control. Having a standard test will

³³⁰ See discussion *supra* Part II.B.

³³¹ *FedEx Home Delivery*, 361 NLRB 610 (2014).

³³² National Labor Relations Act, 29 U.S.C. §§ 151–69.

³³³ See discussion *supra* Part I.A.2.

³³⁴ *Loper Bright Enter. v. Raimondo*, 603 U.S. 369 (2024).

³³⁵ Protecting the Right to Organize Act of 2021, H.R. 842, 117th Cong. (2021).

³³⁶ *ABC Test*, CA LABOR & WORKFORCE DEVELOPMENT AGENCY, <https://www.labor.ca.gov/employmentstatus/abctest/> [<https://perma.cc/K78L-92AB>] (last visited Aug. 14, 2025).

³³⁷ *The PRO Act and the ABC Test: Is the ABC test new?*, AFL-CIO AMERICA’S UNIONS, [<https://perma.cc/MQ2D-GEAX>] (last visited Aug. 14, 2025).

³³⁸ *Member Data: Party Breakdown*, U.S HOUSE OF REPRESENTATIVES PRESS GALLERY, <https://pressgallery.house.gov/member-data/party-breakdown> [<https://perma.cc/2UBP-M5QJ>] (last visited Aug. 14, 2025); *Senate Facts: Senate Party Division*, UNITED STATES SENATE PERIODICAL PRESS GALLERY, <https://www.periodicalpress.senate.gov/senate-facts/> [<https://perma.cc/9CLK-SXU4>] (last visited Aug. 14, 2025).

also provide a better and clearer way to ensure that all employees receive proper protection under the NLRA and are not misclassified as independent contractors. Congress should either pass another version of the PRO Act, implementing the ABC test, or Congress should amend the NLRA to include the current, pro-employee independent contractor test: the *FedEx Home Delivery* test.³³⁹

1. Amendment Establishing the ABC Test

If introducing an amendment like the PRO Act's ABC test,³⁴⁰ the proposed model amendment should include the following:

AN ACT

To amend the National Labor Relations Act, the Labor Management Relations Act, 1947, and the Labor-Management Reporting and Disclosure Act of 1959, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I. Amendment to the National Labor Relations Act

Sec. 101. Definitions.

(b) Employee.—Section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)) is amended by adding at the end the following: “An individual performing any service shall be considered an employee (except as provided in the previous sentence) and not an independent contractor, unless—

“(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact

“(B) the service is performed outside the usual course of the business of the employer; and

“(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.”

³³⁹ FedEx Home Delivery, 361 NLRB 610 (2014); see H.R. 842, 117th Cong. (2021).

³⁴⁰ H.R. 842, 117th Cong. (2021).

2. Amendment Establishing the *FedEx Home Delivery* Test

If introducing an amendment like the *FedEx Home Delivery* test,³⁴¹ the proposed model amendment should include the following:

AN ACT

To amend the National Labor Relations Act, the Labor Management Relations Act, 1947, and the Labor-Management Reporting and Disclosure Act of 1959, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I. Amendment to the National Labor Relations Act

Sec. 101. Definitions.

(b) Employee.—Section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)) is amended by adding at the end the following: “Whether an individual is an employee (except as provided in the previous sentence) will be guided by the nonexhaustive common-law factors enumerated in Restatement (Second) of Agency, Section 220 (1958), and all incidents of the relationship must be assessed and weighed with no one factor being decisive. In determining whether one acting for another is a servant or an independent contractor, the following factors are to be considered:

“(A) the extent of control which, by the agreement, the master may exercise over the details of the work;

“(B) whether or not the one employed is engaged in a distinct occupation or business;

“(C) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

“(D) the skill required in the particular occupation;

³⁴¹ FedEx Home Delivery, 361 NLRB 610 (2014).

“(E) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

“(F) the length of time for which the person is employed;

“(G) the method of payment, whether by the time or by the job;

“(H) whether or not the work is a part of the regular business of the employer;

“(I) whether or not the parties believe they are creating the relation of master and servant; and

“(J) whether the principal is or is not in business.

“Actual entrepreneurial opportunity shall also be taken into account, asking whether the evidence tends to show that a supposed independent contractor is, in fact, rendering services as part of an independent business.”

B. SAG-AFTRA Coverage for Reality Television Stars

Although amending the NLRA is the best resolution, SAG-AFTRA should also expand its coverage to reality television stars to provide greater labor rights and protections for these individuals. As of 2023, SAG-AFTRA was on board to help with the fight to stop the exploitation of reality performers.³⁴² SAG-AFTRA stated it was “tired of studios and production companies trying to circumvent the union in order to exploit the talent that they rely upon to make their product.”³⁴³ SAG-AFTRA also confirmed that it is the union that represents reality performers under its Network Code Agreement, depending on the structure of the show.³⁴⁴

Since making the 2023 statement,³⁴⁵ SAG-AFTRA has not publicly issued any further, similar comments; however, reality television stars are still in need of union protection and continue to face exploitive and manipulative tactics of the reality television industry.³⁴⁶ SAG-AFTRA does encourage “reality performers and/or members to reach out to SAG-AFTRA’s Entertainment Contracts Department so that we may work together toward the protection of the reality performers ending the exploitative practices that

³⁴² SAG-AFTRA Statement on the Representation and Protection of Reality Performers, *supra* note 89.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ See discussion *supra* Part II.A.

have developed in this area and to engage in a new path to union coverage.”³⁴⁷ So, reality television stars must continue to reach out to SAG-AFTRA and also advocate for SAG-AFTRA to update its Network Code Agreement to cover even more reality television stars.

C. Continued Public Activism

In addition to advocating and reaching out to SAG-AFTRA, reality television stars and their allies must continue to raise more public awareness about the exploitative nature of working in reality television. Specifically, “as more voices within the industry speak out, the more production companies may feel pressured to make changes.”³⁴⁸ For example, Bethenny Frankel has spoken out many times about the industry exploiting and manipulating reality performers, calling for a movement to unionize.³⁴⁹ Although she is not suing anyone or any production herself, she shared in an Instagram post that “I have directed wronged talent and production members to legal representation and am fighting for systematic change in a damage institution. The reality reckoning, is true, real, and I’ll lead by example and evolve for myself and for my daughter.”³⁵⁰

Former *Love Is Blind* stars Nick Thompson and Jeremy Hartwell co-founded the UCAN foundation, which advocates “for improved industry labor practices and ethical treatment within the reality television industry.”³⁵¹ The UCAN foundation also provides “legal support and mental health resources to current, past, and future unscripted cast members,” since many unscripted actors, including modern reality television stars, do not receive benefits like scripted actors do from SAG-AFTRA.³⁵²

Additionally, reality television stars must continue, if they can, to file complaints like Nick Thompson and Renee Poche filed with the NLRB.³⁵³ Not only could complaints prompt government involvement, but they may

³⁴⁷ *SAG-AFTRA Statement on the Representation and Protection of Reality Performers*, *supra* note 89.

³⁴⁸ Cort, *supra* note 212, at 458.

³⁴⁹ Malkin, *supra* note 15.

³⁵⁰ Image posted by Bethenny Frankel (@bethennyfrankel), INSTAGRAM, (Oct. 1, 2023), https://www.instagram.com/p/Cx30BFouK5a/?img_index=3 [<https://perma.cc/XX7B-G3ZW?type=standard>].

³⁵¹ *About Us*, UCAN FOUNDATION, <https://theucanfoundation.org/about> [<https://perma.cc/5KJJ-ZR84>] (last visited Aug. 14, 2025).

³⁵² *Id.*; see *Benefits of Membership*, *supra* note 173.

³⁵³ See Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, NLRB v. Delirium TV, LLC and Kinetic Content, LLC, No. 18-CA-322098 (2024), <https://www.nlr.gov/case/18-CA-329487> [<https://perma.cc/EU87-L8WN>].

also gain media attention, which can help expose the exploitative and manipulative nature of the entertainment industry.³⁵⁴

Overall, continued public activism is crucial, especially given the obstacles and criticism reality television stars already face in their fight for greater labor rights and protections, particularly under the NLRA.³⁵⁵ “There is strength in numbers,” so reality television stars must continue to speak out and expose the unethical practices and abuses within the reality television industry.³⁵⁶

IV. CONCLUSION

Reality television is bigger and more popular than ever, yet the entertainment industry continues to disrespect and undervalue reality television stars. Often, producers and production companies exploit and manipulate reality television stars, subjecting them to abuse and unethical practices without legal consequences. Many reality television stars lack union protection under SAG-AFTRA, and federal labor laws, like the NLRA, do not apply to them due to employment misclassifications. Based on the nature of modern reality television and the NLRB’s *FedEx Home Delivery* independent contractor classification test, reality television stars deserve employment classification and the corresponding rights and protections. Like scripted actors and other employees around the country, reality television stars should be entitled to basic labor rights and union protections.

³⁵⁴ See THE JOURNAL, *supra* note 178; MORE PERFECT UNION, *supra* note 178; Cort, *supra* note 212.

³⁵⁵ See discussion *supra* Part II.C.

³⁵⁶ Cort, *supra* note 212, at 457.