

COALITION FOR A DEMOCRATIC WORKPLACE

April 16, 2012

Dear Senator:

On behalf of millions of job creators concerned with mounting threats to the basic tenets of free enterprise, the Coalition for a Democratic Workplace urges you to support S. J. Res. 36, which provides for congressional disapproval and nullification of the National Labor Relations Board's (NLRB or Board) rule related to representation election procedures. This "ambush" election rule is nothing more than the Board's attempt to placate organized labor by effectively denying employees' access to critical information about unions and stripping employers of free speech and due process rights. The rule poses a threat to both employees and employers. Please vote in favor of S. J. Res. 36 when it comes to the Senate floor next week.

The Coalition for a Democratic Workplace, a group of more than 600 organizations, has been united in its opposition to the so-called "Employee Free Choice Act" (EFCA) and EFCA alternatives that pose a similar threat to workers, businesses and the U.S. economy. Thanks to the bipartisan group of elected officials who stood firm against this damaging legislation, the threat of EFCA is less immediate this Congress. Politically powerful labor unions, other EFCA supporters and their allies in government are not backing down, however. Having failed to achieve their goals through legislation, they are now coordinating with the Board and the Department of Labor (DOL) in what appears to be an all-out attack on job-creators and employees in an effort to enact EFCA through administrative rulings and regulations.

On June 21, 2011, the Board proposed its ambush election rule, which was designed to significantly speed up the existing union election process and limit employer participation in elections. At the time, Board Member Hayes warned that "the proposed rules will (1) shorten the time between filing of the petition and the election date, and (2) substantially limit the opportunity for full evidentiary hearing or Board review on contested issues involving, among other things, appropriate unit, voter eligibility, and election misconduct." Hayes noted the effect would be to "stifle debate on matters that demand it." The Board published a final rule on December 22, 2011, with an April 30, 2012 effective date.¹ While it somewhat modified the original proposal, the final rule is identical in purpose and similar in effect.

The NLRB's own statistics reveal the average time from petition to election was 31 days, with over 90% of elections occurring within 56 days. There is no indication that Congress intended a shorter election time frame, and indeed, based on the legislative history of the 1959 amendments to the National Labor Relations Act, it is clear Congress believed that an election period of at least 30 days was necessary to adequately assure employees the "fullest freedom" in exercising their right to choose whether they wish

¹ The Coalition has challenged the final rule on the grounds that it is both procedurally and substantively flawed. For details see <http://myprivateballot.com/wp-content/uploads/2012/02/CDW-Memo-On-Seeking-Summary-Judgment.pdf>.

to be represented by a union. As then Senator John F. Kennedy Jr. explained, a 30-day period before any election was a necessary “safeguard against rushing employees into an election where they are unfamiliar with the issues.” Senator Kennedy stated “there should be at least a 30-day interval between the request for an election and the holding of the election” and he opposed an amendment that failed to provide “at least 30 days in which both parties can present their viewpoints.”

The current election time frames are not only reasonable, but permit employees time to hear from both the union and the employer and make an informed decision, which would not be possible under the ambush election rule. In fact, in other situations involving “group” employee issues, Congress requires that employees be given at least 45 days to review relevant information in order to make a “knowing and voluntary” decision (this is required under the Older Workers Benefit Protection Act when employees evaluate whether to sign an age discrimination release in the context of a program offered to a group or class of employees). Under the rule’s time frames, employers, particularly small ones, will not have enough time to secure legal counsel, let alone an opportunity to speak with employees about union representation or respond to promises made by union organizers, even though many of those promises may be completely unrealistic. Given that union organizers typically lobby employees for months outside the workplace without an employer’s knowledge, these “ambush” elections would often result in employees’ receiving only half the story. They would hear promises of raises and benefits that unions have no way of guaranteeing, without an opportunity for the employer to explain its position and the possible inaccuracies put forward by the union.

For these reasons, we urge you to support S. J. Res. 36 and Congress to pass this much needed resolution. If left unchecked, the actions of the NLRB will fuel economic uncertainty and have serious negative ramifications for millions of employers, U.S. workers they have hired or would like to hire, and consumers.

The Coalition for a Democratic Workplace

And

National Organization (119)

60 Plus Association

Aeronautical Repair Station Association

Agricultural Retailers Association

AIADA, American International Automobile Dealers Association

Air Conditioning Contractors of America

American Apparel & Footwear Association

American Bakers Association

American Concrete Pressure Pipe Association

American Council of Engineering Companies

American Feed Industry Association

American Fire Sprinkler Association

American Foundry Society

American Frozen Food Institute

American Hospital Association
American Hotel and Lodging Association
American Meat Institute
American Nursery & Landscape Association
American Organization of Nurse Executives
American Pipeline Contractors Association
American Rental Association
American Seniors Housing Association
American Society for Healthcare Human Resources Administration
American Society of Employers
American Staffing Association
American Supply Association
American Trucking Associations
American Wholesale Marketers Association
AMT – The Association For Manufacturing Technology
Assisted Living Federation of America
Association of Millwork Distributors
Associated Builders and Contractors
Associated Equipment Distributors
Associated General Contractors of America
Association of Equipment Manufacturers
Automotive Aftermarket Industry Association
Brick Industry Association
Building Owners and Managers Association (BOMA) International
Center for Individual Freedom
Center for the Defense of Free Enterprise Action Fund
Coalition of Franchisee Associations
College and University Professional Association for Human Resources
Consumer Electronics Association
Council for Employment Law Equity
Custom Electronic Design & Installation Association
Environmental Industry Associations
Fashion Accessories Shippers Association
Federation of American Hospitals
Food Marketing Institute
Forging Industry Association
Franchise Management Advisory Council
Heating, Air-Conditioning and Refrigeration Distributors International
HR Policy Association
INDA, Association of the Nonwoven Fabrics Industry
Independent Electrical Contractors
Industrial Fasteners Institute
Institute for a Drug-Free Workplace

Interlocking Concrete Pavement Institute
International Association of Refrigerated Warehouses
International Council of Shopping Centers
International Foodservice Distributors Association
International Franchise Association
International Warehouse Logistics Association
Kitchen Cabinet Manufacturers Association
Metals Service Center Institute
Modular Building Institute
Motor & Equipment Manufacturers Association
NAHAD - The Association for Hose & Accessories Distribution
National Apartment Association
National Armored Car Association
National Association of Chemical Distributors
National Association of Convenience Stores
National Association of Electrical Distributors
National Association of Manufacturers
National Association of Wholesaler-Distributors
National Automobile Dealers Association
National Club Association
National Council of Chain Restaurants
National Council of Farmer Cooperatives
National Council of Investigators and Security
National Council of Security and Security Services
National Council of Textile Organizations
National Federation of Independent Business
National Franchisee Association
National Grocers Association
National Lumber and Building Material Dealers Association
National Marine Distributors Association, Inc.
National Mining Association
National Multi Housing Council
National Pest Management Association
National Ready Mixed Concrete Association
National Retail Federation
National Roofing Contractors Association
National School Transportation Association
National Small Business Association
National Solid Wastes Management Association
National Stone, Sand & Gravel Association
National Systems Contractors Association
National Tank Truck Carriers
National Tooling and Machining Association

National Utility Contractors Association
North American Die Casting Association
North American Equipment Dealers Association
Northeastern Retail Lumber Association
Outdoor Power Equipment and Engine Service Association, Inc.
Plastics Industry Trade Association
Precision Machined Products Association
Precision Metalforming Association
Printing Industries of America
Professional Beauty Association
Retail Industry Leaders Association
Snack Food Association
Society for Human Resource Management
SPI: The Plastics Industry Trade Association
Textile Care Allied Trades Association
Textile Rental Services Association
Truck Renting & Leasing Association
U.S. Chamber of Commerce
United Motorcoach Association
Western Growers Association

State and Local Organizations (60)

Arkansas State Chamber of Commerce
Associated Builders and Contractors, Inc. Central Florida Chapter
Associated Builders and Contractors, Inc. Central Pennsylvania Chapter
Associated Builders and Contractors, Inc. Chesapeake Shores Chapter
Associated Builders and Contractors, Inc. Connecticut Chapter
Associated Builders and Contractors, Inc. Cumberland Valley Chapter
Associated Builders and Contractors, Inc. Delaware Chapter
Associated Builders and Contractors, Inc. Eastern Pennsylvania Chapter
Associated Builders and Contractors, Inc. Florida East Coast Chapter
Associated Builders and Contractors, Inc. Florida Gulf Coast Chapter
Associated Builders and Contractors, Inc. Georgia Chapter
Associated Builders and Contractors, Inc. Greater Houston Chapter
Associated Builders and Contractors, Inc. Hawaii Chapter
Associated Builders and Contractors, Inc. Heart of America Chapter
Associated Builders and Contractors, Inc. Indiana Chapter
Associated Builders and Contractors, Inc. Inland Pacific Chapter
Associated Builders and Contractors, Inc. Iowa Chapter
Associated Builders and Contractors, Inc. Keystone Chapter
Associated Builders and Contractors, Inc. Massachusetts Chapter
Associated Builders and Contractors, Inc. Michigan Chapter
Associated Builders and Contractors, Inc. Mississippi Chapter

Associated Builders and Contractors, Inc. Nevada Chapter
Associated Builders and Contractors, Inc. New Orleans/Bayou Chapter
Associated Builders and Contractors, Inc. Ohio Valley Chapter
Associated Builders and Contractors, Inc. Oklahoma Chapter
Associated Builders and Contractors, Inc. Pacific Northwest Chapter
Associated Builders and Contractors, Inc. Pelican Chapter
Associated Builders and Contractors, Inc. Rhode Island Chapter
Associated Builders and Contractors, Inc. Rocky Mountain Chapter
Associated Builders and Contractors, Inc. South East Texas Chapter
Associated Builders and Contractors, Inc. Virginia Chapter
Associated Builders and Contractors, Inc. Western Michigan Chapter
Associated Builders and Contractors, Inc. Western Washington Chapter
Associated Builders and Contractros, Inc. North Alabama Chapter
Associated Industries of Arkansas
Associated Industries of Massachusetts
CA/NV/AZ Automotive Wholesalers Association (CAWA)
California Delivery Association
Capital Associated Industries (NC)
Employers Coalition of North Carolina
First Priority Trailways (MD)
Garden Grove Chamber of Commerce
Georgia Chamber of Commerce
GO Riteway Transportation Group (WI)
Greater Columbia Chamber of Commerce (SC)
Greater Reading Chamber of Commerce & Industry (PA)
Kansas Chamber of Commerce
Little Rock Regional Chamber of Commerce (AR)
London Road Rental Center (MN)
Long Beach Area Chamber of Commerce
Minnesota Grocers Association
Montana Chamber of Commerce
Nebraska Chamber of Commerce & Industry
Nevada Manufacturers Association
New Jersey Food Council
New Jersey Motor Truck Association
North Carolina Chamber
Northern Liberty Alliance (MN)
Ohio Chamber of Commerce
Texas Hospital Association