COALITION FOR A
DEMOCRATIC WORKPLACE

October 12, 2011

Dear Chairmen Rogers and Rehberg and Ranking Members Dicks and DeLauro:

On behalf of millions of job creators concerned with mounting threats to the basic tenets of free enterprise, we thank you for releasing the draft fiscal year 2012 Labor, Health and Human Services (LHHS) funding bill. Policy provisions included in the legislation are needed to prevent unnecessary and economically crippling actions by the National Labor Relations Board (NLRB or Board) and efforts by Department of Labor (DOL) to interfere with employers' access to legal counsel and other advice. We urge you to move forward with these critical policy provisions in this bill or any other available legislative vehicle.

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 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 NLRB and DOL in what appears to be an all-out attack on business and an effort to enact EFCA through administrative rulings and regulations.

While the Board's actions have gained recent notoriety from the unprecedented attempt by the agency's Acting General Counsel to mandate where and how one company—Boeing—can operate and expand its business, this action is just tip of iceberg. During the last few years, the Board and DOL have issued a barrage of anti-business and anti-worker decisions and rules, which collectively amount to the greatest upheaval in U.S. labor law in over 50 years.

Just this summer, the Board issued two major decisions, one proposed rule and a final rule, while the DOL issued a proposed rule of its own. The negative impact of the decisions and rules on employees, employers and our economy is substantial and far-reaching. The policy provisions in the draft bill address each of these damaging agency actions, which are explained in more detail below.

On June 21, the Board proposed a rule on "ambush elections." Under the proposed rule, the NLRB would conduct representation elections in as few as 10 days after the union files a petition, as opposed to the current median of 38 days between petition and election. The reduced

time frame would leave employers barely enough time to secure legal counsel, with little to no opportunity to talk with employees about union representation or respond to promises union organizers may have made to secure union support, even though many of those promises may be completely unrealistic.

A day earlier, on June 20, DOL released its "gag rule" proposal. The proposal would reverse 50 years of established law and require employers to disclose an otherwise confidential agreement when a consultant, lawyer, association or seminar presenter provides the business with materials used for communication with employees about unions, such as policies or prepared speeches, or revises drafts of such documents written by company management. This would be the case even if the consultant, lawyer, association or seminar presenter never actually interacts with the employees. Failure to report, or the filing of false or incomplete reports could result in civil and criminal penalties. The disclosure requirements are intrusive and designed to intimidate businesses, particularly small businesses, from relying on counsel or other consultants to assist in communicating with employees about unions. The American Bar Association, among thousands of others, informed the DOL that the proposal is in direct conflict with attorney-client confidentiality and related attorney ethical rules.

The Board also issued on August 30 a final rule requiring for the first time in the 75-year history of the National Labor Relations Act (NLRA) that employers post detailed notices in the workplace. The notice provides incomplete and biased information about the NLRA and NLRB, and fails to provide employees with adequate information about unions and labor law. Specifically, the notice omits details about the following:

- The right to refuse to pay union dues to the extent they are used for political purposes.
- The right to refuse to join a union or pay dues in Right-to-Work states.
- The right to decertify an unwanted union.
- The downsides to unionization, such as loss of the ability to negotiate directly with their employer, the fact that economic strikers can be permanently replaced or that unions can fine their own members.

Aside from the bias, the NLRB simply has no legal authority to require all six million covered employers to post a notice. The NLRA does not contain a posting requirement and only grants the Board the power to act with respect to any given employer if (a) a petition for election has been filed; or (b) an unfair labor practice charge has been filed.

Finally, on August 26, 2011, the NLRB issued decisions in two cases that bring us even closer to agency-imposed EFCA. In *Lamons Gasket Company*, the NLRB stripped workers of voting rights by ruling that employees cannot petition for a private ballot election after an employer voluntarily recognizes a union through "card check." Now, employees could be barred from

challenging a union recognized through "card check" for up to a year, and far longer if the employer and union sign a contract. Every employee should have right to a secret ballot.

In *Specialty Healthcare*, the NLRB paved the way for the formation of "micro-unions," which make it easier for unions to organize by permitting them to form smaller bargaining units that often exclude those similarly situated employees who oppose unionization. This effectively disenfranchises them. Prior to the decision, bargaining units had to include employees who share a "community of interest." Smaller units were only permissible where the employees in the proposed unit had interests that were "sufficiently distinct from those of other employees to warrant the establishment of a separate unit." This prevented swarms of small, "fractured units," of similarly situated employees. As a result of the Board's decision, businesses now face the possibility of having to manage multiple, small units of similarly situated employees with increased chances of work stoppages, as well as potentially different pay scales, benefits, work rules and bargaining schedules. This will greatly limit an employer's ability to cross-train and meet customer and client demands via lean, flexible staffing because employees will no longer be able to perform work assigned to other units. Employees also will suffer from reduced job opportunities, as promotions and transfers will be hindered by organizational unit barriers.

Again, we thank you for releasing the draft fiscal year 2012 Labor, Health and Human Services (LHHS) funding bill. The policy provisions are critically necessary. If left unchecked, the actions of the NLRB and DOL 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

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National Organizations (84)
60 Plus Association
Agricultural Retailers Association
AIADA, American International Automobile Dealers Association
American Apparel & Footwear Association (AAFA)
American Bakers Association
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 Organization of Nurse Executives (AONE)
American Pipeline Contractors Association
American Rental Association
American Seniors Housing Association
American Supply Association
American Trucking Associations
American Wholesale Marketers Association
AMT-The Association For Manufacturing Technology
Asian American Hotel Owners Association
Assisted Living Federation of America
Associated Builders and Contractors, Inc.
Associated General Contractors of America
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
Custom Electronic Design & Installation Association
Electronic Security Association (ESA)
Environmental Industry Associations
Food Marketing Institute
Forging Industry Association
Heating, Airconditioning & Refrigeration Distributors International (HARDI)
HR Policy Association
INDA, Association of the Nonwoven Fabrics Industry
Industrial Fasteners Institute
International Association of Refrigerated Warehouses
International Council of Shopping Centers
International Foodservice Distributors Association
International Franchise Association
International Warehouse Logistics Association
Metals Service Center Institute
Motor & Equipment Manufacturers Association
NAHAD - The Association for Hose and Accessories Distribution
National Apartment Association
National Association of Chemical Distributors
National Association of Electrical Distributors
National Association of Home Builders

National Association of Manufacturers
National Association of Wholesaler-Distributors
National Club Association
National Council of Chain Restaurants
National Council of Investigators and Security Services (NCISS)
National Federation of Independent Business
National Franchisee Association
National Grocers Association
National Mining Association
National Multi Housing Council
National Pest Management Association
National Restaurant Association
National Retail Federation
National School Transportation Association
National Solid Wastes Management Association
National Tank Truck Carriers
National Tooling and Machining Association
NATSO, Representing America's Travel Plazas and Truckstops
North American Die Casting Association
North American Equipment Dealers Association
Precision Machined Products Association
Precision Metalforming Association
Printing Industries of America
Retail Industry Leaders Association
Snack Food Association
Society for Human Resource Management
Textile Care Allied Trades Association
Textile Rental Services Association
The Real Estate Roundtable
Truck Renting and Leasing Association
U.S. Chamber of Commerce
United Motorcoach Association
Western Growers Association

State and Local Organizations (36)

American Society of Employers (Michigan)
Arkansas State Chamber of Commerce/Associated Industries of Arkansas
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. Delaware Chapter
Associated Builders and Contractors, Inc. Florida East Coast Chapter
Associated Builders and Contractors, Inc. Florida Gulf Coast Chapter
Associated Builders and Contractors, Inc. Hawaii Chapter
Associated Builders and Contractors, Inc. Heart of America Chapter
Associated Builders and Contractors, Inc. Inland Pacific Chapter
Associated Builders and Contractors, Inc. Iowa Chapter
Associated Builders and Contractors, Inc. Mississippi Chapter
Associated Builders and Contractors, Inc. Nevada Chapter
Associated Builders and Contractors, Inc. Ohio Valley Chapter
Associated Builders and Contractors, Inc. Pacific Northwest 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. Western Michigan Chapter
Associated Builders and Contractors, Inc. Western Washington Chapter
CA/NV/AZ Automotive Wholesalers Association (CAWA)
CAI-Capital Associated Industries Inc. (Raleigh, NC)
California Delivery Association
Charleston Metro Chamber of Commerce
Employers Coalition of North Carolina (Raleigh, NC)
Greater Columbia Chamber of Commerce
IEC of Oregon
Iowa-Nebraska Equipment Dealers Association
Little Rock Regional Chamber of Commerce
Minnesota Grocer Association
New Jersey Motor Truck Association
North Carolina Chamber
Rogers-Lowell Chamber of Commerce (Arkansas)
South Carolina Trucking Association
Virginia Trucking Association