COALITION FOR A
DEMOCRATIC WORKPLACE

February 9, 2015

Dear Chairman Kline:

On behalf of millions of job creators concerned with mounting threats to the basic tenets of free enterprise, the Coalition for a Democratic Workplace (CDW) thanks you for introducing H. J. Res. 29, 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, trampling on employee privacy rights and stripping employers of free speech and dues process rights. As such, the rule poses a threat to both employees and employers alike. We support H. J. Res 29 and urge Congress to immediately pass it.

CDW is a broad-based coalition of more than 600 organizations united in opposition to the tenets of the misnamed "Employee Free Choice Act" (EFCA) and alternatives that pose a similar threat to workers, businesses, and the American economy. In recent years, the NLRB has attempted to enact many EFCA-like policies that threaten jobs and our economy through administrative rulings and regulations. In response, much of CDW's focus has been directed toward the NLRB.

On December 12, 2014, the Board published the final ambush election rule, which is designed to significantly speed up the existing union representation election process. The rule, which goes into effect on April 14, 2015, will shorten the time between the union filing a petition for election and NLRB holding of an election from the current median time of 38 days to as few as 14 days. This effectively limits employers' ability to communicate with employees prior to a representation election and encourages the kind of "back door" organizing that unions sought to achieve through EFCA. In addition, in order to meet the new truncated election time frames, the rule deprives employers of many due process rights. It also requires employers to provide, within two business days of the election agreement or decision directing an election, employees' personal telephone numbers and e-mail addresses. Employees would not have the opportunity or the right to prevent the release of this information to the union and would not have the ability to determine which contact information would be handed over to the paid union organizers. This mandatory release of employee information invites harassment and intimidation and opens the door to identify theft and other privacy concerns. The changes made by the rule are similar to those the NLRB attempted to push through in a 2011 rule, which was struck down by a federal court on procedural grounds shortly after it was implemented.

In many cases, employers, particularly small ones, will not have enough time under the rule's time frames to secure legal counsel, let alone an opportunity to speak 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. 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.

The NLRB's own statistics reveal that for the last 10 years the median time from petition to election was 38 days, with nearly 95% of elections occurring within 56 days in 2013 and 95.7% percent within 56 days in 2014. 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 to be represented by a union. As then Senator John F. Kennedy Jr. explained at the time, 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 important employment decisions, 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).

For these reasons, we thank you for introducing H. J. Res. 29 and urge Congress to immediately 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.

Sincerely,

Geoffrey Burr
Chair, the Coalition for a Democratic Workplace