COALITION FOR A
DEMOCRATIC WORKPLACE

The Workforce Democracy and Fairness Act (H.R. 3094)

Bi-Partisan Legislation Addresses Job Killing Activities of the NLRB

During this time of economic uncertainty, our country cannot afford to allow unelected bureaucrats to abuse their power in favor of special interests at the expense of our economic vitality and job growth. That is exactly what is happening at the National Labor Relations Board (NLRB or Board), however, where the Board's unelected members and acting general counsel are forcing radical changes to the law in order to appease politically powerful labor unions. The NLRB has been working behind the scenes to enact sweeping policy changes in an effort to enact the goals of the Employee Free Choice Act (EFCA) through administrative rulings and regulations. Two of the Board's most controversial actions—which promise to hamstring job creators—are ambush elections and micro-unions. Fortunately, the Workforce Democracy and Fairness Act (H.R. 3094), a bi-partisan bill that was passed in the House on November 30, 2011 would rollback these economically damaging Board actions. More details are set forth below.

THE PROBLEM

Ambush Elections This past December, the Board issued a rule that will dramatically change the NLRB's longstanding election procedures. These proposed changes are intended to limit employers' ability to communicate with employees, and encourage the kind of "back door" organizing that unions sought to achieve through EFCA. Some of the provisions of the Board's rule include:

- Shortening the time for union elections to as little as 14-20 days from a current average of 38 days. The shortened period limits employees' ability to learn the pros and cons of unionization and make a fully-informed decision when casting a ballot. This is particularly important as unions often make unrealistic promises as part of the organizing drive.

- Limiting the evidence that can be presented at a pre-election hearing, which may leave important questions unresolved prior to a union election, including which employees will be represented by the union.

The final regulation was hastily issued on December 22, 2011, right before the expiration of Member Becker's term. *Importantly, since President Obama's recent "recess" appointments to the Board, NLRB Chairman Pearce has threatened to adopt the provisions of the proposed rule that were not included in the final rule, such as requiring employers to provide union organizers with employees' private contact information, as well as other provisions that would reduce the election time frame to as few as 10 days.*

An employer's right of free speech and opportunity to express its views—under Section 8(c) of the NLRA—on the subject of unionization is severely undermined by the Board's regulation. The regulation is intended to increase union organizing and dues revenue streams at the expense of employees, who will not have the opportunity to hear both sides before voting on union representation, and employers, who are effectively denied free speech and due process rights.

Micro-Unions In *Specialty Healthcare*, the Board announced a new standard for determining composition of bargaining units which allows organized labor to gerrymander bargaining units and disenfranchise employees that oppose the union. The case will make it easier to establish very small micro-units. For example, a union may organize a small group of employees working on one machine rather than all machinists in a manufacturing facility, because the majority of machinists do not want union representation. Likewise, a union may now organize greeters at a retail store, because cashiers and floor associates don't want a union. These micro-unions or fractured units would greatly limit an employer's ability to cross train and meet customer and client demands via lean, flexible staffing as employees could not perform work assigned to another unit. Employees also will suffer from reduced job opportunities, such as promotions and transfers.

THE SOLUTION: THE WORKFORCE DEMOCRACY AND FAIRNESS ACT (H.R. 3094)

In light of response to the Board's radical actions, the House passed the Workforce Democracy and Fairness Act in order to return balance to our workplace laws and provide an atmosphere that is conducive to economic growth. The Workforce Democracy and Fairness Act, which has received bi-partisan support, will accomplish this by enacting the following common-sense measures.

- Provides for a fair hearing process by allowing employers at least 14 days to prepare their case for the Board and allows employers to raise issues during the hearing.

- Prohibits ambush elections by requiring a campaign period of at least 35 days prior to an election. This will guarantee that workers have an opportunity to hear both sides of the unionization debate.

- Reinstates the long-standing criteria that the Board has traditionally used for determining the appropriateness of a proposed bargaining unit.

- Allows employees to choose how they may be contacted by union organizers.

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The Coalition for a Democratic Workplace supports the Workforce Democracy and Fairness Act. The bill will return much-needed balance to our labor laws. Not only will it ensure that employees are permitted to make a fully informed decision regarding unionization, but it will also provide a sense of certainty for our country's job creators, who have recently found themselves unfairly targeted by the runaway Board.