

COALITION FOR A DEMOCRATIC WORKPLACE

October 26, 2011

Dear Chairman Kline and Ranking Member Miller:

On behalf of millions of job creators concerned with mounting threats to the basic tenets of free enterprise, the Coalition for a Democratic Workplace thanks you for holding today's mark up on H.R. 3094, the Workforce Democracy and Fairness Act. We support H.R. 3094 and urge Committee to approve and Congress to immediately pass this much-needed legislation. The bill directly addresses recent and economically crippling actions of the National Labor Relations Board (Board or NLRB). Specifically, the bill would block the Board from moving forward with its ambush election proposal—an effort by the Board to effectively deny employees' access to critical information about unions and strip employers of free speech and dues process rights. H.R. 3094 also would reverse the Board's recent decision in *Specialty Healthcare*, which poses an immediate and direct threat to our economy by opening the door to swarms of micro-unions.

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 Board and the Department of Labor (DOL) in what appears to be an all-out attack on job-creators 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, the Boeing case 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. The Workforce Democracy and Fairness Act directly remedies ambush elections and micro-unions (*Specialty Healthcare*), which are two of the Board's most damaging and outrageous actions.

On June 21, the Board proposed a rule on "ambush elections." According to Board Member Brian Hayes, these new procedures could result in union representation elections held in as few as 10 days after the filing of a union petition. The NLRB's own statistics reveal that in 2010, the

average time to election was 31 days, with over 95 percent of elections occurring within 56 days. 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 proposed timetables. In fact, 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. 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. Ambush elections would be particularly damaging to small businesses as the proposed changes would effectively eliminate any measure of due process by forcing elections before most employers could even understand what was happening or even obtain legal advice and representation.

The proposal also tramples over employer due process rights. As Member Hayes noted, the proposed rule will "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." The proposal would require that all pre-election hearings occur within seven days of the petition. Businesses must file a statement within those seven days setting forth their position on all relevant legal issues. Any issues not identified in the statement would be waived forever. These unnecessary time limits put enormous pressure on all businesses, but like the NLRB's ambush election proposal, the impact will be especially damaging to small business, who will have enough problems finding counsel within these time frames, let alone obtaining any meaningful understanding of their rights and obligations under this complex law.

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 holding this important mark up and urge immediate Committee approval and passage of H.R. 3094, the Workforce Democracy and Fairness Act. 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 Organizations (92)

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 Health Care Association

American Meat Institute

American Organization of Nurse Executives (AONE)

American Pipeline Contractors Association

American Rental Association

American Seniors Housing Association

American Staffing Association

American Supply Association

American Trucking Associations

American Wholesale Marketers Association

AMT-The Association For Manufacturing Technology

American Apparel & Footwear Association

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

College and University Professional Association for Human Resources
Custom Electronic Design & Installation Association
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 Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National School Transportation Association
National Solid Wastes Management Association
National Systems Contractors 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
Professional Beauty Association
Retail Industry Leaders Association
Society for Human Resource Management
Snack Food Association

SPI: The Plastics Industry Trade Association
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 (46)

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. Keystone 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 Bakersfield Chamber of Commerce
Greater Columbia Chamber of Commerce
IEC of Oregon
Iowa-Nebraska Equipment Dealers Association
Little Rock Regional Chamber of Commerce
Minnesota Grocer Association
Nebraska Chamber of Commerce & Industry
New Jersey Food Council
New Jersey Motor Truck Association
NAIOP Colorado
North Carolina Chamber
Ohio Manufacturers' Association
State Chamber of Oklahoma
Rogers-Lowell Chamber of Commerce (Arkansas)

South Carolina Trucking Association
Texas Hospital Association
Virginia Trucking Association
Western Electrical Contractors Association
Western Carolina Industries