COALITION FOR A
DEMOCRATIC WORKPLACE

February 16, 2012

Dear Senators Enzi and Isakson and Representatives Kline, Roe and Gingrey:

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 introducing S. J. Res. 36 and its companion resolution in the House of Representatives, which provide 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 dues process rights. The rule poses a threat to both employees and employers. We support S. J. Res. 36 and its House companion and urge Congress to immediately pass these much-needed resolutions, which will nullify the ambush election proposal.

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 to the proposal.

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

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

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, 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.) Also, 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.

For these reasons, we thank you for introducing S. J. Res. 36 and its House companion and urge Congress to immediately pass these much-needed resolutions. 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