



February 17, 2012

TO MEMBERS OF THE UNITED STATES SENATE

I am writing to express the support of the National Small Business Association for S.J. Res. 36 which disapproves the rule submitted by the National Labor Relations Board relating to Union representation election procedures under the Congressional Review Act.

The proposed rule focuses on an alleged effort to streamline and expedite the elections process. Over the past decade, however, the median time between a petition being filed and the elections is only 38 days. Historically, the NLRB has had a target timeframe of 42 days between petition and election—more time than what currently is the norm.

Given this and the fact that unions prevailed in 71 percent of elections in FY 2011, NSBA's small-business owners are unconvinced that there is any major flaw in the process, and cannot fathom what "major delays" could, in good faith, have prompted this proposal. The primary objective of the National Labor Relations Act is to "assure employees the fullest freedom to decide whether or not they desire union representation." Employees ought to have unfettered access to information from both sides on the implications of a unionizing campaign before a vote would happen. This rule impedes that objective.

Small business is particularly subject to several types of harm as a result of the rule. One obvious example is the deferral of issues as to eligibility of voters until after the election. In small businesses, employees (including supervisors) wear many hats. It is not always easy to identify who is a supervisor (who is ineligible to vote, or to attempt to influence employees and for whose actions the employer can be held responsible) and who is not. Delaying this determination until after the election is a recipe for objections, unfair labor practice charges and ultimately more delay in resolving questions concerning representation for small businesses that can ill-afford the expense and lost productivity inherent in administrative and court proceedings.

Unions can spend months or even years in advance of filing a petition to encourage employee support of unionization. The unions control when a petition is filed, giving them the upper-hand in planning and spreading information to the workforce. Employers, under this proposed rule, would then bear the full brunt of a shortened timeframe which, in certain circumstances, could be just 10 days following the filing of a petition.

The rule would dramatically limit the scope of the pre-hearing process. Previously, both the NLRB and courts have come to the conclusion that, as the law spells out, a pre-election hearing is necessary to ensure fairness to employers and to protect the rights of employees to make informed choices in the elections.

We urge you to oppose the NLRB elections rule by supporting S.J. Res. 36

Sincerely,

A handwritten signature in black ink, appearing to read "Todd McCracken", with a long horizontal line extending to the right.

Todd McCracken
President

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