113TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
113–583

EMPLOYEE PRIVACY PROTECTION ACT

SEPTEMBER 9, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KLINE, from the Committee on Education and the Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4321]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 4321) to amend the National Labor Relations Act to require that lists of employees eligible to vote in organizing elections be provided to the National Labor Relations Board, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Employee Privacy Protection Act".

SEC. 2. LISTS OF EMPLOYEES ELIGIBLE TO VOTE IN ELECTIONS.

Section 9(c)(1) of the National Labor Relations Act (29 U.S.C. 159(c)(1)) is amended by adding at the end the following: "Not earlier than 7 days after a final determination by the Board of the appropriate bargaining unit, the Board shall acquire from the employer a list of all employees eligible to vote in the election to be made available to all parties, which shall include the names of the employees, and not more than one additional form of personal contact information of the employee, (such as telephone number, email address, or mailing address) chosen by the employee in writing.".

COMMITTEE REPORT

PURPOSE

H.R. 4321, the Employee Privacy Protection Act, protects employee privacy, modernizes the voter eligibility list, and empowers workers while ensuring unions can continue to communicate with employees. The bill ensures labor organizations will continue to receive a list of eligible voters within seven days of an election agreement or direction of an election. However, rather than providing each employee's home address, the bill modernizes the process by providing employees the right to choose how they wish to be contacted by the union. Under the Employee Privacy Protection Act, employees ultimately will choose what personal information, such as phone number, e-mail address, or home address, is provided to the union.

COMMITTEE ACTION

112TH CONGRESS

Full Committee Hearing Investigates NLRB's Unprecedented Rulemaking

On July 7, 2011, the Committee on Education and the Workforce held a hearing entitled "Rushing Union Elections: Protecting the Interests of Big Labor at the Expense of Workers Free Choice," on the National Labor Relations Board's (NLRB) June 22, 2011, proposed election procedure regulation. The proposal expanded the information included on the Excelsior list and reduced the time for production. Witnesses before the committee agreed the cumulative changes of the proposal would significantly hinder an employer's ability to communicate with his or her employees and cripple an employee's right to choose whether to be represented by a labor organization. Witnesses before the panel were The Honorable Peter C. Schaumber, Former NLRB Chairman, Washington, D.C.; Mr. Larry Getts, Tube Press Technician, Dana Corporation, Garrett, Indiana; Mr. John Carew, President, Carew Concrete & Supply Company, Appleton, Wisconsin, representing himself and the National Ready Mixed Concrete Association; Mr. Michael J. Lotito, Attorney, Jackson Lewis LLP, San Francisco, California; and Mr. Kenneth Dau-Schmidt, Professor, Indiana University, Maurer School of Law, Bloomington, Indiana.

Full Committee Hearing Explores NLRB 's Decision to Disfranchise Employees in Union Elections

On September 22, 2011, the Committee on Education and the Workforce held a hearing on the "Culture of Union Favoritism: Recent Actions of the National Labor Relations Board." At the end of August 2011, the NLRB issued a number of biased anti-worker decisions, including Specialty Healthcare and Rehabilitation Center of Mobile (Specialty Healthcare),[1] Lamons Gasket Company,[2] and UGL–UNICCO Service Company.[3] Additionally, the NLRB finalized a rule requiring almost every employer to post a vague, union-

[1] 357 NLRB No. 83 (2011).
[2] 357 NLRB No. 72 (2011).
[3] 357 NLRB No. 76 (2011).

biased notice on employee National Labor Relations Act (NLRA) rights. The NLRB's unbridled overreach of authority demanded a complete examination by the committee. Witnesses before the committee included Mr. Curtis L. Mack, Partner, McGuire Woods LLP, Atlanta, Georgia; Ms. Barbara A. Ivey, Employee, Kaiser Permanente, Keizer, Oregon; Mr. Arthur J. Martin, Partner, Schuchat, Cook & Werner, St. Louis, Missouri; and Mr. G. Roger King, Partner, Jones Day, Columbus, Ohio.

H.R. 3094, Workforce Democracy and Fairness Act, Introduced

On October 5, 2011, Chairman John Kline (R–MN) introduced H.R. 3094, the Workforce Democracy and Fairness Act with 26 cosponsors. Recognizing the NLRB had moved far beyond an adjudicative body designed to implement congressional intent under the NLRA, the legislation sought to (1) reinstate the traditional standard for determining which employees comprise an appropriate bargaining unit; (2) ensure employers can participate in a fair union election; (3) guarantee workers have the ability to make a fully informed decision in a union election; and (4) safeguard employee privacy by allowing workers to decide the type of personal information provided to a union.

Legislative Hearing Considers Bill in Statutory Context

On October 12, 2011, the Committee on Education and the Workforce held a legislative hearing on H.R. 3094, the Workforce Democracy and Fairness Act. Witnesses included The Honorable Charles Cohen, Senior Counsel, Morgan, Lewis and Bockius LLP, and Former Member, National Labor Relations Board, Washington, D.C.; Mr. Robert Sullivan, President, RG Sullivan Consulting, Westmoreland, New Hampshire, representing the Retail Industry Leaders Association; Mr. Michael J. Hunter, Partner, Hunter, Carnahan, Shoub, Byard and Harshman, Columbus, Ohio; and Mr. Phillip Russell, Attorney, Ogletree Deakins, Tampa, Florida. Witnesses testified the NLRB had overturned decades of precedent to facilitate union organizing at the cost of employee free choice and employer free speech.

Committee Passes H.R. 3094, the Workforce Democracy and Fairness Act

On October 26, 2011, the Committee on Education and the Workforce considered H.R. 3094, the Workforce Democracy and Fairness Act. Chairman Kline offered an amendment in the nature of a substitute to clarify that years of labor policies affecting the acute health care industry remain in place; to limit pre-election issues to those that are relevant and material; and to reaffirm the Board's responsibility to grant or deny requests for review of regional directors' decisions before the election. Nine additional amendments were offered and debated; however, no additional amendments were adopted. The committee favorably reported H.R. 3094 to the House of Representatives by a vote of 23–16.

House Passes H.R. 3094, the Workforce Democracy and Fairness Act

On November 30, 2011, the House of Representatives considered H.R. 3094, the Workforce Democracy and Fairness Act. Four amendments and an amendment in the nature of a substitute were

offered, but none were adopted. The House passed H.R. 3094 by a bipartisan vote of 235–188. The bill was not considered by the Senate prior to the conclusion of the 112th Congress.

113TH CONGRESS

Subcommittee Hearing Examines Union Organizing

On September 19, 2013, the Subcommittee on Health, Employment, Labor, and Pensions held a hearing examining "The Future of Union Organizing." The hearing examined the application of Specialty Healthcare and the future of NLRB representational elections. Witnesses were Mr. David R. Burton, General Counsel, National Small Business Association, Washington, D.C.; Mr. Clarence Adams, Field Technician, Cablevision, Brooklyn, New York; Mr. Ronald Meisburg, Member of the Firm, Proskauer, Washington, D.C.; and Mr. Stefan J. Marculewicz, Shareholder, Littler Mendelson, Washington, D.C.

Full Committee Hearing Scrutinizes the NLRB's Proposed Ambush Election Rule

On March 5, 2014, the Committee on Education and the Workforce held a hearing entitled "Culture of Union Favoritism: The Return of the NLRB's Ambush Election Rule." The witnesses stated the February 6, 2014, proposed ambush election rule, like its predecessor, would considerably shorten the time between the filing of the petition and the election date as well as substantially limit the opportunity for a full evidentiary hearing or NLRB resolution of contested issues, including appropriate bargaining unit, voter eligibility, and election misconduct. Ms. Doreen S. Davis, Partner, Jones Day, New York, New York; Mr. Steve Browne, Vice President of Human Resources, LaRosa, Cincinnati, Ohio; Ms. Caren P. Sencer, Shareholder, Weinberg, Roger & Rosenfeld P.C., Alameda, California; and Mr. William Messenger, Staff Attorney, National Right to Work Legal Defense Foundation, Inc., Springfield, Virginia, testified before the committee.

H.R. 4321, Employee Privacy Protection Act, Introduced

On March 27, 2014, Congressman Phil Roe (R–TN) introduced the Excelsior list provision of H.R. 3094 of the 112th Congress, the Workforce Democracy and Fairness Act, as a standalone bill, H.R. 4321, the Employee Privacy Protection Act, with 20 cosponsors. With the NLRB's ambush election rule undermining employee privacy, the legislation is necessary to ensure employees can choose what personal information is provided to a union.

Committee Passes H.R. 4321, the Employee Privacy Protection Act

On April 9, 2014, the Committee on Education and the Workforce considered H.R. 4321, the Employee Privacy Protection Act. Congressman Roe offered an amendment in the nature of a substitute, making a technical change to clarify that employees only have to provide one form of personal contact information. Two additional amendments were offered and debated but they were not adopted. The committee favorably reported H.R. 4321 to the House of Representatives by a vote of 21–17.

SUMMARY

The *Employee Privacy Protection Act*, H.R. 4321, ensures labor organizations will continue to receive a list of eligible voters within seven days of an election agreement or direction of election. The bill modernizes the process while providing employees the right to choose how they wish to be contacted by the union.

COMMITTEE VIEWS

In 1935, Congress passed the *National Labor Relations Act* (NLRA), guaranteeing the right of most private sector employees [4] to organize and select their own representative. In 1947, Congress passed the most significant amendment of the NLRA, the *Taft-Hartley Act,*[5] abandoning "the policy of affirmatively encouraging the spread of collective bargaining . . . [and] striking a new balance between protection of the right to self-organization and various opposing claims." [6] The *Taft-Hartley Act* clarified that employees have the right to refrain from participating in union activity,[7] created new union unfair labor practices,[8] codified employer free speech,[9] and made changes to the determination of bargaining units.[10]

The NLRA established the NLRB, an independent federal agency, to fulfill two principal functions: (1) to prevent and remedy employer and union unlawful acts (called unfair labor practices or ULPs), and (2) to determine by secret ballot election whether employees wish to be represented by a union. In determining whether employees wish to be represented by a union, the NLRA is wholly neutra1.[11]

To promote free and informed choice in union elections, in 1966 in *Excelsior Underwear Inc.,* the NLRB created a requirement that employers must provide a list of all eligible voters and their home address to the union(s) seeking representation prior to the election.[12] This list is commonly referred to as the Excelsior list. Currently, within seven days of the regional director's pre-election decision or approval of the election agreement, the employer must file the Excelsior list with the regional director.[13] The regional director makes the list available to all parties. Unless waived, the non-employer parties, most commonly the union(s) seeking representation, must have at least 10 days to review the list prior to the election.[14]

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[4] The NLRA does not cover all employees and employers in the United States. For example, public sector employers (state, local, and federal employees), employers covered by the Railway Labor Act (airlines and railroads), agricultural labor, and supervisors are not covered by the act. 29 USC § 152(2).

[5] 29 U.S.C. 141 et seq.

[6] Archibald Cox, *Some Aspects of the Labor Management Relations Act of 1974,* 61 Harv. L. Rev. 1, 4 (1947).

[7] 29 U.S.C. § 157.

[8] *Id.* § 158.

[9] *Id.* § 158(c).

[10] *Id* § 159(d).

[11] *NLRB v. Savair Mfg,* 414 U.S. 270, 278 (1973).

[12] *Excelsior Underwear Inc.,* 156 NLRB 1236 (1966).

[13] National Labor Relations NLRB Casehandling Manual ¶11312

[14] *Id.*

Under this procedure, unions won almost two-thirds of representational elections in calendar year 2013.[15]

On February 6, 2014, the NLRB issued a proposed rulemaking that largely mirrors the June 2011 proposed rulemaking on election procedures. Like its predecessor, the February 6, 2014, proposed rule contemplates adding additional information to the Excelsior list and cutting the timeframe for its production.[16] In addition to employee names and addresses, the employer must provide unit employees' phone numbers, email addresses, work locations, shift information, and job classifications.[17] Absent extraordinary circumstances or party agreement, this information must be provided to the union within two days of the regional director's decision or approval of the election agreement.[18]

Privacy Implications of an Expanded Excelsior List

The inclusion of employee phone numbers and email addresses on the Excelsior list will further encroach on employee privacy. Moreover, providing unions with employees' phone numbers, email addresses, and home addresses puts employees and their families at greater risk of coercion and intimidation. A 2007 report by the Heritage Foundation stated "[t]housands of unfair labor practice cases have been filed against unions since 2000, including 1,417 for coercive statements, 416 for violence and assaults, 546 for harassment, and 1,325 for threatening statements." [19]

Employees clearly face significant and at times unlawful union pressure.[20] However, union communications need not be unfair labor practices or criminal acts to be unwelcome. In testimony before the committee, Marlene Felter, a medical records coder at Chapman Medical Center in Orange, California, and Larry Getts, a Dana Corporation employee in Fort Wayne, Indiana, described their negative and unwelcome experiences with union organizers.

Ms. Felter stated:

> From July to November 2011, my co-workers reported that [Service Employees International Union] operatives were calling them on their cell phones, coming to their homes, stalking them, harassing them, and even offering to buy them meals at restaurants to convince them to sign union cards.[21]

Mr. Getts stated:

> On a daily basis[,] my coworkers and I would find UAW officials waiting in our break room. They'd approach us

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[15] NLRB Graphs & Data Representation Petitions, available at *http://www.nlrb.gov/news-outreach/graphs-data/petitions-and-elections/representation-petitions-rc* (last visited on Aug. 13, 2014).

[16] Notice of Proposed Rulemaking, Representation—Case Procedures, 79 Fed. Reg. 7318, 7360 (Feb. 6, 2014).

[17] *Id.*

[18] *Id.*

[19] Sherk, James, *The Truth About Improper Firings and Union Intimidation*, The Heritage Foundation (June 20, 2007) (available at *http://www.heritage.org/research/reports/2007/03/the-truth-about-improper-firings-and-union-intimidation#__ftn9).*

[20] Sherk, James, *The Truth About Improper Firings and Union Intimidation,* The Heritage Foundation (June 20, 2007) (available at *http://www.heritage.org/research/reorts/2007/03/the-truth-about-improper-firings-and-union-intimidation#__ftn9).*

[21] Legislative Hearing on H.R. 2346, *Secret Ballot Protection Act*, and H.R. 2347, *Representation Fairness Restoration Act,* Hearing before the House Health, Employment, Labor, and Pensions Subcommittee, 113th Cong., 1st Sess. at 2 (2013) (written testimony of Marlene Felter) [hereinafter Felter Testimony].

> during our lunch breaks. They would even follow us to our vehicles at the end of the day and some of us even to our homes.[22]

Not surprisingly, Mr. Getts stated he would object to his employer providing his phone number and email address to a union.[23]

In a recent Washington Times article, Jennifer Parrish described her alarming experience with a Service Employees International Union organizer:

> My story starts in the spring of 2006, when a man I'd never met walked into my Minnesota home and asked for my signature on what he claimed was a petition asking the state for health insurance for child care providers like myself (sic). As it happened, I already had health insurance, and I didn't feel it was the state's responsibility to provide it to me.
>
> I repeatedly declined to sign his petition, but this wasn't enough. The gentleman grew angry, and his demands became louder and more insistent. His behavior was alarming, to get him to leave, I promised to sign his card later if he would return after I had time to look it over.[24]

Of equal concern are alleged union misuses of personal employee information outside an organizing campaign. In fall 2007, 33 AT&T employees at the company's Burlington, North Carolina, facility resigned from Communication Workers of America (CWA) membership and ceased paying union dues.[25] In apparent retaliation, the CWA Local posted the 33 AT&T employees' names and social security numbers on a publicly accessible bulletin board located in a hallway close to the building entrance stating the employees had resigned from the union and ceased paying dues.[26]

In 2009, Patricia Pelletier, an employee of the Connecticut Student Loan Foundation, circulated a petition to decertify the CWA.[27] She and her coworkers ultimately voted to decertify the union.[28] "CWA operatives responded by allegedly forging Pelletier's signature on numerous magazine subscriptions and consumer product solicitations."[29] As a result, "Pelletier's home was then flooded with hundreds of unwanted magazines and advertisements. Not only was Pelletier forced to spend several hours each day canceling individual subscriptions, she was also billed for thousands of dollars by unwitting magazine companies, jeopardizing her credit rating."[30] Ultimately, Pelletier filed a lawsuit against the union that

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[22] Rushing Union Elections: Protecting the Interests of Big Labor at the Expense of Workers' Free Choice, Hearing before the Education and the Workforce Committee, 112th Cong., 1st Sess. at 2 (2011) (written testimony of Larry Getts)[hereinafter Getts Testimony].

[23] Getts Testimony at 2–3.

[24] Parrish, Jennifer, *A breath of employee freedom*, The Washington Times (Aug. 7, 2014)(available at *http://www.washingtontimes.com/news/2014/aug/7/parrish-a-breath-of-employees-freedom/*).

[25] AT&T Workers Petition U.S. Supreme Court to Overturn Union Exemption for Identity Theft Laws, National Right to Work Legal Defense Foundation, Inc. (July 19, 2012)(available at *http://www.nrtw.org/en/press/2012/07/fisher-supreme-court-appeal-07192012*).

[26] *Id.*

[27] Union Settles Lawsuit Alleging Identity Theft in Retaliation Campaign against Independent Worker, National Right to Work Legal Defense Foundation, Inc. (May 9, 2009)(available at *http://www.nrtw.org/en/press/2009/05/union-settles-lawsuit-alleging-ident*).

[28] *Id.*

[29] *Id.*

[30] *Id.*

was settled, but "her name continued to be circulated through advertiser mailing lists across the country."[31]

As these examples illustrate, employees face unwelcome, even unlawful, union coercion and intimidation, as well as union misuse of their personally identifiable information. Providing additional private personal information to unions will only increase these incidents.

Legislation Is Needed to Address This Unnecessary Encroachment on Employee Privacy

The *Employee Privacy Protection Act* will address the shortcomings of the NLRB's February 6, 2014, proposed changes to union election procedures by modernizing the Excelsior list while protecting employee privacy by empowering workers. Seven days after the regional director's pre-election decision or approval of the election agreement, employers will be required to provide a list of eligible employees. The list shall include employee names and one additional piece of personal contact information. The additional piece of information, such as a personal phone number, an email address, or a home address, will be chosen in writing by employees, thereby ensuring effective union communication and modernizing the Excelsior list while protecting employee privacy by allowing employees to choose how to be contacted by the union.

Privacy Protection

Congress has acted repeatedly to protect personally identifiable information, extending privacy protections to credit, electronic communications, education, bank accounts, cable, video, motor vehicle, health, telecommunications subscriber, children's online information, and financial information. The following are examples of federal laws that include protections for personally identifiable information:[32]

- The *Fair Credit Reporting Act of 1970 (FCRA)* sets forth rights for individuals and responsibilities for consumer "credit reporting agencies" in connection with the preparation and dissemination of personal information in a consumer report. Under the FCRA, consumer reporting agencies are prohibited from disclosing consumer reports to anyone who does not have a permissible purpose.
- The *Family Educational Rights and Privacy Act of 1974* governs access to and disclosure of educational records to parents, students, and third parties.
- The *Right to Financial Privacy Act of 1978* restricts the ability of the federal government to obtain bank records from financial institutions and sets forth procedures for the federal government's access to bank customer records.
- The *Cable Communications Policy Act of 1984* limits the disclosure of cable television subscriber names, addresses, and utilization information for mail solicitation purposes.
- The *Video Privacy Protection Act of 1988* regulates the treatment of personal information collected in connection with video sales and rentals.

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[31] *Id.*

[32] E-mail from Gina Stevens, Congressional Research Service American Law Division, to Marvin Kaplan, Workforce Policy Counsel, House Education and the Workforce Committee (Aug. 12, 2014, 11:08 EST) (on file with author).

• The *Driver's Privacy Protection Act of 1994* regulates the use and disclosure of personal information from state motor vehicle records.

• The *Health Insurance Portability and Accountability Act of 1996* set a deadline of August 1999 for congressional action on privacy legislation for electronically transmitted health information and required the secretary of Health and Human Services to issue final privacy regulations by February 2000 in the absence of congressional action.

• The *Communications Act of 1934,* as amended by the *Telecommunications Act of 1996,* limits the use and disclosure of customer proprietary network information by telecommunications service providers and provides a right of access for individuals.

• The *Children's Online Privacy Protection Act of 1998* requires parental consent to collect a child's age or address and requires sites collecting information from children to disclose how they plan to use the data.

• The *Gramm-Leach-Bliley Act of 1999* requires financial institutions to disclose their privacy policies to their customers. Customers may opt out of sharing personal information, and the institutions may not share account numbers with non-affiliated telemarketers and direct marketers.

The Do Not Call Registry, authorized by the bipartisan Telemarketing and Consumer Fraud and Abuse Prevention Act, provides insight into American sentiment on this issue. The Do Not Call Registry gives Americans the opportunity to limit the telemarketing calls they receive.[33] Once registered on the Do Not Call Registry, covered telemarketers must cease calling the registered number within 31 days.[34] According to the Federal Trade Commission, at the end of fiscal year 2012, the Do Not Call Registry contained 217,568,135 actively registered phone numbers.[35] In 2013, the U.S. population was approximately 316 million.[36] Clearly, the vast majority of Americans would object to having an employer provide their personal information to any third party.

Representative John Dingell (D-MI), the longest serving member of Congress, stated during debate on the *Do-Not-Call Implementation Act* that the "national do-not-call registry will allow consumers to limit . . . unwanted intrusions and once again answer their telephones without aggravation."[37] Like the Do Not Call Registry, the *Employee Privacy Protection Act* will limit unwanted intrusions. However, recognizing the importance of a free and informed choice in union elections, the *Employee Privacy Protection Act* does not forbid employers from providing employee information to a union. Instead, the *Employee Privacy Protection Act* modernizes the Excelsior list and allows employees to choose what personal information is provided to the union.

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[33] National Do Not Call Registry, Federal Trade Commission, available at *http://www.consumer.ftc.gov, articles/0108-national-do-not-call-registry* (last visited on Aug. 13, 2014).

[34] *Id.*

[35] FTC Issues FY 2012 National Do Not Call Registry Data Book, Federal Trade Commission, available at *http://www.ftc.gov/news-events/press-releases/2012/10/ftc-issues-fy-/-2012-national-do-not-call-registry-data-book* (last visited on Aug. 13, 2014).

[36] USA QuickFacts, United States Census Bureau, available at *http://quickfacts.census.gov/efd/states/00000.html* (last visited on Aug. 13, 2014).

[37] *Do-Not-CallImplementationAct,*capitolwords, available at *http://capitolwords.org/date/2003/02/12/H407-3__*do-not-call-implemenation-act/ (last visited on Aug. 15, 2014).

Modernize Union Communication

Under current rules, labor organizations have multiple avenues through which they may contact employees to encourage support for the union. In general, employees may solicit support in the workplace during non-work time, including breaks and lunch.[38] Given unions win almost two-thirds of representational elections, having employee phone numbers and email addresses is not essential to secure employee support. However, the *Employee Privacy Protection Act* recognizes the Excelsior list promotes free and informed choice but is outdated. As such, the *Employee Privacy Protection Act* codifies a modernized Excelsior list that protects employee privacy and choice.

The ways individuals communicate has changed significantly since 1966 when the NLRB created the Excelsior list. At the time, traditional mail was probably one of the most widely used forms of communication.[39] However, the use of traditional mail has declined significantly. From 2006 to 2012, single-piece First-Class Mail volume dropped by almost 19 billion pieces.[40] In contrast, the use of email and cellular phones has risen significantly. eMarketer projected there would be over 216 million U.S. email users in 2013, approximately two out three people in the U.S.[41] According to Pew Research, as of January 2014, 90 percent of American adults have a cell phone.[42] The *Employee Privacy Protection Act* modernizes the Excelsior list to allow employees to provide a personal email address or phone number in lieu of a home address. However, to ensure employee privacy and choice, the *Employee Privacy Protection Act* leaves it to the individual employee to choose which piece of personal information is provided to the union.

CONCLUSION

Over the last several years, the NLRB has issued multiple decisions and rules intended to unbalance labor relations to benefit organized labor. The most significant of these recent actions was the NLRB's February 6, 2014, re-proposed rulemaking regarding election procedures.[43] The proposed changes to the Excelsior list unnecessarily infringe on employee privacy. The *Employee Privacy Protection Act* protects employee privacy by providing employees with the power to choose what personal contact information is provided to the union.

SECTION-BY-SECTION ANALYSIS

The following is a section-by-section analysis of the Amendment in the Nature of a Substitute offered by Congressman Roe and reported favorably by the committee.

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[38] *Republic Aviation Corp. v. NLRB,* 324 U.S. 793 (1945).

[39] *Excelsior Underwear Inc.,* 156 NLRB 1236 (1966).

[40] U.S. Postal Service Mail Processing Network Exceeds What is Needed for Declining Mail Volume, United States Government Accountability Office (April 2012) (*available at http://www.gao.gov/assets/600/590081.pdf*).

[41] EMAIL USAGE, Powerprodirect, available at *http://www.powerprodirect.com/statistics* (last visited on Aug. 13, 2014).

[42] Mobile Technology Fact Sheet, Pew Research Internet Project, available at *http://www.pewinternet.org/factsheets/mobile-technology-fact-sheet/* (last visited on Aug. 13, 2014).

[43] Notice of Proposed Rulemaking, Representation—Case Procedures, 79 Fed. Reg. 7318 (Feb. 6, 2014).

Section 1. Provides that the short title is the "Employee Privacy Protection Act."

Section 2. Amends the *National Labor Relations Act* to preempt the NLRB's February 6, 2014, proposed changes to representational election procedures by establishing the composition of and timetable upon which the employer must provide a list of eligible voters. Seven days after the final determination by the NLRB of the appropriate bargaining unit, the NLRB shall acquire the list of eligible employees from the employer and make it available to all parties. The list shall include the employee names and one additional form of personal employee contact information, such as telephone number, email address, or mailing address, chosen by the employee in writing.

EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the body of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. H.R. 4321 protects employee privacy, modernizes the voter eligibility list, and empowers workers while ensuring unions can continue to communicate with employees.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. This issue is addressed in the CBO letter.

EARMARK STATEMENT

H.R. 4321 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of House Rule XXI.

ROLL CALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Date: April 9, 2014

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 1 Bill: H.R. 4321 Amendment Number: 2

Disposition: Passed by a vote of 21 to 17

Sponsor/Amendment: Motion to table the appeal of the ruling of the Chair (Pocan/ Fair Minimum Wage Act)

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)	X			Mr. MILLER (CA) (Ranking)		X	
Mr. PETRI (WI)	X			Mr. SCOTT (VA)		X	
Mr. McKEON (CA)	X			Mr. HINOJOSA (TX)		X	
Mr. WILSON (SC)	X			Mrs. McCARTHY (NY)		X	
Mrs. FOXX (NC)	X			Mr. TIERNEY (MA)		X	
Mr. PRICE (GA)			X	Mr. HOLT (NJ)		X	
Mr. MARCHANT (TX)			X	Mrs. DAVIS (CA)		X	
Mr. HUNTER (CA)	X			Mr. GRIJALVA (AZ)		X	
Mr. ROE (TN)	X			Mr. BISHOP (NY)		X	
Mr. THOMPSON (PA)	X			Mr. LOEBSACK (IA)		X	
Mr. WALBERG (MI)	X			Mr. COURTNEY (CT)		X	
Mr. SALMON (AZ)	X			Ms. FUDGE (OH)		X	
Mr. GUTHRIE (KY)	X			Mr. POLIS (CO)		X	
Mr. DesJARLAIS (TN)	X			Mr. SABLAN (MP)			X
Mr. ROKITA (IN)	X			Ms. WILSON (FL)		X	
Mr. BUCSHON (IN)	X			Ms. BONAMICI (OR)		X	
Mr. GOWDY (SC)	X			Mr. POCAN (WI)		X	
Mr. BARLETTA (PA)	X			Mr. TAKANO (CA)		X	
Mr. HECK (NV)	X						
Mrs. BROOKS (IN)	X						
Mr. HUDSON (NC)	X						
Mr. MESSER (IN)	X						
Mr. BYRNE (AL)	X						

TOTALS: Aye: 21 No: 17 Not Voting: 3

Total: 41 / Quorum: 14 / Report: 21

Date: April 9, 2014

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 2 Bill: H.R. 4321 Amendment Number: 3

Disposition: Passed by a vote of 21 to 17

Sponsor/Amendment: Motion to table the appeal of the ruling of the Chair (Mr. Courtney/ Paycheck Fairness Act)

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)	X			Mr. MILLER (CA) (Ranking)		X	
Mr. PETRI (WI)	X			Mr. SCOTT (VA)		X	
Mr. McKEON (CA)	X			Mr. HINOJOSA (TX)		X	
Mr. WILSON (SC)	X			Mrs. McCARTHY (NY)		X	
Mrs. FOXX (NC)	X			Mr. TIERNEY (MA)		X	
Mr. PRICE (GA)			X	Mr. HOLT (NJ)		X	
Mr. MARCHANT (TX)			X	Mrs. DAVIS (CA)		X	
Mr. HUNTER (CA)	X			Mr. GRIJALVA (AZ)		X	
Mr. ROE (TN)	X			Mr. BISHOP (NY)		X	
Mr. THOMPSON (PA)	X			Mr. LOEBSACK (IA)		X	
Mr. WALBERG (MI)	X			Mr. COURTNEY (CT)		X	
Mr. SALMON (AZ)	X			Ms. FUDGE (OH)		X	
Mr. GUTHRIE (KY)	X			Mr. POLIS (CO)		X	
Mr. DesJARLAIS (TN)	X			Mr. SABLAN (MP)			X
Mr. ROKITA (IN)	X			Ms. WILSON (FL)		X	
Mr. BUCSHON (IN)	X			Ms. BONAMICI (OR)		X	
Mr. GOWDY (SC)	X			Mr. POCAN (WI)		X	
Mr. BARLETTA (PA)	X			Mr. TAKANO (CA)		X	
Mr. HECK (NV)	X						
Mrs. BROOKS (IN)	X						
Mr. HUDSON (NC)	X						
Mr. MESSER (IN)	X						
Mr. BYRNE (AL)	X						

TOTALS: Aye: 21 No: 17 Not Voting: 3

Total: 41 / Quorum: 14 / Report: 21

Date: April 9, 2014

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 3 Bill: H.R. 4321 Amendment Number:

Disposition: Ordered favorably reported to the House, by a roll call vote of 21 yeas and 17 nays.

Sponsor/Amendment: Mr. Petri - motion to report the bill to the House with an amendment and with the recommendation that the amendment be agreed to, and the bill as amended do pass.

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)	X			Mr. MILLER (CA) (Ranking)		X	
Mr. PETRI (WI)	X			Mr. SCOTT (VA)		X	
Mr. McKEON (CA)	X			Mr. HINOJOSA (TX)		X	
Mr. WILSON (SC)	X			Mrs. McCARTHY (NY)		X	
Mrs. FOXX (NC)	X			Mr. TIERNEY (MA)		X	
Mr. PRICE (GA)			X	Mr. HOLT (NJ)		X	
Mr. MARCHANT (TX)			X	Mrs. DAVIS (CA)		X	
Mr. HUNTER (CA)	X			Mr. GRIJALVA (AZ)		X	
Mr. ROE (TN)	X			Mr. BISHOP (NY)		X	
Mr. THOMPSON (PA)	X			Mr. LOEBSACK (IA)		X	
Mr. WALBERG (MI)	X			Mr. COURTNEY (CT)		X	
Mr. SALMON (AZ)	X			Ms. FUDGE (OH)		X	
Mr. GUTHRIE (KY)	X			Mr. POLIS (CO)		X	
Mr. DesJARLAIS (TN)	X			Mr. SABLAN (MP)			X
Mr. ROKITA (IN)	X			Ms. WILSON (FL)		X	
Mr. BUCSHON (IN)	X			Ms. BONAMICI (OR)		X	
Mr. GOWDY (SC)	X			Mr. POCAN (WI)		X	
Mr. BARLETTA (PA)	X			Mr. TAKANO (CA)		X	
Mr. HECK (NV)	X						
Mrs. BROOKS (IN)	X						
Mr. HUDSON (NC)	X						
Mr. MESSER (IN)	X						
Mr. BYRNE (AL)	X						

TOTALS: Aye: 21 No: 17 Not Voting: 3

Total: 41 / Quorum: 14 / Report: 21

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House Rule XIII, the goals of H.R. 4321 are to protect employee privacy, modernize the voter eligibility list, and empower workers while ensuring unions can continue to communicate with employees.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 4321 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The committee estimates that enacting H.R. 4321 does not specifically direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the committee's oversight findings and recommendations are reflected in the body of this report.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the committee has received the following estimate for H.R. 4321 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 16, 2014.

Hon. JOHN KLINE,
Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4321, the Employee Privacy Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christina Hawley Anthony.

Sincerely,

ROBERT A. SUNSHINE
(For Douglas W. Elmendorf, Director).

Enclosure.

H.R. 4321—Employee Privacy Protection Act

H.R. 4321 would amend the National Labor Relations Act to require the National Labor Relations Board to wait at least seven days after the board has issued its final determination on the petition for collective bargaining representation before obtaining from an employer a list of employees who are eligible to vote in an election for such representation. That list could include not more than one form of personal contact information, chosen by the employee in writing. CBO estimates that enacting H.R. 4321 would not affect the federal budget.

Enacting H.R. 4321 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

The bill would impose a private-sector mandate as defined in UMRA by requiring employers to obtain, in writing, their employees' preferred method of being contacted by union representatives. The bill would allow employees to choose what type of personal contact information (telephone number, email address, or mailing address) to share with union organizers seeking to establish a union in their workplace. Because complying with the mandate would be a small change relative to current requirements, CBO expects that the cost of the mandate would fall below the annual threshold established in UMRA for private-sector mandates ($152 million, in 2014, adjusted annually for inflation).

The CBO staff contacts for this estimate are Christina Hawley Anthony (for federal costs) and Chung Hyun Kim (for the private-sector effects). This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 4321. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

NATIONAL LABOR RELATIONS ACT

* * * * * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) * * *

* * * * * * *

(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) * * *

* * * * * * *

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. *Not earlier than 7 days after a final determination by the Board of the appropriate bargaining unit, the Board shall acquire from the employer a list of all employees eligible to vote in the election to be made available to all parties, which shall include the names of the employees, and not more than one additional form of personal contact information of the employee, (such as telephone number, email address, or mailing address) chosen by the employee in writing.*

* * * * * * *

MINORITY VIEWS

H.R. 4321 ATTACKS THE RIGHTS OF WORKERS AND FAILS TO ADDRESS THE URGENT NEED TO INCREASE THE MINIMUM WAGE AND ADDRESS WORKPLACE WAGE DISCRIMINATION

Committee Democrats oppose and voted unanimously against H.R. 4321, the "Employee Privacy Protection Act." H.R. 4321 would delay NLRB elections by prohibiting the circulation of the voter list to unions for at least 7 days after a final determination by the Board of the appropriate bargaining unit. By contrast, the proposed Board rule would require circulation of the voter list directly to unions (rather than to the Board first, thus saving time) electronically after 2 days, and does not require Board review of the bargaining unit until after the election. The bill also limits additional contact information provided to unions beyond home addresses to either email or telephone numbers, as opposed to the proposed Board rule which allows unions access to both. In sum, the bill substantially disadvantages the fair choice of employees by allowing the employers access to emails, calls, and captive audience meetings, while at the same time limiting union's access to additional contact through the "voluntary" selection of the employee, and mandating substantial delays in providing voter lists. By not allowing unions to contact workers, H.R. 4321 prevents the creation of the level playing field the National Labor Relations Act is intended to produce in a representation election.

This bill attempts to undermine the National Labor Relations Board's (NLRB) proposed rules while doing nothing to help workers fight for fair wages in the workplace. The NLRB recently proposed commonsense rules to modernize the representation election process by standardizing best practices and reducing frivolous litigation and delay. H.R. 4321 is an effort to preempt improvements put forth in the proposed rule.

COMMITTEE DEMOCRATS OFFER AMENDMENTS TO H.R. 4321 TO HELP WORKERS ACCESS FAIR PAY

H.R. 4321 is also misguided because it neglects the real life problems workers face in today's workplace. In response, the Committee Democrats offered amendments to increase the minimum wage and boost protections against wage discrimination.

Representative Pocan introduced an amendment that would strike the text of H.R. 4321 and replace it with the Fair Minimum Wage Act (H.R. 1010). The bill provides a long overdue increase in the minimum wage to $10.10 from $7.25 and increases the tipped wage from $2.13 to 70 percent of the minimum wage. It also indexes the minimum wage to inflation. No one should work full time and live in poverty, but currently, someone working full-time, year-round, earning minimum wage makes just $14,500, almost $4,000

below the poverty line for a parent with two children. Fifty-five percent of workers making minimum wage work full time and 88 percent are adults 20 years old or older. These workers bring home 50 percent of their family's total income on average. Moreover, two-thirds of minimum wage workers are women. An increase in the minimum wage to $10.10 would raise the pay of at least 25 million workers across the nation—4.7 million of whom are mothers—and lift between 1 million and 4.5 million Americans out of poverty. Increasing the minimum wage to $10.10 is not only good for workers and their families, but also for the economy as whole. This raise in the wage floor would generate a total of $35 billion in increased compensation for working families, $22 billion in economic activity for businesses, and create 85,000 new jobs.

The amendment was ruled non-germane. Representative Pocan appealed the ruling of the chair and the vote to table the appeal the ruling of the chair on the amendment was adopted 17–21.

Representative Courtney and Representative Wilson introduced an amendment that would strike the text of H.R. 4321 and replace it with The Paycheck Fairness Act (H.R. 377). The Paycheck Fairness Act closes loopholes that provide employers with a means to avoid responsibility for discriminatory pay. Gender-based wage discrimination remains a serious problem with women only making 77 cents for every dollar earned by a man according to the U.S. Census Bureau. The Institute of Women's Policy Research estimated that the disparity in pay will cost women between $400,000 and $2 million in lost wages over a lifetime harming families and the economy. Additionally, because the gap in pay affects pension benefit calculations and Social Security many women will be less secure in retirement than if they had not been subject to pay discrimination. The Paycheck Fairness Act allows women to sue for compensatory and punitive damages, which puts gender-based discrimination sanctions on equal footing with other forms of wage discrimination. The Paycheck Fairness Act also sets high standards for accountability in court for employers, modernizes the law by allowing workers to make pay comparisons for the same job with the same employer at different worksites in the same county, and prohibits employers from retaliating against employees who discuss or disclose pay information with coworkers—the primary way in which unequal pay is discovered.

The amendment was ruled non-germane. Representative Courtney appealed the ruling of the chair and the vote to table the appeal of the ruling of the Chair on the amendment was adopted 21–17.

CONCLUSION

H.R. 4321 is a misguided attempt to prevent commonsense reforms to the representation election process because its effect will be to delay and ultimately prevent union elections. This does nothing to improve conditions for workers who are struggling in this country and instead, weakens the representation election process

that protects workers' rights. Committee Democrats are united in opposition to H.R. 4321 and will continue to fight for the rights of workers and families.

GEORGE MILLER.
RUBÉN HINOJOSA.
JOHN F. TIERNEY.
SUSAN A. DAVIS.
TIMOTHY H. BISHOP.
JOE COURTNEY.
JARED POLIS.
FREDERICA S. WILSON.
MARK POCAN.
ROBERT C. "BOBBY" SCOTT.
CAROLYN MCCARTHY.
RUSH HOLT.
RAÚL M. GRIJALVA.
DAVID LOEBSACK.
MARCIA L. FUDGE.
GREGORIO KILILI CAMACHO SABLAN.
SUZANNE BONAMICI.
MARK TAKANO.

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