113TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
113–653

WORKFORCE DEMOCRACY AND FAIRNESS ACT

DECEMBER 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. 4320]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 4320) to amend the National Labor Relations Act with respect to the timing of elections and pre-election hearings and the identification of pre-election issues, 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 "Workforce Democracy and Fairness Act".

SEC. 2. PRE-ELECTION HEARINGS.

Section 9(c)(1) of the National Labor Relations Act (29 U.S.C. 159(c)(1)) is amended in the matter following subparagraph (B)—

(1) by inserting ", but in no circumstances less than 14 calendar days after the filing of the petition" after "upon due notice";

(2) by inserting after "with respect thereto." the following: "An appropriate hearing shall be one that is non-adversarial with the hearing officer charged, in collaboration with the parties, with the responsibility of identifying any relevant and material pre-election issues and thereafter making a full record thereon. Relevant and material pre-election issues shall include, in addition to unit appropriateness, the Board's jurisdiction and any other issue the resolution of which may make an election unnecessary or which may reasonably be expected to impact the outcome of the election. Parties may independently raise any relevant and material pre-election issue or assert any relevant and material position at any time prior to the close of the hearing."; and

(3) by striking "and shall certify the results thereof" and inserting "to be conducted as soon as practicable but no earlier than 35 calendar days after the filing of an election petition. The Board shall certify the results of the election after it has ruled on each pre-election issue not resolved before the election and any additional issue pertaining to the conduct or results of the election".

SEC. 3. DETERMINATION OF APPROPRIATE UNITS FOR COLLECTIVE BARGAINING.

Section 9(b) of the National Labor Relations Act (29 U.S.C. 159(b)) is amended—

(1) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(2) by striking "The Board shall decide" and all that follows through "or subdivision thereof:" and inserting the following: "(1) In each case, prior to an election, the Board shall determine, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining. Unless otherwise stated in this Act, and excluding any bargaining unit determination promulgated through rulemaking before August 26, 2011, the unit appropriate for purposes of collective bargaining shall consist of employees that share a sufficient community of interest. In determining whether employees share a sufficient community of interest, the Board shall consider— In each case, prior to an election, the Board shall determine, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining. Unless otherwise stated in this Act, and excluding any bargaining unit determination promulgated through rulemaking before August 26, 2011, the unit appropriate for purposes of collective bargaining shall consist of employees that share a sufficient community of interest. In determining whether employees share a sufficient community of interest, the Board shall consider—

"(A) similarity of wages, benefits, and working conditions;

"(B) similarity of skills and training;

"(C) centrality of management and common supervision;

"(D) extent of interchange and frequency of contact between employees;

"(E) integration of the work flow and interrelationship of the production process;

"(F) the consistency of the unit with the employer's organizational structure;

"(G) similarity of job functions and work; and

"(H) the bargaining history in the particular unit and the industry.

To avoid the proliferation or fragmentation of bargaining units, employees shall not be excluded from the unit unless the interests of the group seeking a separate unit are sufficiently distinct from those of other employees to warrant the establishment of a separate unit. Whether additional employees should be included in a proposed unit shall be determined based on whether such additional employees and proposed unit members share a sufficient community of interest, with the sole exception of proposed accretions to an existing unit, in which the inclusion of additional employees shall be based on whether such additional employees and existing unit members share an overwhelming community of interest and the additional employees have little or no separate identity."; and

(3) by striking "*Provided,* That the Board" and inserting the following:

"(2) The Board".

COMMITTEE REPORT

PURPOSE

H.R. 4320, *Workforce Democracy and Fairness Act*, seeks to narrowly preempt the National Labor Relations Board's (NLRB or Board) February 6, 2014, rulemaking on election procedures and reverse its August 26, 2011, decision in *Specialty Healthcare and Rehabilitation Center of Mobile* (*Specialty Healthcare*), which limits employee free choice and employer free speech and will fracture the workforce.[1] The bill will codify the traditional standard for determining an appropriate bargaining unit and the traditional standard used to challenge a petitioned-for bargaining unit, require the Board to rule prior to the election on challenges to composition of the bargaining unit, ensure employers have at least 14 days to pre-

[1] 357 NLRB No. 83, 12 (Aug. 26, 2011).

pare for a pre-election hearing, allow parties to raise relevant and material pre-election issues as the pre-election hearing record is developed, provide employees with at least 35 days to consider whether they wish to be represented by a union, and ensure parties may request post-election Board review of regional directors' decisions. The *Workforce Democracy and Fairness Act* will ensure employee free choice, employer free speech, and workforce cohesion.

COMMITTEE ACTION

112TH CONGRESS

Subcommittee hearing highlights concerns about the NLRB's harmful actions

On February 11, 2011, the Subcommittee on Health, Employment, Labor, and Pensions held a hearing examining the "Emerging Trends at the National Labor Relations Board." The hearing examined controversial and precedent-changing NLRB holdings and invitations for briefs (including *Specialty Healthcare*), the NLRB's December 22, 2010, Notice of Proposed Rulemaking mandating employers hang a vague and biased poster regarding union rights at work, and new policies issued by Acting NLRB General Counsel Lafe Solomon. Witnesses at this hearing were Mr. Philip A. Miscimarra, Partner, Morgan, Lewis & Bockius LLP, Chicago, Illinois; Mr. Arthur Rosenfeld, former National Labor Relations Board General Counsel, Alexandria, Virginia; Mr. G. Roger King, Partner, Jones Day, Columbus, Ohio; and Ms. Cynthia Estlund, Professor of Law, New York University School of Law, New York, New York.

Full Committee hearing investigates NLRB's unprecedented rulemaking

On July 7, 2011, the Committee on Education and the Workforce heard testimony on the NLRB's proposed election procedure regulation in a hearing entitled "Rushing Union Elections: Protecting the Interests of Big Labor at the Expense of Workers' Free Choice." Witnesses 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 were the Honorable Peter C. Schaumber, former National Labor Relations Board Chairman, Washington, D.C.; Mr. Larry Getts, Tube Press Technician, Dana Corporation, Garrett, Indiana; Mr. John Carew, President, Carew Concrete & Supply Company, Appleton, Wisconsin, testifying on behalf of 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 disenfranchise 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 de-

cisions, including *Specialty Healthcare*, *Lamons Gasket*, and *UGL–UNICCO*. Additionally, the Board finalized a rule requiring almost every employer to post a vague, union-biased notice on employee *National Labor Relations Act* (NLRA) rights. The Board's unbridled overreach of authority demanded a complete examination by the committee. Witnesses before the committee were 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.

Introduction of H.R. 3094, Workforce Democracy and Fairness Act

On October 5, 2011, Chairman John Kline (R–MN) introduced H.R. 3094, *Workforce Democracy and Fairness Act*, with 26 cosponsors. Recognizing the NLRB had gone far beyond an adjudicative body designed to implement congressional intent under the NLRA, legislation was necessary to (1) reinstate the traditional standard for determining which employees make up an appropriate bargaining unit; (2) ensure employers are able to 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 to consider bill

On October 12, 2011, the Committee on Education and the Workforce held a legislative hearing on H.R. 3094. Witnesses testified the Board had overturned decades of precedent to facilitate union organizing at the cost of employee free choice and employer free speech and these actions would have devastating economic consequences for the country. Witnesses were 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, testifying on behalf of 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.

Committee favorably reports H.R. 3094, Workforce Democracy and Fairness Act

On October 26, 2011, the Committee on Education and the Workforce considered H.R. 3094. Chairman Kline offered an amendment in the nature of a substitute, clarifying that years of labor policies affecting the acute health care industry remain in place; limiting pre-election issues to those that are relevant and material; and reaffirming 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 the bill to the House of Representatives by a vote of 23–16.

House passes H.R. 3094

On November 30, 2011, the House of Representatives considered H.R. 3094. 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 Senate failed to act on the bill before the conclusion of the 112th Session of 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 "The Future of Union Organizing." The hearing reviewed 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 Rose, 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." Witnesses testified the proposed ambush election rule,[2] like its predecessor, would considerably shorten the time between the filing of the petition and the election date, and substantially limit the opportunity for a full evidentiary hearing or Board resolution of contested issues, including appropriate bargaining unit, voter eligibility, and election misconduct. Witnesses at this hearing were 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.

Introduction of H.R. 4320, Workforce Democracy and Fairness Act

On March 27, 2014, Chairman Kline introduced H.R. 4320, *Workforce Democracy and Fairness Act* with 20 cosponsors. The legislation largely mirrored H.R. 3094, *Workforce Democracy and Fairness Act* as introduced in the 112th Congress. Among the most significant differences, H.R. 4320 does not address the Board's proposed changes to the "Excelsior list"[3] or its *Specialty Healthcare* decision. Recognizing that the NLRB's ambush election rule would fundamentally alter representational elections to the determent of employers and employees, legislation was necessary to (1) ensure employers are able to participate in a fair union election and (2)

[2] 79 Fed. Reg. 7318.

[3] 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.

guarantee workers have the ability to make a fully informed decision in a union election.

Committee favorably reports H.R. 4320, Workforce Democracy and Fairness Act

On April 9, 2014, the Committee on Education and the Workforce considered H.R. 4320. Chairman Kline offered an amendment in the nature of a substitute, making a technical change to clarify that the legislation applies to representational elections. Four additional amendments were offered and debated. Representative Tom Price's (R–GA) amendment codifying the NLRB's bargaining unit determination standard prior to *Specialty Healthcare* was adopted by a vote of 21–13. The committee favorably reported H.R. 4320 to the House of Representatives by a vote of 21–14.

SUMMARY

The *Workforce Democracy and Fairness Act* (H.R. 4320) would (1) codify the traditional standard for determining an appropriate bargaining unit and the traditional standard used to challenge a petitioned-for bargaining unit; (2) require the Board to rule prior to the election on challenges to composition of the bargaining unit: (3) ensure employers have at least 14 days to prepare for a pre-election hearing; (4) allow parties to raise relevant and material pre-election issues as the pre-election hearing record is developed; (5) provide employees with at least 35 days to consider whether they wish to be represented by a union; and (6) ensure parties may request post-election Board review of a regional director's decisions.

The legislation is designed to be a narrow reversal of the NLRB's August 26, 2011, decision in *Specialty Healthcare and Rehabilitation Center of Mobile* and preempt the NLRB's February 6, 2014, proposed election procedures without upsetting any other current law. The legislation will ensure cohesion in the workplace, employee free choice, and employer free speech.

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 *Taft-Hartley Act*,[5] the most significant amendment of the NLRA, 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

[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 U.S.C. § 152(2).

[5] 29 U.S.C. § 141 et seq.

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

[7] 29 U.S.C. § 157.

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 as 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 neutral.[11]

CURRENT REPRESENTATIONAL ELECTION PROCESS

Section 9 of the NLRA broadly lays out the rules under which employees exercise their right to select or reject a union through a secret ballot.[12] In general, NLRB rulings, regulations, or internal policies establish specific representational election procedures.[13]

The representational election process begins when employees, an employer, or a labor organization files a petition for an investigation and certification of the representatives (petition) with the NLRB's regional office.[14] If a petition is filed by employees or a labor organization, the petitioner should present within 48 hours of filing evidence that 30 percent of employees in the proposed bargaining unit support the petition, typically through signed and dated authorization cards.[15]

Upon receipt of the petition, the regional director[16] issues a notice of hearing and serves the following on the employer: the petition, a Notice to Employees, a generic notice of employees' rights, and a Questionnaire on Commerce to receive information relevant to the Board's jurisdiction.[17] Additionally, the regional director ordinarily will request a list of employees in the petitioned-for unit and their job classifications to determine whether 30 percent of employees are interested in representation and the employer's position as to the appropriateness of the unit described in the petition.[18] To limit delay, if the list is untimely or not filed, absent unusual circumstances, the Board will assume the number of unit employees estimated is accurate and the individuals are among those employed in the unit.[19]

These official requests by the regional director are followed up by telephone consultations, meetings, and joint conference calls with the parties before the pre-election hearing to resolve outstanding issues and secure an election agreement.[20] If parties can agree on representational issues, they may enter into one of three types of

[8] *Id*. § 158.
[9] *Id*. § 158(c).
[10] *Id*. § 159(d).
[11] *NLRB* v. *Savair Mfg*., 414 U.S. 270, 278 (1973).
[12] 29 U.S.C. § 159.
[13] Notice of Proposed Rulemaking, Representation—Case Procedures, 79 Fed. Reg. 7319 (Feb. 6, 2014).
[14] National Labor Relations Board Casehandling Manual ¶ 11002.2–11002.3.
[15] *Id*. ¶ 11003.1 and 11023.1.
[16] While the Board is responsible for conducting secret ballot elections, in 1961 it delegated the bulk of its authority over election cases to its regional directors. The regional directors: (1) decide whether a question concerning representation exists; (2) determine the appropriate bargaining unit; (3) direct the election; (4) certify the results of the election; and (5) make findings and issue rulings on objections and challenged ballots.
[17] *Id*. ¶ 11009.
[18] *Id*. ¶ 11009.1.
[19] *Id*. ¶ 11009.2.
[20] *Id*. ¶ 11012.

election agreements: the consent election agreement, the stipulated election agreement, or the full consent election agreement.[21] In consent agreements, post-election issues are decided by the regional director.[22] In stipulated agreements, post-election issues are decided by the Board.[23] In 2013, more than 91 percent of initial NLRB representational elections were held pursuant to agreement of the parties.[24]

In those rare cases (less than 10 percent) in which parties cannot reach an election agreement, a Board agent will hold a pre-election hearing to develop and record evidence upon which the Board may discharge its duties under Section 9 of the NLRA.[25] The hearing is investigatory and non-adversarial.[26] Parties may present evidence on issues including the Board's jurisdiction, the existence of any bars to an election, the appropriateness of the unit, and eligibility of particular employees to vote.[27] The employer may petition for inclusion of additional employees in the bargaining unit by showing that the additional employees share a "sufficient community of interest" with the petitioned-for unit. To expedite the process, the hearing is held typically on consecutive days until completion,[28] and issues are limited to pre-election issues [29] that are genuinely in dispute.[30] Postponement requests are granted only under the most compelling circumstances.[31]

In most cases, the regional director issues a decision based on the record developed at the pre-election hearing.[32] Within the decision, the Board is statutorily obligated to determine the appropriate bargaining unit.[33] In general, the Board applies the "sufficient community of interest" standard to determine the appropriateness of the bargaining unit. To determine whether employees share a sufficient community of interest, the Board evaluates a number of factors, including skills, training, and whether the employees are organized into a separate department.[34] After finding the unit shares a sufficient community of interest, the Board proceeds to determine whether the interests of the group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit.[35] In most cases, the regional director will either direct an election or dismiss the petition. Under these procedures in 2013, the median time between the notice of

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[21] *Id*. ¶ 11084.
[22] *Id*. ¶ 11084.1.
[23] *Id*.
[24] Percentage of Elections Conducted Pursuant to Election Agreements in FY13, National Labor Relations Board, available at *http://www.nlrb.gov/news-outreach/graphs-data/petitions-and-elections/percentage-elections-conducted-pursuant-election* (last visited Oct. 2, 2014).
[25] National Labor Relations Board Casehandling Manual ¶ 11181.
[26] *Id*.
[27] 79 Fed. Reg. 7324.
[28] National Labor Relations Board Casehandling Manual ¶ 11008.
[29] Excludes issues such as alleged violations of federal statutes, the adequacy of the showing of interest, and alleged unfair labor practices, unless such matters are material to the issue of whether a question concerning representation exists.
[30] If a party refuses to state its position on an issue and no controversy exists, the party may be foreclosed from presenting evidence on that issue. *Mariah, Inc*., 322 NLRB 586 (1996); *Bennett Industries*, 313 NLRB 1363 (1994).
[31] National Labor Relations Board Casehandling Manual ¶ 11207.
[32] *Id*. ¶ 11273.
[33] *Allen Health Care Services*, 332 NLRB No. 134 (2000); *American Hospital Ass'n*. v. *NLRB*, 499 U.S. 606, 611, and 614 (1991).
[34] *Kalamazoo Paper Box Corp*., 136 NLRB 134, 137 (1962); *United Operations Inc*., 338 NLRB No. 18 (2002).
[35] *Seaboard Marine, Ltd*., 327 NLRB No. 108 (1999), *Brand Precision Services*, 313 NLRB 657 (1994); *Transerv Systems*, 311 NLRB 766 (1993).

hearing and the close of the pre-election hearing was 13 days. The median time between the close of the pre-election hearing and the regional director's decision was 20 days.[36] In 2012, regional directors issued 169 pre-election decisions in cases involving contested representations in a median of 34 days.[37]

To ensure uniform and consistent application, parties may appeal the regional director's decisions pre- and post-election to the Board. Pre-election decisions are appealed by filing a request for review with the Board within 14 days of the issuance of the decision.[38] The Board will grant the request if specific circumstances exist.[39] To ensure the Board has an opportunity to rule on a request for review, the regional director "will normally not schedule an election until a date between the 25th and 30th day after the date of the decisions."[40] Unless waived in a pre-election agreement, parties may obtain Board review of the regional director's disposition of election objections and challenges post-election by filing exceptions.[41]

The current Board process has been effective in expeditiously resolving questions concerning representation while maintaining the rights of employees and employers. For all petitions filed in 2013, the median time from the filing of a petition to an election was 38 days.[42] More than 94 percent of all initial elections were conducted within 56 days of the filing of the election petition.[43] Former NLRB general counsels have described similar results as "outstanding."[44] Additionally, unions won almost two-thirds of representational elections in calendar year 2013.[45]

NEW REPRESENTATIONAL ELECTION PROCESS

Despite the success of the existing election procedures, the NLRB re-proposed significant changes to the representational election process that will dramatically shorten the time between the filing of the petition and the representational election and will limit the opportunity for a full evidentiary hearing or Board review on contested issues.[46] In *Specialty Healthcare*, the NLRB majority—over-

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[36] E-mail from Celine McNicholas, Special Counsel, National Labor Relations Board, to Marvin Kaplan, Workforce Policy Counsel, House Education and the Workforce Committee (Mar. 3, 2014, 12:22 EST) (on file with author).

[37] General Counsel Memorandum 13–01, 7 (Jan. 11, 2013).

[38] National Labor Relations Board Casehandling Manual ¶ 11274 and 11364.5.

[39] NLRB Rules and Regulations 102.67(c), requests may be granted only upon one or more of the following grounds:

(1) A substantial question of law or policy is raised because of the absence of or the departure from officially reported Board precedent;

(2) The regional director s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party;

(3) The conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error; or

(4) Compelling reasons exist for reconsideration of an important Board rule or policy.

[40] 29 CFR 101.21(d).

[41] 79 Fed. Reg. 7325.

[42] Median Days from Petition to Election, National Labor Relations Board, available at *http://www.nlrb.gov/news-outreach/graphs-data/petitions-and-elections/median-days-petition-election* (last visited Oct. 2, 2014).

[43] Percentage of Elections Conducted in 56 Days in FY13, National Labor Relations Board, available at *http://www.nlrb.gov/news-outreach/graphs-data/petitions-and-elections/percentage-elections-conducted-56-days-fy13* (last visited Oct. 2, 2014).

[44] General Counsel Memorandum 11–03 at "Introduction" (Jan. 10, 2011).

[45] NLRB Graphs and Data, Disposition of Election Petitions Closed in FY13, available at *http://www.nlrb.gov/news-outreach/graphs-data/petitions-and-elections/disposition-election-petitions-closed-fy13* (last visited Oct. 2, 2014).

[46] 79 Fed. Reg. 7318.

turning decades of precedent—articulated a new standard for determining employee bargaining units that will fragment the workplace. Taken together, the Board's actions will have the effect of limiting employee free choice and employer free speech and fracturing the workforce.

February 6, 2014, Proposed Rulemaking

To speed up the representational election process, the Board's proposal would (1) replace the Questionnaire on Commerce Information with a Statement of Positions; (2) set pre-election hearings to begin seven days after the petition is filed: (3) delay voter eligibility issues until after the election: and (4) make post-election Board review discretionary.[47]

The Statement of Positions will solicit the parties' position on (1) the Board's jurisdiction; (2) the appropriateness of the petitioned-for unit; (3) any proposed exclusions from the petitioned-for unit; (4) the existence of any bar to the election; (5) the types, dates, times, and locations of the election; and (6) any other issues that a party intends to raise at the hearing.[48] With few exceptions, issues not raised in the Statement of Positions will be waived.[49] The Statement of Positions would be due no later than the date of the pre-election hearing, seven days from the filing of the petition.[50]

Under the proposed rule, resolution of disputes concerning the eligibility or inclusion of individual employees that represent less than 20 percent of the unit will be resolved if necessary after the election.[51] According to the Board, the "adoption of a bright-line numerical rule requiring that questions concerning the eligibility or inclusion of individuals constituting no more than 20 percent of all potentially eligible voters be litigated and resolved, if necessary, post-election, best serves the interests of the parties and employees as well as the public interest in efficient administration of the representation case process."[52]

The proposed rule would eliminate pre-election Board review.[53] All pre-election rulings if not rendered moot, would remain subject to Board review post-election.[54] Regional directors would no longer be required to provide at least 25 days between the issuance of the decision and the election for Board review.[55]

The Board's majority asserts the proposed rule has been implemented to "remove unnecessary barriers to the fair and expeditious resolution of questions concerning representation."[56] However, as was the case in 2011, the Board has made no "attempt to identify particular problems in cases where the process has failed."[57] In the opinion of former NRLB Member Brian Hayes, "vacancies or partisan shifts in Board membership and the inability of the Board itself to deal promptly with complex legal and factual issues have

[47] *Id.*
[48] *Id.* at 7328.
[49] *Id.*
[50] *Id.*
[51] *Id.* at 7330.
[52] *Id.* at 7331.
[53] *Id.* at 7333.
[54] *Id.*
[55] 29 C.F.R. 101.21(d).
[56] *Id.* at 7337.
[57] 76 Fed. Reg. at 36833.

delayed final resolution far more often than any systematic procedural problems or obstructionist legal tactics."[58] Former NLRB Chairman Peter Schaumber agreed that the election process was not the source of delays.[59] As Mr. Hayes has also noted, the "problem" the Board seeks to address with this rule "is not that the representation election process generally takes too long, [i]t is that unions are not winning more elections. . . . The [Board] majority [has] act[ed] in apparent furtherance of the interests of a narrow constituency, [unions], and at the great expense of undermining public trust in the fairness of Board elections."[60] It is the committee's view the Board is seeking to address a problem that does not exist.

Specialty Healthcare and Rehabilitation Center of Mobile

On August 26, 2011, in *Specialty Healthcare*,[61] the Board majority articulated a new standard for determining the composition of bargaining units. Under the new standard, if the union-proposed bargaining unit is made up of a readily identifiable group[62] and the Board finds the employees in the group share a community of interest, the Board will find the proposed unit appropriate.[63] Any party seeking to enlarge the unit must demonstrate that employees in the larger unit share an "overwhelming community of interest" with those in the petitioned-for unit.[64] The Board will no longer determine whether the interests of the group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit.[65] While the underlying case dealt specifically with non-acute health care, the Board decision significantly affects all industries.[66] NLRB regional offices "will have little option but to find almost any petitioned-for unit appropriate."[67] In the opinion of former NLRB Region 10 Director Curtis Mack, "a regional director looking at a representation petition would be compelled to hold a representation election for any unit supported by the union."[68] Under the new standard, "it [will be] virtually impossible for a party opposing th[e] unit to prove that any excluded employees should be included."[69]

Under *Specialty Healthcare,* the NLRB is approving fragmented petitioned-for units despite past precedent and challenges to the unit have been unsuccessful. For example, on July 22, 2014, in *Macy's, Inc.,*[70] the NLRB determined that cosmetics and fragrance employees at the Macy's store in Saugus, Massachusetts, are an

[58] *Id*. at 36831.
[59] Rushing Union Elections: Protecting the Interests of Big Labor at the Expense of Workers' Free Choice, Hearing before the House Education and the Workforce Committee, 112th Cong., 1st Sess. at 77 (2011).
[60] Notice of Proposed Rulemaking, Representation—Case Procedures, 76 Fed. Reg. 36812, 80 (June 22, 2011), available at *http://www.nlrb.gov/sites/default/files/documents/525/2011-15307_pi_2.pdf*.
[61] 357 NLRB No. 83 (Aug. 26, 2011).
[62] Such as employees that make up a job classification, department, or work location.
[63] 357 NLRB No. 83, 12 (Aug. 26, 2011).
[64] *Id.* at 6.
[65] *Id.*at 12.
[66] *Id.* at 18.
[67] *Id.* at 20.
[68] Culture of Union Favoritism: Recent Actions of the National Labor Relations Board, Hearing before the House Education and the Workforce Committee, 112th Cong., 1st Sess. at 13 (2011) (written testimony of Curtis Mack) [hereinafter Mack Testimony].
[69] *Id.* at 19.
[70] 361 NLRB No. 4 (2014).

appropriate unit for collective bargaining.[71] Despite past precedent that the appropriate unit is a store-wide unit[72] and extensive evidence that all sales associates share a community of interest,[73] in the opinion of the Board majority,[74] the employer had not "demonstrated that its other selling employees share an overwhelming community of interest with the cosmetics and fragrances employees."[75] While the NLRB rejected a unit consisting of employees in the salon and contemporary shoes departments at a Manhattan Bergdorf Goodman in *The Neiman Marcus Group, Inc.,* it appears to endorse an even smaller unit consisting of only those employees in the salon shoes department.[76] The Board's new standard is intended to fragment the workplace for the benefit of union organizing at the expense of employers and employees.

IMPLICATIONS OF THE NEW REPRESENTATIONAL ELECTION PROCESS

The NLRB's February 6, 2014, proposed rule will restrict an employer's ability to communicate with his or her employees, cripple an employee's ability to make an informed decision as to unionization, increase litigation, and decrease election agreements. The August 26, 2011, *Specialty Healthcare* decision will fracture workplaces, increasing labor costs and decreasing employee opportunities.

Limited opportunity for a robust debate and employee free choice

Congress recognized the value of employer speech and a robust debate when it added section 8(c) to the NLRA.[77] The Supreme Court noted Congress's express protection of free debate:

> From one vantage, § 8(c) "merely implements the First Amendment," *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575, 617, 89 S.Ct. 1918, 23 L.Ed.2d 547 (1969), in that it responded to particular constitutional rulings of the NLRB. See S.Rep. No. 80–105, pt. 2, pp. 23–24 (1947). But its enactment also manifested a "congressional intent to encourage free debate on issues dividing labor and management." *Linn* v. *Plant Guard Workers,* 383 U.S. 53, 62, 86 S.Ct. 657, 15 L.Ed.2d 582 (1966). It is indicative of how important Congress deemed such "free debate" that Congress amended the NLRA rather than leaving to the courts the task of correcting the NLRB's decisions on a case-by-case basis. We have characterized this policy judgment, which suffuses the NLRA as a whole, as "favoring uninhibited, robust, and wide-open debate in labor disputes," stressing that "freewheeling use of the written and spoken word . . . has been expressly fostered by Congress and approved by the NLRB." *Letter Carriers* v. *Austin,* 418 U.S. 264, 272–273, 94 S.Ct. 2770, 41 L.Ed.2d 745 (1974).[78]

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[71] *Macy's* at 1.
[72] *Bullocks, Inc., d/b/a I. Magnin & Co.,* 119 NLRB 642 (1957).
[73] *Macy's* at 22–23.
[74] Member Miscimarra dissented and Member Johnson recused himself.
[75] *Macy's* at 19.
[76] *The Neiman Marcus Group, Inc.,* 361 NLRB No. 11, 3 (2014).
[77] 29 U.S.C. §158(c)("The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act [subchapter], if such expression contains no threat of reprisal or force or promise of benefit.").
[78] *Chamber of Commerce* v. *Brown,* 554 U.S. 60, 67–68 (2008).

The proposed election procedures will effectively eliminate an employer's opportunity to communicate with its employees. Under the proposed election procedures, representational elections will be held in as little as 10 days.[79] The employer will spend the first seven days finding legal representation and preparing for the pre-election hearing, leaving as little as three days to educate employees and rebut misinformation.

In contrast, the union seeking to organize employees will have weeks, maybe years, to covertly lobby employees while collecting authorization cards. Unlike the employer, the union can promise employees increased wages, benefits, vacation time, etc., with few restrictions under the law.[80] While employees are likely to receive extensive information from the union on the benefits of unionization, employees are unlikely to receive information from the union on the union's political or social agenda, dues, or the effects unionization can have on their employer's profitability or market competitiveness.[81] When the union has garnered sufficient support, it selects the date and time for filing the petition.[82]

At the Committee on Education and the Workforce's July 7, 2011, hearing entitled "Rushing Union Elections: Protecting the Interests of Big Labor at the Expense of Workers' Free Choice," John Carew, president of Carew Concrete and Supply Co., described his experience with a union organizing drive and election. In mid-September 1999 during one of his company's busiest times of year, the NLRB informed Carew Concrete that a union was attempting to organize its entire employee base.[83] This was the first time Mr. Carew had heard about the organizing drive.[84] Speaking of the organizing drive at Carew Concrete, Mr. Carew testified:

> [E]mployees would receive mail containing not enough information, misinformation, and misleading information on issues such as striking, health care insurance, wages and pensions. At times employees were inaccurately told they would receive increased wages, similar to cities with higher wages nearly 100 miles away.[85]

Mr. Carew was forced to temporarily shut down portions of his business to educate supervisors and managers to ensure they did not violate the NLRA and to counter misinformation.[86]

At the same hearing, Larry Getts, an employee of the Dana Corporation, described his experience with union organizers:

> [Organizers stated] that our shop would make the same as the workers in the other—much larger—Fort Wayne plant. . . . [T]hat did not seem plausible because we were making twelve dollars an hour, and in Fort Wayne they were making twenty-one dollars an hour. Of course, much

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[79] 76 Fed. Reg. 36831

[80] 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 15 (2011) (written testimony of Peter Schaumber) [hereinafter Schaumber Testimony].

[81] *Id.*

[82] *Id.*

[83] 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 3 (2011) (written testimony of John Carew)[hereinafter Carew Testimony]

[84] *Id.*

[85] *Id.*

[86] *Id.*

> of what they told us proved to be false, but it's fair to say we weren't lacking information from union officials.[87]

While Mr. Getts stated he and his fellow employees would have appreciated hearing the views of his employer, he did not have access to a robust debate.[88] His employer had signed a neutrality agreement.[89] Since he and his fellow employees were not hearing opposing points of view, Mr. Getts took it upon himself to research and verify everything they were told.[90]

The expedited timeframe for representational elections contemplated in the NLRB's February 6, 2014, proposed rule will effectively eliminate employer speech and deprive employees of the right to make a fully informed decision on whether to be represented by a labor organization.

Increased controversy during representational elections

The new Statement of Positions, combined with the new timeframe for the start of the pre-election hearing and delays in unit composition determinations, will increase conflict between labor and management during representational elections, thereby decreasing the number of election agreements and increasing costs for employers and taxpayers.

As outlined above, the proposed rule will require parties to complete a Statement of Positions within seven days of receiving the election petition. With few exceptions, failure to state a position will preclude a party from raising the issue at the pre-election hearing. Robert Sullivan, testifying on behalf of the Retail Industry Leaders Association (RILA) at the October 12, 2011, hearing, stated that these requirements "will wreak havoc with small and large employers."[91] Small employers will have access to factual information, but they will not have in-house experts to evaluate the legal issues.[92] In contrast, large employers will have the advantage of having in-house experts or access to outside experts, but their size will complicate legal issues.[93]

This situation has been further complicated by the *Specialty Healthcare* decision. At the Committee on Education and the Workforce's March 19, 2014, hearing entitled "Culture of Union Favoritism: The Return of the NLRB's Ambush Election Rule," labor attorney Doreen Davis highlighted the difficulty of determining whether employees share an "overwhelming community of interest" and questioned whether seven days provided sufficient time to prepare for the pre-election:

> [U]nder the current rules, sometimes we are required to [prepare for the pre-election hearing] as soon as 10 days [after the petition for election is filed], but not 7 days, and under the current rules, we can litigate at the pre-election

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[87] 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].
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] H.R. 3094, The Workforce Democracy and Fairness Act, Hearing before the Committee on Education and the Workforce, 112th Cong., 1st Sess. at 8 (2012) (written testimony of Robert Sullivan) [hereinafter Sullivan Testimony].
[92] *Id.*
[93] *Id.* at 9.

> conference. . . . We haven't waived issues that weren't raised in the pre-election conference. . . . Under the new rules, there would be no opportunity to do that, unless you had stated it in your statement of position, which is due [] no later than 7 days after the petition is filed. So it is very challenging for small employers. It is equally challenging for large employers, because as an outside counsel, I have to learn their business, how it operates, which group of employees interact with whom, which employees have a community of interest with others. Do they have similar wages, hours, working conditions, supervision? Is what they do at that company related to what another employee does and how? There are many things that have to be learned in order to effectively represent an employer in these kinds of proceedings, and that is all being very much short-circuited under these proposed rules.[94]

With only seven days to prepare the Statement of Positions for the start of the pre-election hearing, there is little opportunity for election agreements.[95] To ensure no issues are waived, employers will spend their time preserving their positions rather than working with the regional director to reach a voluntary election agreement.[96] Former NLRB Chairman Schaumber stated that "the sum total of these rules is you are going to have far fewer pre-election agreements."[97] Unable to secure election agreements, the NLRB will be forced to hold more pre-election hearings on every possible issue in controversy, increasing both taxpayer and employer legal costs.

Delaying unit composition issues until after the election could increase the number of rerun elections. Pro-union activity by supervisors may taint the election if employees falsely conclude that the employer favors the union or if employees support the union out of fear of retaliation.[98] In these cases, the Board may set aside an election. Undoubtedly, pro-union activity by supervisors improperly included in the bargaining unit will be more common under the proposed rules, resulting in more elections being set aside. In cases where the character or scope of the bargaining unit changes significantly, a number of courts have ordered a new election, finding that employees were effectively denied the right to make an informed choice in the representational election.[99] Every rerun election and unfair labor practice charge will cost taxpayer dollars and increase employer legal costs.

Fragmentation of the workforce

The new standard for determining the composition of an appropriate bargaining unit adopted in *Specialty Healthcare* will allow

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[94] Culture of Union Favoritism: The Return of the NLRB's Ambush Election Rule, Hearing before the House Education and the Workforce Committee, 113th Cong., 2nd Sess. (2014).

[95] 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 44 (2011).

[96] *Id.*

[97] 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 78–79 (2011).

[98] *Fall River Sav. Bank* v. *NLRB,* 649 F.2d 50, 56 (1st Cir. 1981).

[99] *NLRB* v. *Lorimar Productions, Inc.,* 771 F.2d 1294 (9th Cir. 1985); *NLRB* v. *Beverly Health and Rehabilitation Services,* 120 F.3d 262 (4th Cir. 1977).

unions to gerrymander the bargaining unit, encourage incremental organizing of units that support unionization, and lead to fragmentation in the workplace. As noted above, under the new standard, regional directors will be compelled to approve any unit supported by the union, and employer challenges will be difficult, if not impossible, permitting unions to limit organizing to those employees that support the union.[100] Instead of one unit, employers will have to bargain with multiple units.

Fragmentation will increase labor costs. As the number of units within a business increases, labor costs and the risk of strikes increase. Rather than negotiating once every three years, the employer may be forced to negotiate collective bargaining agreements every year or multiple times a year. Each negotiation includes the possibility of a strike, disrupting operations and damaging customer relations.[101]

Moreover, this new standard is detrimental to workers. Drawing lines between departments limits flexibility and employee opportunities. As explained by Robert Sullivan during the October 12, 2011, Committee on Education and the Workforce hearing, if employees are divided by department, such as sporting goods divided from housewares, employers will not be able to move employees between departments in response to changes in demand, and employees will not be able to pick up shifts in other departments.[102] Additionally, opportunities for advancement into management would be limited without cross-training.[103]

LEGISLATION IS NEEDED TO ADDRESS THE ACTIONS OF THE NATIONAL LABOR RELATIONS BOARD

Congress is responsible for establishing and revising, as necessary, standards in federal labor law. The NLRB's decision in *Specialty Healthcare* and its February 6, 2014, proposed election procedures will limit employee free choice and employer free speech and fragment the workforce. The *Workforce Democracy and Fairness Act* is a narrow reversal of the NLRB's August 26, 2011, decision in *Specialty Healthcare* and preempts the NLRB's February 6, 2014, proposed rule governing election procedures, without upsetting other standards under current law.

To limit proliferation and fragmentation of bargaining units, unless otherwise stated in the Act and excluding bargaining unit determinations promulgated through rulemaking effective prior to August 25, 2011 (acute health care facilities),[104] the legislation codifies the test used prior to the Board's holding in *Specialty Healthcare*. Bargaining units will again be comprised of employees that share a "sufficient community of interest." In determining whether employees share a "sufficient community of interest," the Board will weigh eight factors, including similarity of wages, working conditions, and skills. The Board will not exclude employees from the unit unless the interests of the group sought are suffi-

[100] *Specialty Healthcare,* 357 NLRB No. 83, 19.
[101] Sullivan Testimony at 4.
[102] *Id.*
[103] *Id.*
[104] Acute care is a branch of secondary health care where a patient receives active but short-term treatment for a severe injury or episode of illness, an urgent medical condition, or during recovery from surgery.

ciently distinct from those of included employees to warrant the establishment of a separate unit.

To ensure parties can dispute union-proposed bargaining units, the *Workforce Democracy and Fairness Act* will codify the test used prior to *Specialty Healthcare.* Any party seeking to enlarge the proposed bargaining unit must demonstrate that employees in the larger unit share a "sufficient community of interest" with those in the proposed unit, not an "overwhelming community of interest." Taken together, these provisions of the *Workforce Democracy and Fairness Act* will limit fragmentation, ensure employer flexibility and greater employee opportunities, and reduce labor costs.

The *Workforce Democracy and Fairness Act* will also address the shortcomings of the NLRB's proposed rule that changes union election procedures. More specifically, the Act will address:

Voter Eligibility. To ensure employees and employers know who will be in their bargaining unit and avoid complications on eligibility, i.e., whether an employee is a supervisor, the Board shall determine the appropriate bargaining unit prior to an election.

Scheduling of Pre-Election Hearing. The regional director will have discretion as to when the pre-election hearing shall begin, but parties will have at least 14 days to prepare for the pre-election hearing. Employers will have at least 14 days to hire an attorney, identify issues, and prepare their case for the pre-election hearing. The 14-day time period gives unions, employers, and the NLRB an opportunity to compromise and reach an election agreement.

Identifying Issues in Dispute. Employers and unions will be allowed to raise independently any relevant and material issue or assert any relevant and material position at any time prior to the close of the hearing. Employers and unions will be free to raise issues as the hearing record develops, ensuring a fair and effective pre-election hearing. To ensure parties do not inappropriately delay elections, issues traditionally excluded from pre-election hearings, such as the eligibility of employees for union membership, may only be raised after the election.

Timing of Election. Providing the time necessary for employees to understand the costs and benefits of unionization is essential to free choice. In 1959, then-Senator John F. Kennedy stated during the debate over amendments to the NLRA that at least 30 days were required between the petition's filing and the election to "safeguard against rushing employees into an election where they are unfamiliar with the issues."[105] For all petitions filed in 2013, the median time from the filing of a petition to an election was 39 days.[106] Under the legislation, the NLRB will conduct an election as soon as practicable, but no less than 35 calendar days following the filing of an election petition. Employers will have time to educate employees, and employees will have time to effectively judge whether they wished to be represented by a union.

Post-election Board Review. To ensure uniformity and due process, parties may petition the Board for post-election review of the regional director's decision.

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[105] Cong. Rec. 5361 (1959).

[106] Median Days from Petition to Election, National Labor Relations Board, available at *http://www.nlrb.gov/news-outreach/graphs-data/petitions-and-elections/median-days-petition-election* (last visited May 28, 2014).

In sum, the *Workforce Democracy and Fairness Act* will ensure employers have adequate time to communicate with their employees and employees have the time and information necessary to make a fully-informed decision as to unionization.

CONCLUSION

Over the last several years, the NLRB has issued multiple decisions and rules intended to unbalance labor relations to benefit organized labor. The two most significant examples are the Board's holding in *Specialty Healthcare* and its February 6, 2014, proposed rule regarding election procedures. Together, these actions will fragment workplaces, increase labor costs and strife, and limit employer free speech and employee free choice. The *Workforce Democracy and Fairness Act* will return balance to labor relations by creating a fair election process for unions, employers, and employees.

SECTION-BY-SECTION ANALYSIS

The following is a section-by-section analysis of the Amendment in the Nature of a Substitute to H.R. 4320 as offered by Chairman Kline and reported favorably by the committee.

Section 1. Provides that the short title is the "Workforce Democracy and Fairness Act."

Section 2. Amends the *National Labor Relations Act* to reverse the National Labor Relations Board's decision in *Specialty Healthcare and Rehabilitation of Mobile* and preempt its February 6, 2014, proposed changes to representational election procedures.

First, this section outlines the test used to determine the appropriate bargaining unit prior to the election. To determine whether employees share a sufficient community of interest, the Board will consider eight factors: (1) similarity of wages, benefits, and working conditions; (2) similarity of skills and training; (3) centrality of management and common supervision; (4) extent of interchange and frequency of contact between employees; (5) integration of the work flow and interrelationship of the production process; (6) the consistency of the unit with the employer's organizational structure; (7) similarity of job functions and work; and (8) the bargaining history in the particular unit and the industry. To avoid the proliferation or fragmentation of bargaining units, employees shall not be excluded from the unit unless the interests of the group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit.

Second, this section sets the number of days from the filing of the petition upon which the pre-election hearing may begin and the representational election may be held. Parties will have at least 14 days from the date of the filing of the petition to prepare for the pre-election hearing. Secret ballot elections will be held as soon as practicable, but no less than 35 days following the filing of an election petition.

Third, this section lays out certain aspects of the pre-election hearing. The pre-election hearing shall be non-adversarial. The hearing officer is charged with the responsibility of identifying any relevant and material pre-election issues and thereafter making a full record thereon. The scope of relevant and material pre-election issues is defined. Finally, it makes clear that parties may raise any

relevant and material pre-election issue at any time prior to the close of the hearing.

Fourth, this section guarantees an opportunity for Board review of representational election issues while ensuring that elections are not delayed. The Board must continue to rule on each pre-election issue not resolved before the election and any additional issue pertaining to the conduct or results of the election. However, to avoid election delay, such review shall occur after the election.

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. 4320 will ensure employee free choice, employer free speech, and workforce cohesion.

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. 4320 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 4320 Amendment Number: 2a

Disposition: Defeated by a vote of 12 to 20

SponsorAmendment: Miller/ Minimum Wage (2nd degree amendment to amendment offered by Mr. Price)

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: 12 No: 20 Not Voting: 9

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. 4320 Amendment Number: 3

Disposition: Passed by a vote of 20 to 15.

SponsorAmendment: Motion to table the appeal of the ruling of the Chair (Polis/ Employment Non-Discrimination 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: 20 No: 15 Not Voting: 6

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. 4320 Amendment Number: 4

Disposition: Passed by a vote of 20 to 12

SponsorAmendment: Motion to table the appeal of the ruling of the Chair (Miller/ Mine Safety Protection 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: 20 No: 12 Not Voting: 9

Total: 41 / Quorum: 14 / Report: 21

Date: April 9, 2014

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 4 Bill: H.R. 4320 Amendment Number: 2

Disposition: Adopted by a roll call vote of 21 yeas and 13 nays.

Sponsor/Amendment: Mr. Price - amendment to the ANS

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: 13 Not Voting: 7

Total: 41 / Quorum: 14 / Report: 21

Date: April 9, 2014

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 5 Bill: H.R. 4320 Amendment Number:

Disposition: Ordered favorably reported the House, as amended, by a vote of 21 yeas and 14 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)							

TOTALS: Aye: 21 No: 14 Not Voting: 6

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. 4320 are to ensure employee free choice, employer free speech, and workforce cohesion.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 4320 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. 4320 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. 4320 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. 4320, the Workforce Democracy and Fairness 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. 4320—Workforce Democracy and Fairness Act

H.R. 4320 would amend the National Labor Relations Act to require the National Labor Relations Board to delay, for at least 14 days after a petition is filed, hearings on petitions by employees or employers for representation in collective bargaining. The bill also would set certain requirements for pre-election hearings. In addition, secret ballot elections could be held no earlier than 35 days after an election petition is filed. CBO estimates that enacting H.R. 4320 would not affect the federal budget.

Enacting H.R. 4320 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

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

The CBO staff contact for this estimate is Christina Hawley Anthony. The 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. 4320. 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATIONAL LABOR RELATIONS ACT

* * * * * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) * * *

(b) [The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercisiong the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,* That the Board] *(1) In each case, prior to an election, the Board shall determine, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining. Unless otherwise stated in this Act, and excluding any bargaining unit determination promulgated through rulemaking before August 26, 2011, the unit appropriate for purposes of collective bargaining shall consist of employees that share a sufficient community*

of interest. In determining whether employees share a sufficient community of interest, the Board shall consider—

(A) similarity of wages, benefits, and working conditions;

(B) similarity of skills and training;

(C) centrality of management and common supervision;

(D) extent of interchange and frequency of contact between employees;

(E) integration of the work flow and interrelationship of the production process;

(F) the consistency of the unit with the employer's organizational structure;

(G) similarity of job functions and work; and

(H) the bargaining history in the particular unit and the industry.

To avoid the proliferation or fragmentation of bargaining units, employees shall not be excluded from the unit unless the interests of the group seeking a separate unit are sufficiently distinct from those of other employees to warrant the establishment of a separate unit. Whether additional employees should be included in a proposed unit shall be determined based on whether such additional employees and proposed unit members share a sufficient community of interest, with the sole exception of proposed accretions to an existing unit, in which the inclusion of additional employees shall be based on whether such additional employees and existing unit members share an overwhelming community of interest and the additional employees have little or no separate identity.

(2) The Board shall not ⟦(1)⟧ *(A)* decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or ⟦(2)⟧ *(B)* decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or ⟦(3)⟧ *(C)* decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(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*, but in no circumstances less than 14 calendar days after the filing of the petition*. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. *An appropriate hearing shall be one that is non-adversarial with the hearing officer charged, in*

collaboration with the parties, with the responsibility of identifying any relevant and material pre-election issues and thereafter making a full record thereon. Relevant and material pre-election issues shall include, in addition to unit appropriateness, the Board's jurisdiction and any other issue the resolution of which may make an election unnecessary or which may reasonably be expected to impact the outcome of the election. Parties may independently raise any relevant and material pre-election issue or assert any relevant and material position at any time prior to the close of the hearing. 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**]** *to be conducted as soon as practicable but no earlier than 35 calendar days after the filing of an election petition. The Board shall certify the results of the election after it has ruled on each pre-election issue not resolved before the election and any additional issue pertaining to the conduct or results of the election.*

* * * * * * *

MINORITY VIEWS

H.R. 4320 ATTACKS THE RIGHTS OF WORKERS AND FAILS TO ADDRESS THE URGENT NEED TO PROTECT WORKERS FROM DISCRIMINATION BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY AND PROTECT AMERICAN MINERS AT WORK

Committee Democrats oppose and voted unanimously against H.R. 4320, the "Workforce Democracy and Fairness Act," which mandates delays in the National Labor Relations Board (NLRB) process by stating that no election may occur sooner than 35 days after the filing of a petition. However, there is no limit on how long an election may be delayed. By contrast, the Board's proposed rule would eliminate the automatic 25–30 day delay, and instead allow disputes to be resolved post-election. The bill also requires a 14 day delay prior to a hearing, which is twice the minimum mandated by the Republican-controlled board in 2002. In contrast, the proposed NLRB rule requires a hearing to begin 7 days after the hearing notice is served. The bill also requires all election-related issues to be resolved by the Board prior to an election, which would promote and reward litigation and frivolous claims by management seeking to prevent representation elections.

H.R. 4320 is a misguided attempt to prevent reasonable reforms to the representation election process. It will create delay and as a result, prevent representation elections. This bill does nothing to improve the lives of struggling workers, but instead, it impedes workers' access to the election representation process that protects workers' rights. Committee Democrats are united in opposition to H.R. 4320 and will continue to fight for the rights of workers and their families.

REPUBLICAN AMENDMENT TO H.R. 4320

Representative Price offered an amendment to H.R. 4320 on the determination of appropriate units for collective bargaining. This amendment was offered in response to the August 2011 *Specialty Healthcare* decision, which dealt with a demand by a nursing home operator to add maintenance assistants, cooks, data entry clerks, business office clericals, and receptionists to a union petition of certified nursing assistants. The Board held that the employer had the burden of showing that there is an "overwhelming community of interest" between the employees the employer wishes to add and the bargaining unit. The Majority has expressed concerns that this decision will give rise to "micro-bargaining units" that are easier to organize and difficult for employers to manage. However, these concerns are unfounded as there has not been any appreciable impact on the size of bargaining units. Senior Democratic Member Miller offered a second degree amendment to this amendment discussed below.

COMMITTEE DEMOCRATS OFFER AMENDMENTS TO H.R. 4320 TO PREVENT WORKPLACE DISCRIMINATION AND PROMOTE SAFE WORKING CONDITIONS IN OUR NATION'S MINES

H.R. 4320 is misguided not only because it creates unnecessary delays and prevents workers from accessing the election representation process, but also because it neglects the real problems workers face. In response, the Democrats offered H.R. 1373, the "Robert C. Byrd Mine Safety Protection Act of 2013," and H.R. 1755, the "Employment Non-Discrimination Act of 2013" (ENDA), as amendments to H.R. 4320. These Democratic substitutes address discrimination based on sexual orientation and gender identity and miners' health and safety concerns in the workplace.

Senior Democratic Member Miller also offered a second degree amendment to strike the text of Representative Price's amendment and replace it with language that would prevent H.R. 4320 from taking place until the Bureau of Labor Statistics' Occupational Employment Statistics Survey showed that the minimum wage was at least $10.10 an hour. This amendment would effectively prevent H.R. 4320 from being enacted until the minimum wage reaches $10.10. Workers in this country continue to struggle to get by without adequate minimum wage protections. A $10.10 minimum wage would provide a fair wage for working Americans and stimulate consumer demand and our economy.

The second degree amendment failed 12–20.

Representative Polis introduced an amendment that would strike the text of H.R. 4320 and replace it with the text of H.R. 1755, the "Employment Non-Discrimination Act of 2013" (ENDA). ENDA would prohibit discrimination in hiring and employment on the basis of sexual orientation or gender identity by employers with at least 15 employees. Twenty one states and the District of Columbia have passed laws prohibiting employment discrimination based on sexual orientation, and 17 states and D.C. also prohibit discrimination based on gender identity. This legislation has 202 cosponsors in the House, and the Senate voted 64 to 32 to pass their version of ENDA. Despite widespread support on this issue, the Majority in the House has failed to take action on this important civil rights bill.

The amendment was ruled non-germane. Representative Polis appealed the ruling of the chair, and the vote to table the appeal the ruling of the chair was adopted 15–20.

Senior Democratic Member Miller introduced an amendment that would replace the text of H.R. 4320 with H.R. 1373, the "Robert C. Byrd Mine Safety Protection Act," which provides comprehensive reforms that will help protect the lives and well-being of American miners. The investigation of the Upper Big Branch mine explosion on April 5, 2010—the deadliest U.S. coal mine disaster in almost 40 years—revealed weaknesses in our laws protecting miners, and this bill was introduced in response. H.R. 1373 would update our nation's mine health and safety laws by giving MSHA the ability to effectively protect miners' lives, hold mine operators accountable for putting their workers in unnecessary danger, and strengthen whistleblower protections for miners who speak out about unsafe conditions. This amendment includes meas-

ures that would increase the consequences for operators who intimidate miners to discourage them from stopping unsafe work or reporting hazards to MSHA, protect miners if MSHA temporarily closes a mine due to safety hazards by ensuring miners can receive pay for up to 60 days, and deters mine operators from providing advanced notice of inspections, which allows them to hide violations and hazards from enforcement personnel. While H.R. 4320 weakens the ability of workers to advocate for better working conditions by making it harder for workers to choose to form a union, this legislation would work to improve the health and safety of miners on the job.

The amendment was ruled non-germane. Senior Democratic Member Miller appealed the ruling of the chair, and the vote to table the appeal of the ruling of the chair on the amendment was adopted 12–20.

CONCLUSION

H.R. 4320 blocks commonsense reforms that would streamline and modernize the current election representation process by creating unnecessary delay. This legislation does nothing to better workers' lives, but instead hinders their ability to access the election representation process and exercise their right of freedom of association. Committee Democrats are united in opposition to H.R. 4320 and will continue to fight for the rights of workers and their families.

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

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