There is more to this than meets the eye. Also, be aware—don't be surprised if you see your insurance premiums go up.

The President wants to sell Americans on the good things in the law, what he considers the good things in the law, but he has failed to mention that mandating insurers to cover these extra benefits is going to cause premiums to go up.

Another: Insurance companies can no longer cap the amount they will pay over a person's lifetime. Americans need to be aware, however, that insurance plans that had lower premium costs because—they say, how do you get premiums down? They did it by limiting lifetime amounts. It says those people now may be forced to pay higher insurance premiums.

Another: The law designed new rules preventing insurers from denying coverage to any child under the age of 19 who has a preexisting medical condition. So what did the Washington Post say about that? What did the Los Angeles Times report? They both printed articles this Tuesday, 2 days ago, warning consumers that major health insurance companies—what are they going to do about this? They are going to plan to stop selling new child-only covered products completely. Is this going to help kids with preexisting conditions, this law? As these insurance companies plan to stop selling new child-only coverage products, that is not going to help. It is because of this law.

The health care law allows parents to wait until their child is sick before buying a policy. When only sick people buy health insurance, premiums have to go up. As the rate increases, more people drop their coverage. This certainly is going to hit lower income families hard. Some uninsured parents, while they can't afford family insurance, often decide to buy a child-only policy to ensure their kids have coverage. But according to these new reports, families all across America will have fewer health insurance options because of the new law—fewer options for families, fewer options for patients, not more.

This Congress had a historic opportunity to make patient-centered health care reforms to bring down the cost of medical care in this country. We had a historic opportunity, and this Congress missed it. The one thing the American people wanted out of health care reform was lower costs. But increased Washington mandates passed by this Senate only serve to produce fewer insurance choices, increased costs, and insert the Federal Government between patients and their doctors.

It is time that we start talking honestly about how this law—even the things on which Republicans and Democrats agree—affected patients and their families. That is why I believe this health care law needs to be repealed. It should be repealed and replaced with better ideas. And there are better ideas—better ideas that were rejected by the majority in this Senate, who refused to listen, who refused to listen to the American people who were bringing forth better ideas, changes such as allowing people to buy insurance across State lines—that is going to bring down the cost of care, and it is going to help about 12 million people who did not have insurance get insurance; offering premium breaks to folks who make healthy lifestyle changes—absolutely critical; dealing with lawsuit abuse to help eliminate some of this defensive medicine and the increased cost of that practice. We need to allow small businesses to join together, to pool together in order to offer affordable health insurance to their workers, get better deals with insurance costs. These are changes that put patients in control of their medical decisions, not the government.

People ask me, as a doctor, what I think about this, what I think about this law. I will tell you, having practiced medicine for over 25 years, we need to do something. This wasn't it. This law is bad for people. It is bad for people who are patients. It is bad for people who are providers, the nurses and the doctors who take care of the patients. It is bad for payers, the taxpayers of this country who will foot a significant amount of the bill. The people who get their insurance through work—what is the impact going to be on those jobs and those businesses? This is a bill that is bad for people.

We can and we must fix a broken health care system, but we can do it without undermining choice, which is what this health care law has done; without undermining competition, which is what this health care law has done; and without undermining innovation, which is what this health care law has done. And we need to do it without raiding Medicare to start a whole new government entitlement program. We can do it without raising taxes that kill jobs in a bad economy.

That is why, as we are here today, 6 months after the enactment of this bill becoming law, the Obamacare law, 6 months later, 61 percent of the American people want it repealed. It is now time to repeal and replace this health care legislation and replace it with something that will work for the American people because that is what this country wants, that is what this country needs, that is what this country and the people of this country have been asking for all along, but the members of the majority and the White House refused to listen.

I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HARKIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

The Senator from Georgia.

CONGRESSIONAL DISAPPROVAL OF THE RULE SUBMITTED BY THE NATIONAL MEDIATION BOARD RELATING TO REPRESENTATION ELECTION PROCEDURES—MOTION TO PROCEED

Mr. ISAKSON. Madam President, I move to proceed to the consideration of S.J. Res. 30.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 2 hours for debate on the motion to proceed, with the time equally divided and controlled between the Senator from Iowa, Mr. HARKIN, and the Senator from Georgia, Mr. ISAKSON, or their designees.

The Senator from Georgia.

Mr. ISAKSON. Madam President, I yield myself up to 15 minutes of the time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ISAKSON. Madam President, on May 11, 2010, the National Mediation Board, the board that oversees labor relations in transportation—in the railroad and airlines industries—finalized a regulation repealing the 75-year-old majority rule. Under the majority rule, a majority of the organizing unit was required to affirmatively vote yes to unionize. The repeal of this rule means that now a minority in the bargaining unit can organize, essentially permanently, the entire organization of the unit.

Today, I am asking this body to pass S.J. Res. 30 to undo this rule change under the procedures created by the Congressional Review Act of 1996. This law allows Congress to disapprove regulatory rules issued by Federal agencies by enacting a joint resolution of disapproval. This resolution will revoke a recent regulation promulgated by the National Mediation Board eliminating the old majority rule that had been in place for 75 years under 12 Presidential administrations.

Under the old rules, a majority of the workers in the organizing unit were required to affirmatively vote yes in order to organize. Under the new rules, however, only a majority of those voting are required to vote yes to organize a union.

Let me give you an example. If an organizing unit had 10,000 employees, under the 75-year-old rule, 5,001 would have had to vote affirmatively for a union. Under the new rule, if only 4,000 turned out to vote, only 2,001 would have had to vote affirmatively to be able to unionize. In fact, in large measure, it seems to me, it is kind of ''card check lite.''

There is no sound legal or policy basis for hastily changing a rule that has been in

place and upheld repeatedly for 75 years. Throughout this time, the majority rule has furthered the primary purpose of the Railway Labor Act, which is ''to avoid any interruption to commerce or to the operation of any carrier engaged therein.''

The Supreme Court of the United States has upheld the rule not once but twice. The National Mediation Board, under both Democratic and Republican administrations, previously rejected changes to the majority rule on four separate occasions. In fact, the National Mediation Board, under former President Jimmy Carter of Georgia, concluded that only Congress could make such a decision.

Even the Obama administration's own Labor Department defended the soundness of the majority rule, writing on October 8, 2009:

For 70 years, the Board has required, when there is no representative and just one organization is seeking to be representative, a majority of the workers in the craft or class to vote for that organization.

In so doing, President Obama's own Labor Department argued that all past boards ''reasonably construed'' the Railway Labor Act.

As former National Mediation Board Chairman Elizabeth Dougherty wrote in her strong dissent of the repeal of the majority rule, making this change ''would be an unprecedented event in the history of the National Mediation Board.''

She continued:

Regardless of the composition of the board or the inhabitant of the White House, this independent agency has never been in the business of making controversial, one-sided rule changes at the behest of only labor or management.

The majority rule is not unfair to organizing efforts, as over two-thirds of the 1,850 reported elections since 1935 have resulted in a union. Moreover, an average of 72 percent of airline and railroad employees are represented by unions, while only 8 percent of private-sector workers are union represented.

One of the reasons the majority rule was approved is because recognition of a union under the Railway Labor Act is essentially permanent, and I reiterate that. The decision is essentially permanent and irrevocable. Thus, to reference my example earlier, the minority of 2,001 in an employee group of 10,000 could irrevocably unionize an organization and make it permanent.

Quoting the Obama administration's Labor Department again:

Unlike the National Labor Relations Act, the Railway Labor Act does not provide for a decertification process.

''Does not provide for a decertification process.''

Therefore, the union's certification continues until another union makes a showing of interest to represent the respective class or craft. . . . Consequently, it is of utmost importance that a certified union has the support of the workers it is certified to represent.

While existing practice allows for a cumbersome and slow ''straw man'' union disillusion process, the Railway Labor Act has no decertification process as there is under the National Labor Relations Act.

The current ''straw man'' union disillusion process is Byzantine and nearly impossible for workers to use. This is how National Mediation Board Chairman Dougherty described the process:

Employees who no longer wish to be represented by a union must select an individual to stand for election (the so-called ''straw man''), convince a majority of the eligible voters in the craft or class to sign authorization cards for that individual (while attempting to explain that this individual is not actually going to represent them), and then file an application with the Board. If the requisite showing of interest is met, an election is authorized, and the employees must either vote for the ''straw man,'' with the hope that he will later disclaim interest in representing the craft or class, or abstain from voting.

What a ridiculous process that is.

Unfortunately, the new rule allows no corollary process by which employees can choose to opt out of unionization. Thus, the Obama administration greatly lowers the bar for unionization, while continuing to ensure that it is nearly impossible to decertify a union.

In Teamsters v. BRAC, the DC Circuit Court wrote:

It is inconceivable that the right to reject collective representation vanishes entirely if the employees of a unit once choose collective representation. On its face, that is a most unlikely rule, especially taking into account the inevitability of substantial turnover of personnel within the unit.

If the Obama administration truly sought to ''more accurately measure employee choice,'' they would have provided a parallel process by which employees could vote out a union in an election conducted in the same manner as the election which resulted in certification of the union in the first place. Of course, they did not do that.

Quoting Chairman Dougherty again:

Apparently, employee choice only matters to the Majority when it relates to changing the status quo from no representation to representation and not the other way around.

The impact of this is dramatic in my State, and it has a dramatic impact on Delta Air Lines, which is headquartered in my State.

On April 14, 2008, Delta and Northwest Airlines announced a merger. Before the merger, Delta was a predominantly nonunion organization. Its pilots were unionized, but flight attendants and ground personnel were nonunion. Delta employees—many of whom reside in Georgia—were and still are some of the most dedicated employees of any company in the United States, and some of the best paid employees in the airline industry, which explains why Delta employees have voted down six unionization drives since 2000 alone.

Some of the former employees of Northwest, which was a much smaller operation than Delta, wish the new Delta to adopt their old labor agreements. Those old labor agreements at Northwest led to a long history of labor strife, lower pay, and burdensome work rules.

I say, leave that decision up to the workers. If the benefits of union representation are so great, then why the need to change the rule? This administration simply refuses to obey the will of the majority of the class and has chosen to side with the union in the passing of this rule.

As National Mediation Board Chairman Dougherty has written, the board's actions are targeted at ''40,000 employees at two major airlines—the largest group of elections in the history of the National Mediation Board. I believe it is harmful to the reputation and credibility of the [National Mediation] Board for it to take a position in favor of a change to our election rules during these elections.''

In short, we are here today for one reason and one reason only: The Obama administration has chosen to tilt the outcome of unionization elections at Delta Air Lines in favor of the transit unions.

Let me discuss the integrity of this process that took place at the Board.

Once confirmed by the Senate, revoking the majority rule was clearly job one for Members Puchala and Hoglander. Only 5 weeks after Mr. Hoglander was confirmed on July 24, 2009, the AFL–CIO requested the rule change on September 2, 2009.

Two months later, on November 2, the National Mediation Board issued the proposed rule. Not coincidentally, the transit unions immediately withdrew their applications to organize Delta, giving Hoglander and Puchala more time to stack the deck in their favor. Public remarks of union leaders from the Association of Flight Attendants have since confirmed their insider knowledge of the proposed rule.

On November 6, the Democratic members of the National Mediation Board told Chairman Dougherty they had prepared a ''final'' version of the proposed rule and she had only 1½ hours to consider their proposal.

Further, the Democratic majority told her she would not be permitted to publish a dissent in the Federal Register. Of course, publication of a dissent is not prohibited by any agency.

Finally, on May 11, 2010, the Democratic majority issued their final rule, having prevented an honest and forthright debate and comment—all of this from an administration that prides itself on transparency.

Throughout their effort to repeal the majority rule, the Democratic majority and the National Mediation Board intentionally left Chairman Dougherty out of the process. As she wrote in her stinging dissent: ''This rule was drafted without my input or participation.''

I am concerned this course of conduct by two former union leaders plainly reflects a predetermination to proceed with a course of action beneficial to transit unions at the expense of fairness and sound public policy.

Chairman Dougherty is correct when she writes:

Independent agencies have an obligation to avoid even the appearance of impropriety. The Board's failure to do so in this instance has damaged the Board's reputation irreparably.

Clearly, this administration is afraid that the Employee Free Choice Act, which it promotes, will not pass the Senate in the near future. As a result, President Obama has repeatedly assured union bosses in Washington that his administration will use the Federal regulatory agencies and Executive orders to implement their radical agenda on behalf of labor bosses in Washington.

We are just beginning to see the impact that former union boss Craig Becker is having as a member of the NLRB. Mr. Becker was rejected by this body on a bipartisan vote. The President responded by thwarting the will of the Senate and extending to Mr. Becker a recess appointment.

Since assuming his position, Mr. Becker has been anything but impartial to the unions. He has refused to recuse himself in cases involving his old employer, the SEIU, and is doggedly attempting to foster card check campaigns at businesses throughout the country.

Last week, President Obama said:

What we've done instead [of getting EFCA passed in the Senate] is try to do as much as we can administratively to make sure that it's easier for unions to operate.

The repeal of the majority rule fits into this pattern. It is yet another attempt by the Obama administration to circumvent the Congress of the United States and vilify American businesses.

As the Supreme Court wrote in Russell v. National Mediation Board in 1985:

Employees were given the right under the (Railway Labor) Act not only to vote for collective bargaining, but to reject it as well.

Unfortunately, the Obama administration's two Democratic nominees to the National Mediation Board, in repealing a 75-year-old rule without congressional approval or adequate reasoning, have recklessly tossed aside fairness and impartiality to benefit their former labor bosses in the labor movement. In so doing, they have eviscerated the right the Supreme Court articulated.

The Congressional Review Act is the appropriate legislative vehicle for Congress to undo this assault on workers' rights. I urge my colleagues to support this resolution of disapproval.

I ask unanimous consent that letters supporting this resolution from the U.S. Chamber of Commerce, the National Association of Manufacturers, the Alliance for Worker Freedom, Americans for Limited Government, and Associated Builders and Contractors be printed in the RECORD.

I also ask unanimous consent to have printed in the RECORD a document entitled ''Letters from Workers.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CHAMBER OF COMMERCE,
Washington, DC, September 22, 2010.

To the Members of the United States Senate:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, urges you to support S.J. Res. 30, a resolution of disapproval that would repeal revisions the National Mediation Board made to its regulations concerning union organizing under the Railway Labor Act.

The Board's revisions, which were finalized on May 11, 2010, overturn more than 70 years of precedent and make it possible for a union to be organized without the support of a majority of employees in the craft or class. Strong policy arguments favor the time-tested rule the Board has jettisoned, including the fact that the Board has no rule permitting decertification of a union should the employees later decide they do not want to maintain representation.

In addition, the regulatory process that led to the adoption of the rule was little more than a sham. The Board majority not only excluded the single minority member from deliberations over the rule, but it censored her dissent. Furthermore, while the rule was contentious enough to draw thousands of comments, the Board did not change a single word of the proposed rule when it was finalized, further evidencing that the regulatory process adhered to was egregiously flawed. Policy differences aside, Congress should not permit an agency to set policy in such a manner.

Due to the critical importance of this issue to the business community, the Chamber strongly urges you to support S.J. Res. 30. The Chamber may consider votes on, or in relation to, this issue in our annual How They Voted scorecard.

Sincerely,

R. BRUCE JOSTEN.

NATIONAL ASSOCIATION OF MANUFACTURERS,
September 20, 2010.

DEAR SENATOR: The National Association of Manufacturers (NAM)—the nation's largest industrial trade association—urges you to support S.J. Res. 30, a ''resolution of disapproval'' to prevent the National Mediation Board (NMB) from changing union election rules under the Railway Labor Act.

Manufacturers are increasingly concerned with efforts to implement major changes to our nation's labor laws outside of Congress through executive branch actions. The NMB's recent decision to promulgate a new rule goes contrary to the intent of the Railway Labor Act and is an attempt to circumvent the legislative process.

The Railway Labor Act requires a majority of all eligible employees to affirmatively choose to allow a labor union to collectively bargain on their behalf with their employer. However, in 2009 members of the NMB finalized a proposed rule which allows union organizers to unionize workplaces if only a simple majority of employees who participated in a union representation election chose to certify the labor union instead of requiring an affirmative vote for union representation from a majority of all employees that would be covered by the labor union seeking to be certified. This approach goes counter to decades of labor law precedent and skews the careful balance inherent in federal labor law.

The NMB failed to demonstrate sound policy justification needed to implement such a sweeping change to our labor law system. The final rule that has been issued is beyond the legal authority of the Board and is arbitrary and capricious. The NAM responded to the NMB's proposed rulemaking and submitted comments highlighting these concerns. Unfortunately the Board finalized the rule in May 2010 without addressing our concerns—and those of many other employers.

The failure of a union to receive a true majority support among the employees it seeks to represent is disruptive to employee-employer relations and puts the stability of interstate commerce in question. Labor unions covered by the RLA must be able to have the support of the majority of employees to provide effective representation in labor negotiations.

In order to promote fair and equitable labor relations that protect the rights of the majority of workers, an affirmative change—from a non-union to union workplace—should require an affirmative majority vote from those eligible to vote. Employees who choose not participate in elections are in effect choosing to maintain the status quo and should not be required to directly participate in representation elections in order to maintain their status.

The Senate should disapprove this rule by supporting S.J. Res. 30, as it would harm positive employee relations and sets a disturbing precedent for other federal labor boards like the National Labor Relations Board. More importantly, we believe the NMB is circumventing the proper role of Congress in setting our nation's labor laws on a level playing field to protect the rights of those who wish to be represented by a labor union and those who do not.

As manufacturers face tremendous amounts of uncertainty in these challenging economic times, Congress should not allow a federal agency to issue regulations that harm manufacturers' ability to create and retain jobs.

On behalf of manufacturers, we urge your support for S.J. Res. 30. We look forward to continue working with you on our shared goals for a strong economy, job creation and promoting fair and balanced labor laws.

Sincerely,

JOE TRAUGER,
Vice President.

ALLIANCE FOR WORKER FREEDOM,
Washington, DC, September 17, 2010.

DEAR SENATOR: On behalf of the Alliance for Worker Freedom (AWF), I urge you to support Senator Isakson's S.J. Res 30, which condemns the National Mediation Board's (NMB) decision to ease unionization standards for airline and railway employees.

Since the creation of the National Mediation Board in 1934, a majority of transport workers' votes has been required to form a union. Last year, the AFL-CIO viewed this traditional voting practice as an impediment to their unionization efforts and lobbied the NMB to amend this practice. The NMB complied with the AFL-CIO's request and in May ruled that union elections for workers subject to the Railway Labor Act should be decided by only a majority of workers who cast ballots, not total company workers. This move would make it substantially easier for unions to win elections and could encourage deceptive election practices.

Overturning seventy-five years of precedent and two Supreme Court rulings, the National Mediation Board has overstepped its understood authority. Although frequently challenged, numerous institutions, under both Democrat and Republican Administrations, upheld the ''majority rule'' practice. The Supreme Court twice ruled in favor of ''majority rule'' unionization election standards.

Furthermore, the National Mediation Board has upheld challenges to majority rule four times, on grounds that: ''Certification based upon majority participation promotes

harmonious labor relations. A union without majority support cannot be as effective in negotiations as a union selected by a process which assures that a majority of employee's desire representation.''

AFL-CIO's complaints that transport companies have made it too difficult to unionize workers, thus necessitating the NMB's change, is largely unfounded: majority rule has been used in more than 1,850 elections, and unions have won more than 65 percent of the time.

The merits of majority rule can be thoroughly weighed, debated, and voted on by our legislators, not the three members of the National Mediation Board.

Sincerely,

CHRISTOPHER PRANDONI,
Executive Director.

[From ALG News, Sept. 21, 2010]

ALG URGES SENATE TO SUPPORT ISAKSON RESOLUTION AGAINST UNION ORGANIZATION BY PLURALITY RULE

FAIRFAX, VA.—Americans for Limited Government (ALG) President Bill Wilson today urged the Senate to support a resolution of disapproval against a National Mediation Board rule that allows for union organization at railways and airlines with less than a majority of employees voting ''yes.''

The resolution of disapproval is being proposed by Senator Johnny Isakson, who in The Hill wrote ''The Obama administration's decision to repeal this rule means that now a minority of the bargaining unit can organize—permanently—the entire organizing unit.''

''The National Mediation Board simply does not have the legal authority to make such a radical change without Congressional authorization,'' Isakson stated in a press release. ''With this rule change, a union could be permanently recognized without a majority of employees having ever supported representation.''

That is because on May 11th, 2010, the National Mediation Board repealed the so-called ''Majority Rule.'' Under the old rule, it took a majority of an organizing unit voting ''yes'' to permanently organize a union. Now, it only takes a majority of those voting, a considerably lower threshold.

lsakson wrote in The Hill, ''[U]nder the Majority Rule, if a bargaining unit had 6,000 employees, 3,001 must have voted for a union to organize the unit. However, under the new rule, if only 1,000 of 6,000 vote, and 501 of those 1,000 vote yes, all 6,000 are permanently unionized, even if a majority of them become disenchanted with the union leadership.''

Isakson's resolution is expected to have an up-or-down vote on Thursday under expedited rules.

Wilson said the rule change most likely had been made to accommodate the merger of Delta Airlines and Northwest. ''The new company is 40 percent union, and most of that is from the Northwest employees. Since they didn't already have a majority, the only way to get a union for the whole company was to change the rules to accommodate a decades-long effort by Big Labor to unionize Delta.''

According to CNN Money, ''Unlike its competitors, Delta employees have declined to join labor unions in the past, priding themselves on having great relationships with the company and enjoying the freedom to negotiate contracts with managers one on one.''

Wilson said that the National Mediation Board had violated their authority under the Railway Labor Act, urging the Senate to ''uphold the original intent of the law, which never included allowing a minority of workers at a company to unionize. The National Mediation Board has clearly stepped out of its statutory role as a neutral arbiter, and into being an advocate on behalf of union organizers.''

Wilson's sentiments echoed those of the Chair of the National Mediation Board, Elizabeth Dougherty, who in her dissent wrote, ''Regardless of the composition of the board or the inhabitant of the White House, this independent agency has never been in the business of making controversial, one-sided rule changes at the behest of only labor or management.''

Wilson said this was ''just the latest example of an agency seizing the power to legislate from Congress,'' concluding, ''First it was the EPA with the carbon endangerment finding. Then the National Labor Relations Board opening the door for card check. And now the National MedianBoard allowing for unionization with less than majority support.''

ASSOCIATED BUILDERS AND CONTRACTORS, INC.,
Arlington, VA, September 23, 2010.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: On behalf of Associated Builders and Contractors (ABC), a national association with 77 chapters representing 25,000 merit shop construction and construction-related firms with 2 million employees, I write to express strong support for S.J. Res. 30, offered by Senator Isakson and urge you to vote in favor of this resolution. The resolution disapproves the rule submitted by the National Mediation Board relating to representation election procedures (published at 95 Fed. Reg. 26062 (May 11, 2010)), and would resolve that such rule shall have no force or effect.

The May 11 National Mediation Board rule requires employers governed under the Railway Labor Act to recognize and bargain with a union, even where a majority of affected employees have not voted to do so. This rule overturns 75 years of precedent and promotes union organizing at the expense of employees that do not favor union representation. Moreover, this radical change injects further uncertainty into our economy at a time when we can afford it least.

ABC believes the National Mediation Board's ruling reflects a disturbing trend by the federal government to promote unionization at the expense of free and open competition, economic growth and employees that do not favor union representation. ABC urges you to support S.J. Res. 30 and vote in favor of this resolution.

Sincerely,

GEOFF BURR,
Vice President, Federal Affairs.

LETTERS FROM WORKERS

On Monday, when this vote was scheduled, we launched an email address, airlines@isakson.senate.gov, and we asked the real experts—the workers affected by this rule change—to write us and offer their thoughts.

The response has been overwhelming. As of this morning, we've received over 100 individual letters in three days, not form letters or postcards, but carefully crafted letters decrying the unfairness of the NMB's rule change.

One of my constituents, a proud Delta flight attendant named Debi Shaw from Gainesville, Georgia contacted dozens of her friends and colleagues. Ms. Shaw collected over three dozen letters by herself.

I wish I could read all these letters into the record, but I wanted to share just a sample with my colleagues in the time I have.

One such letter came from Susan Powell of Buford, Georgia. She writes, ''I have invested 31 years into a fabulous career at Delta and I feel so blessed to have been able to work for such a wonderful company all these years. The intentions of the NMB are totally transparent and should not be tolerated by Congress—or any other body or individual (including President Obama) who claims to embrace honesty, fairness and ethics. It is abundantly clear to me that motivation of the newest Obama appointees to the NMB is to pave the way for the AFA to gain entry into Delta Air Lines—I see no other justification for imposing voting rules on Delta flight attendants contrary to the voting rules applied to union elections at all other carriers. I have loved my career at Delta and I am so proud of the monumental efforts my company and my fellow employees have made to emerge from bankruptcy and return to profitability. I watched in horror years ago as the unions at Eastern Airlines singlehandedly brought their own company to its knees—and I was forever grateful that I had chosen to work for Delta, as opposed to Eastern. It is my belief that an election in favor of the AFA will be the ruination of my company and the end of the blissful career I have enjoyed at Delta.''

Another eloquent letter came from Karla Kelsey. ''I am a 32 year Delta flight attendant. I do not understand why the NMB would change a rule that has been in place for 75 years. It is, obviously, a decision partial to the unions, not the employees. . . . I am not interested in union representation and I resent how this situation has been handled. The impact on my life would be hugely negative if the AFA is voted in. What is fair about a union being able to come into my company with only a majority of those who vote as opposed to a majority of all flight attendants who would be represented?''

I didn't just hear from pre-merger Delta employees. I heard from Avery C. Parker, who had been with Northwest Airlines for 31 years. She writes, ''The NMB's decision to change the 75 plus year's old law concerning labor elections is very disturbing to me to say the least. . . . Is this how a government agency that has thousands of employees, counting on them to have an un-bias opinion, should act?''

Several workers contacted me complaining about the harassment they experience by union organizers. A flight attendant from Greensboro, Georgia, Toni Holman complains that ''pro-union activists are spreading really nasty and un-true rumors; are using intimidation tactics; and are also sabotaging the luggage, hotel rooms, etc of many flight attendants who are vocal anti-union or have ''No Way AFA'' bag tags on their suitcases. We are being targeted and persecuted. I also feel harassed by the bombardment of un-requested mail/e-mail/and telephone calls.''

Again, I received dozens of letters from across the country. I will be including a sampling in the record of this debate, so these workers know they have a voice in their Congress.

Mr. ISAKSON. Madam President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. HARKIN. Madam President, I strongly oppose the resolution of disapproval offered by my good friend, the Senator from Georgia. I tried to listen to all my friend said, but let's just keep in mind what this is all about. The resolution we have before us would keep in place outdated and undemocratic election procedures that undermine workers' fundamental rights.

Hard-working Americans deserve better, and I encourage my colleagues to vote down this resolution.

By way of background, the Railway Labor Act governs labor-management relations for the rail and air industries. As the Supreme Court has noted, the Railway Labor Act was expressly passed to ''encourage collective bargaining.'' Under the act, a majority of employees have the right to decide if they wish to be represented by a union, and they use elections to make that choice. Unfortunately, for many years, the National Mediation Board, which implements the Railway Labor Act, has had antiquated elections procedures that place huge obstacles in the way of workers who are trying to exercise their basic right.

Under these archaic rules, a union did not win an election if it won a majority of the votes cast. Let me repeat that. Under these archaic rules, a union did not win an election even though they may have won a majority of the votes cast. How can that be? Well, because, instead, a majority of all eligible voters, or all those who voted, a majority—instead of just counting all of those who voted, it said it had to be all eligible voters had to cast a vote for the union. What that meant was that anyone who didn't vote was automatically counted as a ''no'' vote. So all nonvoters were automatically and arbitrarily treated as a ''no'' vote or a vote against unionization. So if you didn't vote, that equaled a ''no'' vote. Doesn't that strike you as kind of odd?

This procedure is not only contrary to the election rules governing workers under the National Labor Relations Act, but it is contrary to basic principles of democracy underlying elections held throughout the United States, from student council elections to elections for United States Senators. Think about this. In virtually every election in this country, except those involving rail and aviation workers, a voter has a right to vote one way or the other or not to vote at all. However, under the archaic rules of the National Mediation Board, there is no right not to vote because if you don't vote you are counted as a ''no'' vote, whether you wanted to be a ''no'' vote or not. Maybe a lot of people don't vote for one reason or another.

As Senators, it would be apparent to all of us that this current rule makes no sense. For example, in the Senate, we cast hundreds of votes in each Congress. Inevitably, with one or two exceptions, most of us miss a vote or two, whether there is something going on in our State that we have to attend to or a family illness or whatever. We would be outraged if we missed a vote because of those circumstances and our vote was counted as a ''no'' vote when maybe we didn't want to vote no, but it would be automatically counted as a ''no'' vote if we didn't vote. We would be outraged at that.

In addition, in our contests for reelection, we would be outraged if every eligible voter who chooses not to vote is presumed to be a vote for our opponent; in other words, a ''no'' vote on us. That is pretty interesting, isn't it?

If you choose not to vote, you are counted as no. Well, it is no less outrageous to arbitrarily assign a position to nonvoters in a union election.

Again, there are many reasons a person might not vote. As I mentioned, they might be ill, forgot, or maybe they are just disinterested in the result, don't care one way or the other. That is why a basic principle of elections is that a voter's decision not to vote has no impact on an election's outcome. Again, I will repeat: A basic principle of elections in our country is that a voter's decision not to vote has no impact on the outcome of that election.

Indeed, in 1937, the Supreme Court, in Virginian Railway Company v. Systems Federation No. 40, in interpreting the very statute at issue—the Railway Labor Act—expressly said:

> Election laws providing for approval of a proposal by a specified majority of an electorate have been generally construed as requiring only the consent of the specified majority of those participating in the election. Those who do not participate are presumed to assent to the expressed will of those who vote.

It makes sense. If you don't vote, what you are saying is, for one reason or another, whichever side wins, they win. Whatever the expressed will is of the yes or the no, I give my assent to that by not voting. That is what the Supreme Court said.

This basic system of conducting elections works for school boards. It works for State legislatures. It works for Congress. It works for all businesses governed by the National Labor Relations Act, and it certainly will work for rail and aviation workers.

Now, given the antidemocratic nature of its union election procedures, in May the National Mediation Board issued a long overdue rule change. Under the new rules, a majority of those who actually vote in the election is required for the union to prevail. Under this procedure, an employee, a worker, can choose to vote for a union, they can choose to vote against unionization, or they can choose not to vote at all. The rule, very simply, recognizes that in an election, the side with the most votes wins.

Well, I think the National Mediation Board should be commended for its new, more democratic rule. It is consistent with the procedure used in other elections in our country and will ensure fairness and equal treatment for rail and aviation workers.

Nevertheless, my friend from Georgia and others wish to overturn the application of these basic democratic principles to air and rail workers. First, as I understand it, they argue that because the National Mediation Board's old rules are 75 years old, they should remain unchanged. Well, just because something is old doesn't mean it should remain forever. A rule's age is irrelevant in evaluating its fairness. Our country has rightly eliminated many flawed election rules when circumstances changed. It is time to discard this one too.

The justification for the original rule is long outdated. Rail and aviation workers, like workers at many other businesses, are spread throughout the country. Seventy-five years ago, with often poor communications, there was a legitimate concern that many employees would not learn that a union campaign was taking place or that a vote was scheduled. The National Mediation Board feared that a small but informed minority of workers could dominate the election process and dictate a result for a majority of employees, many of whom may not even have known an election was occurring. That is not true today. Given today's modern technology—the Internet, e-mail, cell phones—these concerns are simply no longer relevant and should not dictate the Board's current election procedures.

Secondly, I believe the Senator from Georgia is wrong when he claims that the National Mediation Board has exceeded or does not have authority to implement this rule change. On June 25, a Federal court rejected this argument, finding that the change was well within the agency's authority. The Railway Labor Act does not specify any particular election procedures and leaves the means of conducting elections up to the Board.

The process the Board used to adopt their new rule was fair, open, and allowed all parties an opportunity to comment, using the same notice and comment process under the Administrative Procedures Act as used by other Federal agencies.

The National Mediation Board published a notice of proposed rulemaking in the Federal Register on November 3, 2009, that included a detailed explanation of why the Board was considering this change. It allowed parties 60 days to comment and provided a detailed rationale for the proposal. The Board considered nearly 25,000 public comments and held a public meeting where over 34 members of the public testified. Federal agencies issue new regulations every day following the same notice and comment procedures employed by the Board in this procedure, and nothing untoward happened here. It was fully open, fully aboveboard, and in compliance, as I said, with the Administrative Procedures Act.

My friend from Georgia and others have argued that one of the National Mediation Board members, Linda Puchala, may have somehow misled Congress during her confirmation hearings and failed to consider the new rule with a fair and open mind. There is simply no evidence to support this claim. On May 12, 2009, Ms. Puchala answered a written question from the Senator from Georgia. He asked:

Please state your views regarding the importance of honoring the Board's 60-year history of precedents in matters involving representation and mediation.

That was the question. Ms. Puchala responded:

The board has a long history of precedents in matters involving representation and mediation. I think it is important to review each case on its merits and to consider all applicable precedents when making decisions.

Sounds logical to me. It is important to review each case on its merits. I would hope all individuals who have appointed positions in the Federal Government would take cases on their individual merits. Consider precedents, of course, if they are applicable, but to consider it on its merits.

As I understand it, that is precisely what Ms. Puchala did in this instance. In the almost 6 months between her confirmation and the publication of the notice of proposed rulemaking on November 3, 2009, she had ample time to carefully consider all points of view about the proposed change and implemented what she considered to be a fair rule. As a Federal judge wrote in rejecting these challenges:

The level of detail with which the agency considered and discussed negative comments in the Final Rule belies allegations that the Board rushed its consideration of the new rule. . . .

That is a Federal judge.

Opponents have also argued—and I just heard this—that the Republican National Mediation Board member Elizabeth Dougherty was unfairly excluded from the consideration of the new rule. While I believe the internal deliberative processes of agencies should appropriately be kept confidential, I am reassured by the district court's finding on this point that there was no evidence that the majority board members violated any procedural rule or acted in bad faith. That was the finding of the district court.

Finally, throughout the course of the public debate over this rule change, opponents of the new rule have claimed that the National Mediation Board is trying to ''do card check by running around the backdoor.''

This is just pure nonsense. The National Mediation Board rule has nothing to do with the Employee Free Choice Act or card check. It does not modify in any way the way rail and aviation workers vote. Rather, it simply makes clear that a decision not to vote will not arbitrarily be treated as a ''no'' vote.

While this debate has nothing substantive to do with the Employee Free Choice Act or card check, there is one common thread. At the heart of opposition to this rule, and also at the heart of opposition to the Employee Free Choice Act, is a fear on the part of some people that, yes, workers will exercise their fundamental right to organize.

I want to make it very clear. I happen to be a supporter of the Employee Free Choice Act. I keep asking: Why is it that workers are compelled to walk across broken glass, to go through some kind of a boot camp harassment to exercise what is their legal right in this country: to join a legal organization? Why should they have to go through all that? That is why I have supported the Employee Free Choice Act.

Let's be clear what we are talking about today. Let's be clear what this means with this new rule. It means that rail and aviation workers have a voice in the workplace. Some people may consider that awful. I do not. It means fair wages and benefits. It means better and safer working conditions. It means workers have the right to be heard. They have the right to organize. They have the right to be heard in collective bargaining.

Indeed—I repeat—the Railway Labor Act, as the Supreme Court noted, was expressly passed to ''encourage collective bargaining.'' Maybe there are some who do not want to encourage collective bargaining. I think we are better off when we do have collective bargaining and we respect the rights of workers in this country.

These are the goals I hope every Member of the body could support. I applaud the National Mediation Board's decision to discard an outdated, antidemocratic rule, and to ensure fundamental fairness to rail and aviation workers in this country. Why should they be the only ones, among all the workers in this country, all those covered by the National Labor Relations Act, why should these two be the only ones where if they do not vote, it is counted as a ''no'' vote. It does not happen anywhere else. It is an arcane, outdated rule. It should be brought into the spirit of democracy we have in this country. You can vote yes, you can vote no, or you do not have to vote. If you do not want to vote, you should not be assigned a ''yes'' vote or ''no'' vote to the fact you did not vote. It should not be counted at all in the outcome of the election.

I strongly encourage my colleagues to oppose this resolution of disapproval.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. ISAKSON. Madam President, let me take a moment to share a few alternative ideas to the distinguished Senator's representation.

First of all, with regard to Ms. Puchala's response to my question in the confirmation hearing that all rules ought to be judged on their merit, I think that is a very good response. But it is coincidental or ironic that in one of the largest union votes in the history of America—the vote that will take place between Delta and Northwest employees on whether to unionize flight attendants—that when they were sworn in as board members, the previous application by the union for an election was postponed to give enough time for the rule change to take place in the first place.

I do not know if that was judgment on merit or whether it happened to be just coincidental timing. I will say it was probably not based solely on the merit of the decision.

Secondly—and I love the Senator from Iowa. He and I are dear friends—if you follow his thought process on not counting ''no'' votes, you have to look at this. Past practice at the National Mediation Board dictated that an absolute majority of workers in the class be required to vote to unionize, and once that union takes place it is a permanent decision. Yes, there is an archaic straw-man alternative. However, if you follow the thought of the Senator from Iowa in its entirety, once we are elected to the Senate, we would not have to run for reelection again. That is because the National Mediation Board has no decertification process. This is essentially a permanent decision by the workers. I do not think it should be a permanent decision when one of us is elected to Congress. That is why we have elections in Congress every 2 years or in the Senate every 6 years.

Let's remember this is a decision. When we change this rule, we are allowing a minority to make a permanent decision for a class of workers. That is a very high threshold. I think requiring a majority vote of all those affected not only makes sense, but the reason it was done was to protect the National Mediation Board's intent in the first place in terms of interstate commerce in the United States of America. Another point Congress had no say in this process, even though Article 1 of the Constitution of the United States allows only us to regulate commerce.

I wanted to add those two points. On the case of merit, I think it is obvious there were some considerations specifically because of one vote, i.e, the vote of the AFA and IAM. That is why the unions withdrew their applications and postponed the vote, to give the National Mediation Board an opportunity to pass the rule and affect a pending vote to organize.

I wanted to make a point with regard to current policy not allowing people to be represented. Under the Railway Labor Act, 72 percent of the employees are unionized versus the 8 percent for all American workers. Nobody is talking about a rule preventing organization. We are only talking about requiring a threshold because of the permanency of the decision. That is very important.

We are not trying to skew the balance between labor and management. We are trying to equalize that balance. To change this rule, given the threshold that has been in place for 75 years, is to skew the process in favor of union bosses over workers' rights. That should not be the intent of the Congress of the United States. That is why the National Mediation Board rules are what they are, and that is why the Supreme Court of the United States has twice upheld it.

Madam President, I am happy to yield 10 minutes of my time to the distinguished Senator from Utah, Mr. HATCH.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Madam President, I thank both my colleagues.

It has become customary to expect pendulum swings in labor law each time the White House changes hands and appoints new government officials to lead the Federal executive branch and independent agencies. Sometimes the law changes every 4 years, depending on who is sitting at the NLRB, Department of Labor, OSHA, EEOC, and so on. One year a particular issue might favor labor, and 4 years later the very same issue might favor management.

By analogy, at the NLRB, for example, 1 year graduate school teaching assistants are students not covered by the National Labor Relations Act. The next year they are deemed to be employees covered by the act. Then shortly thereafter, they are once again deemed to be students. Soon we may learn they will once again be employees.

The same is true with regard to the definition of ''supervisors'' excluded from the National Labor Relations Act. One would think that after 75 years, the NLRB would be able to define who is and who is not a supervisor. Instead, the law changes as the political pendulum swings.

What has actually changed other than the people confirmed by the Senate to make the decisions, to call the shots? Without any evidence of changed circumstances in the workplace or relieving the agency's own administrative burden—in fact, without any evident rationale—the only apparent reason for the changes in the NMB's representation election process is in the people who call the shots.

Obviously, this is not the way to promote stability in labor relations and employment law. It makes it difficult for employers, employees, unions, and the lawyers counseling them to ever be assured what the law is in any given area or any given time.

Mercifully, for some issues and at some agencies, it does not work that way. Until recently, that could be said for the National Mediation Board and the process by which it conducted union representation elections.

For 75 years, the procedure which has been applied consistently by the NMB for conducting union representation elections has been the same.

Boards appointed by Democratic Presidents Roosevelt, Truman, Johnson, Carter, and Clinton have agreed that the process through which labor organizations obtain certification as the representative of a majority of the craft or class is the cornerstone of stable labor relations in the air and rail industries. That has been the law for 75 years.

In fact, the NMB appointed by President Carter unanimously ruled that it did not have authority to administratively change the form of the NMB's ballot used in representation elections and that such a change, if appropriate, could only be made by Congress. That is until now.

The new members of the NMB, after assuring this Senate under oath at their confirmation hearings that they had no plans to reverse precedent, after only months on the job, reversed the NMB's longest standing precedent.

By rule, the NMB now certifies representatives elected by a minority of the craft or class so long as they constitute a majority of those voting. This is not just a minor change, this change destabilizes the cornerstone of stable labor relations under the Railway Labor Act and 75 years of NMB precedent which was consistent with the plain statutory language and congressional intent.

Here is how it is destabilizing. First, the former law which required election of a representative by a majority of the craft or class quelled any doubts about the authority of the selected representative. The new procedure will do nothing but foment dissent.

Second, the former certification procedure facilitated the process for employees and their representative to work cohesively toward negotiating and maintaining agreements with an air or rail carrier. The carrier knew the majority of the entire craft or class supported the union, not simply a majority of those voting. This gave the representative more standing. The new procedure will undermine the representative's authority.

Third, the former certification procedure discouraged raids by rival unions and interunion conflicts. The new procedure will encourage such raids.

Fourth, the former certification process recognized the reality in the air and rail industries that, unlike the National Labor Relations Act, negotiations for collective bargaining agreements cover a broad craft or class of employees spread over multiple, geographic locations. Therefore, there is a strong need to demonstrate majority support across those geographic locations, not as the current procedure, smaller units of employees.

So, if anything, the new rules are destabilizing rather than promoting greater stability. The result ignores the clear congressional statutory mandate to maintain stability in the air and rail industries.

I repeat, after assuring us they would not do so, the new NMB members overruled 75 years of precedent which had been consistent through both Democratic and Republican administrations. And how did they do it? It certainly speaks volumes that the rule was developed without the input or participation of the sole Republican member of the three-member NMB, former Chair Elizabeth Dougherty, who was notified of the existence of a proposed rule late one morning and given 24 hours to review the rule and draft a dissent—24 hours to comment on a rule that scraps a precedent which had existed for 75 years and which is likely to discombobulate two great industries. I thought this form of arrogant, rushed, exclusionary rulemaking only exists in Congress when the majority wants to steamroll legislation.

Finally, while changing the rules for certification of a labor representative, the NMB flatly refused to even consider the democratic procedure of decertifying the labor representative should the employees so freely and independently choose. Now, I have heard of ''one man, one vote,'' but ignoring the right of the employees to decertify a union is more like ''one man, one vote, one time.'' How can you have a democratic process where a minority of employees can vote a union in without having a mirror process allowing the majority of employees to be able to vote the union out if a majority of employees become dissatisfied with their representation?

Today, we should stand up and say no—no, you cannot tell us one thing in confirmation hearings and courtesy visits and then do exactly the opposite on the job. We should exercise our voting rights in the Senate under the Congressional Review Act to review this outrageous NMB rule which benefits only one group—labor unions—not employees, certainly not employers, and not the public.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. ISAKSON. Madam President, I suggest the absence of a quorum, and I ask unanimous consent that the time during the quorum be equally divided between the majority and the minority.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ISAKSON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ISAKSON. Madam President, I yield up to 6 minutes to the distinguished Senator from Nevada, Mr. ENSIGN.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. ENSIGN. Madam President, I rise today to discuss the resolution before us—a resolution of disapproval to prevent the implementation of the recent National Mediation Board regulations. Many Americans are likely unaware of the vote we are about to have today, let alone the controversial rule it concerns.

Last May, the National Mediation Board finalized a new regulation that would turn 75 years of union voting precedent on its head. I believe a vote to support this resolution of disapproval is a vote to protect our Nation's workers. Specifically, the National Mediation Board has changed

the voting rules under the Railway Labor Act. The Railway Labor Act is the law that sets labor union rules for railways and airline employees. For the past 75 years, under this act, a majority of employees in an ''organizing unit'' have had to vote yes to form a union. Under this new change, only a majority of employees who actually vote are needed to form a union.

How does this new rule work in practice? For example, if an airline has 1,000 employees who are nonunion today, currently 501 must vote yes to unionize. But under this new union rule, if only 300 of those employees vote, then it would require only 151 of those employees to unionize and speak for the entire 1,000 employees. Since there is no procedure to deunionize under the Railway Labor Act, once this union is formed, these 1,000 employees would be permanently unionized. There is simply no way to vote out a certified union in this part of the law even if a majority is unhappy with the union leadership. This doesn't make sense given that the National Labor Relations Act—the law that governs most labor unions in this country—does allow workers to deunionize.

It is also concerning that the National Mediation Board effectively blocked out the input of its sole Republican member, Chairman Elizabeth Dougherty, during the rulemaking process. Chairman Dougherty stated:

> The proposal was completed without my input or participation, and I was excluded from any discussions regarding the timing of the proposed rule.

That sounds like what has been going on here lately.

It certainly doesn't sound like the transparency on which the other side of the aisle campaigned.

The American people listening to this debate may be thinking this rule change sounds like nothing more than a political payback to labor, and in my opinion, they are right. The American people listening today may also be thinking this whole debate sounds vaguely familiar, and they would be right again. A proposal called card check may ring a bell. Recall that under the Democrats' card check litigation, American workers would be deprived of the right to a secret ballot when voting on whether to form a union. And while card check and the National Mediation Board rule change may not be one in the same, they both lead to an identical outcome: undermining the fundamental rights of American workers.

You may be asking whether this rule will help workers in the airline and railway industries unionize. Perhaps this rule is needed because the employers have stacked the deck of cards against unionization efforts. But let's look at the facts. An average of 72 percent of airline and railway employees today are unionized, compared to only 8 percent in the rest of the private sector. I repeat: 72 percent in airlines and railways, only 8 percent in the rest of the private sector. So it can't be the case that this new policy is in response to the failure of 75 years of voting precedent or employers blocking the ability for employees to unionize. In fact, workers at Delta have voted down six organizing drives over the past 10 years.

This Nation is facing unprecedented economic difficulties. I speak from experience. The unemployment rate in my State of Nevada is 14.4 percent. We lead the country, unfortunately. The Federal bureaucracy should be working to strengthen our economy, not create an environment for American businesses that leads to an uneven playing field and, at the end of the day, more uncertainty. Uncertainty does not help create jobs.

To conclude, the members of the National Mediation Board have not provided Congress with any substantial evidence that a change in union voting procedures is needed. I believe this rule change is a sign of a dangerous trend—a trend that runs counter to the core principles of American democracy and the ability to choose freely through a fair voting process. As such, I urge my colleagues to support Senator ISAKSON's resolution, S.J. Res. 30, and vote down the National Mediation Board rule.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ISAKSON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ISAKSON. Madam President, I yield up to 5 minutes to the distinguished Senator from Georgia, Mr. CHAMBLISS.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. CHAMBLISS. Madam President, first of all, I thank my colleague from Georgia for allowing me to come over to speak on this issue, and I rise to concur with the resolution introduced by my friend and my colleague, Senator ISAKSON.

For more than 75 years, our labor laws governing airline and railway employees have been upheld under both Democratic and Republican administrations and in two Supreme Court decisions. Recently, however, the National Mediation Board acted unilaterally to change a longstanding statute without seeking the consent of Congress.

Unfortunately, this change is based more on politics than on the merits of the law. Historically, if you had 100 employees who wanted to vote to form a union, you would need a majority of those employees—or 51—to vote in favor of unionizing. Now, in accordance with the new rule change from the National Mediation Board, if 10 members choose to vote on whether to organize, a majority of 6 members voting yes would bring all 100 members under union control. That is not the way the law was ever intended to operate, and it should not be changed by an arbitrary action on the part of this Board. Not only would a minority of workers have a tremendous influence over other employees in such a workplace, but when a union is formed, employees would not have the same right to decertify the union under the new minority rule.

While the Obama administration is attempting to amend our labor laws in order to facilitate the unionization process, the old majority rule was anything but anti-union because today an average of 72 percent of railway and airline employees are unionized, compared to only 8 percent of all workers in the remainder of the private sector.

Not only is the new rule change flawed, but the procedure by which it came about was dreadfully biased. The National Mediation Board is made up of three members and has existed since 1934 to coordinate labor-management relations within the railroad and airline industries. The two Democratic appointees decided to move forward with this rule change without input or participation from the Republican-appointed Chairman.

What the National Mediation Board has implemented goes beyond the scope of its capacity as well as its jurisdiction, and it is going to result in a rather lengthy court battle if this rule does come about. There is no need for this rule change when 72 percent of the airline and railroad industry is already unionized and has had the opportunity to unionize under this law. The responsibility of a change in labor laws of this magnitude and affecting this many workers should ultimately rest with Congress, not with a small board of political appointees.

I am proud to be an original cosponsor of the resolution of my colleague from Georgia. I urge my colleagues to follow his lead on this issue and to agree to this resolution.

I yield the remainder of my time to Senator ISAKSON.

Mr. ISAKSON. Madam President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

Mr. ISAKSON. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ISAKSON. I ask unanimous consent to reinstate the quorum call providing the additional time used is equally divided between the majority and minority.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CARDIN. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CARDIN. Madam President, I thank Senator HARKIN for his leadership on this issue in opposing the Senate Joint Resolution 30. I join him in urging my colleagues to oppose the resolution.

The National Mediation Board is an important entity. They have the responsibility to oversee labor-management relations in the rail and aviation industry. On May 11 of this year, they issued a final rule that allowed a majority of voting employees—let me repeat that, a rule that allows a majority of the voting employees—to determine the outcome of union representation elections.

I don't understand the controversy. I thought we all agreed that majority rules, as far as what should happen. The rule is common sense. Let me explain the problem. I know it has been said before on the floor.

Prior to this regulation, if a person did not show up and did not vote, it was counted as a negative. Suppose we conducted our elections that way. Suppose we were to say that if a majority of people do not show up to vote, you do not have an election. It makes sense that we count the votes that are cast. We don't know, from who does not vote, how they would vote, and to say that is a negative defies the democratic system we hold so dear in this country. Not participating voters were counted as ''no'' votes, and this regulation makes it clear that will no longer be the case.

Opponents of this rule change argue the Board does not have the authority to change the rule. That is not true also. The Railway Labor Act gives the NMB discretion on conducting union elections and procedure is not outlined in the statute. U.S. Supreme Court and District Court decisions have confirmed that authority, so they have that authority.

Then the opponents say this rule is about the Employee Free Choice Act, an issue that has some controversy among some of my Members. But that is not true. This rule deals with areas where we already have union representation.

I was proud to join 38 of my Senate colleagues in signing a letter in December of 2009, encouraging the National Mediation Board to change its outdated union election procedures. That is exactly what they have done. The old procedure is not used in any other union elections. It does not follow the democratic norm for elections that all Americans value and respect. The old procedure does not even make any sense.

I urge my colleagues to oppose S.J. Res. 30. To me, this is a matter of basic fairness. It is a matter of what the values of our Nation are all about. Those who participate get the right to decide. You cannot participate by not participating and that is what the rule makes clear. We will count the votes that are cast, but we are not going to count those votes that are not cast. I urge my colleagues to oppose the resolution.

I yield the floor and suggest the absence of a quorum.

Mr. HARKIN. If the Senator will withhold the request for the quorum call.

Mr. CARDIN. I will withhold it.

Mr. HARKIN. Madam President, how much time do we have on our side?

The ACTING PRESIDENT pro tempore. The Senator has 35 minutes.

Mr. HARKIN. On the opposite side?

The ACTING PRESIDENT pro tempore. There is 22 minutes.

Mr. HARKIN. We have 35 minutes left on our side. I yield 10 minutes or however much he needs, up to 10 minutes to my friend, the Senator from Minnesota.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Mr. FRANKEN. Madam President, I rise to discuss my opposition to the resolution before us, the resolution disapproving the National Mediation Board's ruling on election procedures. This ruling finally brings union election rules in the rail and aviation industries in line with union elections in every other industry. It also brings them in line with every other democratic election for public office at the Federal, State, and local levels.

Today, after the NMB rule change, a union election at an airline will be like any other election. Employees who are the voters will have the opportunity to access a ballot. If they want union representation, they will vote yes. If they do not want union representation, they will vote no. If they do not have a strong opinion or if they forget to vote, then they do not count. Election officials count up the cast ballots and the category with the most votes wins.

Does anything about that description raise any flags? Probably not. Because that is how elections work in this country. Prior to the NMB rule change, an airline union election worked very differently. Election officials counted people who did not vote as ''no'' votes. Imagine if Senate elections worked that way for us—if, to elect a Senator, 50 percent of the eligible voters in the State had to vote for a candidate. In the 2000 elections, when every single State except for my home State of Minnesota had less than 60 percent turnout, what would have happened?

Let's say, for the sake of it, that all the races had as high a turnout as Minnesota—60 percent. They did not, but let's say so. In order to capture 50 percent of the entire electorate, a candidate would have to get 84 percent of the votes cast. If no Senator captured 84 percent under the old NMB rules, those States would not get a Senator. There would be no one here or almost no one. It would be a lonely place.

Thankfully, that is not how Senate elections work. Thankfully, airline elections will not work like that going forward. But that is how they worked in the past. In a 2008 Delta flight attendant election, the outcome was 5,306 in favor of union representation out of 5,375. That sounds like a pretty strong victory in favor of the union, right? Wrong. The National Mediation Board was forced to compute the tally by counting nonvoters as ''no'' votes; thus, it ended up with 5,306 votes in favor of the union and 8,074 not in favor. So the vote failed, even though less than 1 percent of those voting against the union represented actual cast ballots.

I should admit I have a special concern in this debate. My home State is home to thousands of Delta employees. Prior to the merger, they were Northwest employees and most were unionized. Now they are facing a scary prospect: losing union representation after enjoying its benefits for decades. Union representation has provided them with living wages, retirement security, and health benefits. Compare this to a flight attendant for a different airline who revealed she was eligible for food stamps, despite working full time.

In professions in which full-time workers get food stamps, union representation is even more vital. The NMB rule change will give Delta workers a meaningful choice, the same meaningful choice voters have in every other democratic election in this country. The claim that this rule change is unfair or undemocratic is simply not true. This change will bring real democracy to elections in the airline and rail industries. I think we can all agree that democracy has served our country well. I think we can agree on that. I urge my colleagues to vote against this resolution.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. ISAKSON. Before I introduce Senator ENZI, the distinguished Senator from Minnesota asked a rhetorical question regarding this election being similar to an election to the Senate. I would note one remarkable difference. National Mediation Board elections are unionized under current law as a permanent decision. Senators are elected every 6 years and then stand before the voters once again, so there is a significant difference between those two standards.

Madam President, I will recognize for up to 10 minutes the distinguished Senator from Wyoming.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Madam President, I rise today to urge my colleagues to join me in supporting this joint resolution disapproving the National Mediation Board rule that will deprive railway and airline employees of a voice in their representation elections.

For 75 years, the Board's procedure for voting on union representation properly reflected the geographically broad workforce of the rail and airline

industries. Under this time-tested procedure, the workforce would become unionized if the majority of all the workers in a class voted to join a union.

The new rule has changed the way employees' votes are counted in order to favor the union. For 75 years, not voting at all has counted as a no vote. Now, employees who do not vote or cannot vote will lose any chance to weigh in on the question of union representation. In fact, a minority of workers in a class could determine the fate of the entire workforce. This new rule conflicts with the plain language of the statute. The method for selecting a union is expressly described in the Railway Labor Act: ''The majority of any craft or class of employees shall have the right to determine who shall be the representatives of the craft or class for the purposes of this Act.'' No matter what the Board's policy justifications for this rule are, the law is clear. Supporting this resolution will send a message to those who want to change this 75-year-old rule to favor unions in an industry that is already majority unionized. The only appropriate manner to create new policy here is to amend the statute.

Proponents of the new rule say the election procedure under the Railway Labor Act should mirror the procedure used under the National Labor Relations Act. While this procedure may work fine with smaller units of workers, typically working within the same workplace, it is not an equitable method for workers in the railway or airline industries. The classes of railway and airline workers were intentionally created to be systemwide in order to allow uniform workplace rules and prevent the shutdown of an entire carrier should there be a strike in one local.

With workers geographically spread out across the country and working on different shifts, it is difficult for transportation industry employees to communicate their views with coworkers and voice their opinions during a union election. For 75 years, abstaining has been a way of saying ''not sure'' or ''need more information,'' as well as ''no.'' In many companies, unions try year after year to gain the backing of a majority of employees through elections. This rule change silences those who do not vote because they don't feel like they have gotten enough information to decide. Instead of requiring a union to convince the workforce to support the union, the Board is seeking to allow unions to force their way in. This is a matter of deep concern because once a union is certified, there is no way to decertify it.

Currently, the Board does not have a specific decertification process. This makes it nearly impossible for employees unhappy with their union to organize their fellow employees and vote the union out of their workplace. It seems logical that since the Board acted to make it easier for employees to join a union, it would have also simplified the process for employees to get rid of their union. But, despite requests to do so during the notice and comment period for the rule, they did not. In fact, employees stuck in unions they do not support because of this rule will also not have the benefit of State right to work laws, which would allow an employee to opt out of full union membership and dues obligations. The Railway Labor Act preempts the 22 States that have adopted right to work laws.

The Board has acknowledged that its primary duty in resolving representative disputes is ''to determine the clear, uncoerced choice of the affected employees.'' I could not agree more. But that important duty needs to apply equally when employees seek to vote a union out of their workplace. The fact that the new rule fails to include a decertification process based on the majority of votes cast, is not only troubling, but evidences the true intent of the Board and this administration to tilt the playing field to favor unions over individual workers' rights.

Last year this body unanimously confirmed two nominees to the National Mediation Board. Several members of the HELP Committee, including my office, specifically asked each of them about their position on changing the way a majority in a unionization election is measured. In reply these nominees stated that they had no preconceived agenda to alter election rules that have been in place for 75 years. Yet, practically before the ink had dried on their confirmations, these two nominees began pushing through this regulation which is a wholesale reversal of those rules to the benefit of labor unions. It is not as uncommon as it should be for nominees to say one thing in their confirmation hearings and act differently once in office, but this example may be one of the most concerning because of the way it was done.

In their haste, the majority NMB members thoroughly disregarded the rights of the single minority member. The minority member was given no notice about the other Board members' plans, including even the fact that there was a rulemaking effort underway. Instead, she was presented with the proposed rule to be published and given 1½ hours to review and determine if she would support it. They even tried to stop her from publishing a dissent to the rule proposal. Silencing dissenting views appears to be an alarming trend at the Board. And unfortunately, it has gone beyond the National Mediations Board.

Over at the National Labor Relations Board, workers' rights and freedoms are similarly at risk. Just recently, at the end of August, the NLRB chose to revisit a 2007 ruling known as Dana Corp. that protected workers' rights to a secret ballot vote. In that 2007 ruling, the Board held that card check was inferior to the use of secret ballot voting in union elections. The Board concluded that when an employer recognized a union in the workplace by card check, employees had the right to request a secret ballot vote to show whether they actually wanted union representation. This was an important ruling to protect workers from union coercion and intimidation that can occur in the card check process. The ruling gave employees a voice in whether they actually wanted union representation, instead of having their employer and a union decide for them.

Now fast forward to August 2010. The NLRB has just decided to revisit that 2007 ruling. Why? There has not been a major shift in management-labor relations that warrants such a change. In fact, the 2007 ruling has served as an important oversight mechanism. According, to the Wall Street Journal, since the 2007 ruling, 1,111 workplaces have become union by the card check process, of which 54 of those have demanded a vote. Only 15 of the 54, voted against the union. So clearly, the 2007 ruling has not led to huge losses for the unions. But it did give employees a say in their workplace.

This Congress should be very concerned about the current state of these administrative boards that were intended to be independent. Concealed agendas cannot become the norm for Senate confirmed positions. If it is then we will have difficulty confirming anyone whose former employer would fall under the nominee's jurisdiction.

I thank the Senator from Georgia, Mr. ISAKSON, for offering this resolution to send a message to the National Mediation Board that when they seek a change in policy, they must do so within their constitutional and legal authority.

I also note that every member of our caucus has cosponsored Senator ISAKSON's resolution and joins him in sending this message. I urge all of my colleagues to vote for this resolution.

Mr. LEVIN. Madam President, I have long supported the rights of workers to form unions, and I support the National Mediation Board's new rule allowing those in the rail and airline industries to form a union based on the votes cast by a simple majority, a basic principle of democracy.

Under the previous rule, a vote not cast was counted as a vote against the union, in spite of the fact that it is impossible to discern the intention of someone not casting a vote. The new rule adopted by the National Mediation Board mirrors the practice of the National Labor Relations Board, which oversees union elections in other sectors, and it mirrors the rules by which we choose our elected officials: the only votes counted are those actually cast.

Discontinuing this unfair and undemocratic practice was the right thing for the National Mediation Board to do. The new rule is fair to all parties, and is consistent with our democratic traditions. For this reason, I do not support the Isakson resolution opposing this new regulation.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I do not have any more speakers on our side. I wanted to respond on a couple of issues that have come up here in the remarks in the last several minutes, last hour and a half, I guess, since we have been here.

First, having to deal with the idea that somehow under the National Mediation Board when there is an election for a union that it is permanent. Now, right. I mean, my friend from Georgia is right. You cannot kind of compare it to Senators, because we have to run every 6 years. I understand that.

I think it is still holds, though, that should someone who does not vote be counted as a no or a yes either way—I would ask my friend from Georgia to think about this in terms of not elections for Senators but how about ballot initiatives? We have school bond issues, and school bond issues get, maybe, what, 30 percent of the vote out. Should all of the people who do not vote be counted no against a bond issue?

I do not know about my friend's State of Georgia, but I know in Iowa we have retention ballot initiatives for our judges. We have a very good nonpartisan, nonpolitical way of getting judges. But then the judges come up on the ballot every so often. Yes or no, should they be retained? They do not have to run against anybody and no one runs for a judgeship. But should they be retained?

Well, obviously not too many people vote on that. Should people who do not vote be counted automatically as a no vote? I do not think people would like that. A lot of people do not vote because they may not have enough information to vote one way or the other, so they leave it go and say, well, maybe other people who know better could have their votes counted yes or no.

We have had ballot initiatives for minimum wages. Should all of those who do not vote be counted as no? I think it is a very fundamental principle of our system of government, as the Supreme Court has said many times in the past, that a ballot not cast should not in any way influence the outcome of the election, of any election.

The outcome of the election is determined by the yes and no votes, not by people who do not vote, a very basic principle. So that is one point I wanted to clarify.

This old rule of the National Mediation Board that people keep talking about, saying it is been the same for 75 years, I could quite frankly argue that it should not have been that way in the first place, although as I said in my opening statement I understand some of the rationale for it, that 75 years ago, where you did not have rapid communications and things such as that, you would not want a small group that maybe had voted a union in, and other people did not even know about it. But that is hardly the case today. Hardly. Everyone knows about it with instant communications and everything else. That is hardly the case today.

It is time to get rid of old, archaic rules that govern certain kinds of elections. Gosh knows, we have had a lot of old archaic rules in elections in this country going back to Jim Crow laws and things such as that. But we have moved beyond that, and those old kinds of rules should not apply any longer. So we move on and we recognize that people ought to have the right to vote, and that if you do not vote, it should not be counted as a no or a yes vote one way or the other.

Regarding the issue of when the union is voted in, it is as though they are forever, it is permanent. I have heard that argument made. Well, that is not necessarily true. But that is under the National Labor Relations Act the same thing. If a union is voted in, it is not voted in for 1 year or 3 years or 5 years. It exists until such time as the union is decertified.

There are two processes. There is a process under the National Labor Relations Act for decertification, and there is a process under the National Mediation Board for decertification. Essentially, with the exception of how they start, they both rely upon an election by secret ballot as to whether the union will continue to represent the workers of that plant or that industry or that association or whatever.

Under the National Mediation Board, if a union was voted in, the employees could at some point say, look, I do not think enough people want to maintain a union here. What they do is they put up a person to run in a union election, a straw man. People know if they vote for that person, they are voting to get rid of the union, because if that person wins, that person will not represent the workers.

This is done. There is nothing wrong with that. It is fine. So workers know if they vote for this person, it ends the union. If they vote against this person, it continues the union. It is all by secret ballot. The National Labor Relations Act is basically the same way. If an employer or employees want to decertify a union, they file a petition with the NLRB, and then there is an election, as to whether the union will continue to represent the workers.

There may be a little bit of difference in structure between the National Labor Relations Act and the National Mediation Board, but, in essence, they are the same thing. You have a secret ballot as to whether the union continues. So it is not that the union is there in perpetuity, it is there as long as the workers want to continue to be represented by a union.

Lastly, I will digress a little bit from the point at hand; that is, the issue at hand on the matter before us on overturning this rule, to say a couple of things about unionization and workers who belong to unions in our country. It is a shame that union workers are somehow almost degraded as not even being worthy of being citizens in this country; that somehow a union has dark overtones, that somehow unions are destructive or not in keeping with American society or who we are as a people.

If we look at the history of the country, it was unions that built the middle class in America. I defy anyone to refute what I just said, that it was unions that built the middle class. It was unions that instituted things such as the minimum wage, such as safe working conditions, such as making sure they had a fair share in terms of wages, that they had an 8-hour workday and a 40-hour workweek and time and a half overtime—all these things were brought by unionization, people collectively bargaining for wages, hours, and conditions of employment. Maybe there are some who would like to undo the Wagner Act. If they do, fine. I suppose some people believe we shouldn't have any unions at all.

China doesn't have any independent unions. Do we want to be like that? Unions built the middle class in America.

Unions today do a very good job of representing workers, both in the public and private sectors. Today, we have too few people in America who actually belong to unions. We should have more, but we have made it more and more difficult for people to freely exercise their right to actually join a union. I just looked at a list of countries in the G8. With the exception of Russia, which I can't get figures for, the United States basically is at the bottom. Canada, 27 percent of their workforce is unionized; Japan, 18 percent; Italy, 33 percent; Germany, 19 percent. Look at the economy of Germany. The United Kingdom is 27 percent, and the United States is 11.9 percent. We are down there at the bottom. One cannot say that somehow if we have unions and we are highly organized, that our economy is going to be bad. Quite frankly, these other economies are doing as well or better than we are, and they have pretty strong unions.

I digress because it seems that time after time we hear people in a subtle way hinting or implying that unions, by their very nature, are somehow destructive of American free enterprise and our capitalist system. I don't think anything could be further from the truth. If it were not for unions, our economy would have gone down the tubes a long time ago.

Quite frankly, I believe one of the reasons we have seen in the last few years a widening gap between the rich and the poor—and it is happening; no one can refute that. The gap between the very wealthy and those at the bottom is growing rapidly and has grown rapidly just over the last 10, 15, 20 years—is coincidental with the fact that fewer and fewer people belong to unions, and more and more unions are being decertified or it is more difficult for people to join unions. Unions are

being busted through by one means or another.

I often tell the story of my brother Frank. He is now deceased. He went to work for a plant in west Des Moines, IA, back in the early 1950s. It was unionized by the United Auto Workers. My brother was disabled, but the owner of the plant—it was privately held—Mr. Delavan, owned the plant and hired a lot of people with disabilities. They had good jobs, good wages and hours. It was a great place to work. He worked there for 23 years. He worked there for 10 years one time, his first 10 years, and they gave him a gold watch because in 10 years he never missed 1 day of work and was not late once. In fact, in 23 years, he only missed 5 days of work because of a blizzard. In all those years, they never had one labor strike, not one labor problem, no strikes, nothing. They would have their bargaining agreement. They would bargain with the owner. They would move on. They never had a work stoppage, never had any problems, until Mr. Delavan got old and sold the plant to a group of investors.

The investors came in and openly bragged—and I have the newspaper to prove it—if you want to see how to get rid of a union, come to Delavan's. That was in the Des Moines Register.

When the contract came up for negotiation, the employer refused to negotiate. They would sit down and talk for a little bit, but nothing could be agreed upon. It went on and on. Finally, the union had to call a strike, the first time ever. The new owners, the investors, brought in what the striking workers called the scabs, the replacement workers, brought them in, kept them there. One year later, they had a vote to decertify the union because the new people there didn't want to lose their jobs. They decertified the union, busted the union.

Why did they want to do that? Because a lot of the people, such as my brother who had worked there for 23 years, had established seniority. They were getting paid a good hourly wage. But the new investors figured out they could get rid of all those people, hire younger people, pay them a lot less, and they would make more profit. That is exactly what happened. Investors made more profit. But they got rid of a lot of people and destroyed a lot of lives. People who had worked there for a long time and had families basically were told they were used up, burned out, out on the trash heap out in back.

I often think about that. I think about what happened. There was no reason to break that union other than to have more profits for the investors and less for the workers.

That has been going on in this country at least for the last 25 to 30 years. So is it any surprise that fewer and fewer people are getting more and more wealth and more and more people are getting less?

I hear people talking about unions and they don't want to strengthen unions, don't want to help unions. I want to make sure the playing field is open and level and that the secret ballot is fairly used, that people should have a better chance at joining a union than what they have in the United States today. That is why I am for the Employee Free Choice Act. It will strengthen the right of people to actually freely and openly join a collective bargaining unit. That would be better for the country. I state that unequivocally. The more and more we denigrate workers in terms of their ability to collectively bargain, we will hurt the economy. When we strengthen unions, when we strengthen people and give them better rights and better chances to organize and bargain collectively, then more and more of our money, our national economy, more of that will go to the workers, maybe less to capital. I think that is the way it should be. Too much of our money is going to capital and not enough to labor. We need a better balance there. About the only way that will happen is through collective bargaining.

Count me as a person who is strongly in favor of collective bargaining and strongly opposed to this effort to overturn a rule made by the National Mediation Board which I believe rights an injustice, rights a wrong, and says that: In the future, if you have an election, if you don't vote, your vote is not counted one way or the other. The outcome of the election will be decided by those who vote yes or no in a secret ballot.

Madam President, I ask unanimous consent that at 12:20 p.m., there be 10 minutes of debate remaining on the joint resolution; that it be equally divided and controlled between Senators ISAKSON and HARKIN; further, that at 12:30 p.m., the Senate immediately proceed to a vote on the motion to proceed to S.J. Res. 30, the joint resolution of disapproval.

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

Mr. HARKIN. How much time is on our side?

The PRESIDING OFFICER. The Senator has 11 minutes.

Mr. HARKIN. And on the other side?

The PRESIDING OFFICER. There is 13 minutes.

Mr. HARKING. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Madam President, I wish to address the remarks of the distinguished chairman which in many ways validate the reason we should all vote for S.J. Res. 30. I wish to tell my colleagues why.

The chairman said unionization is permanent, but it is kind of not permanent if you make a decision under the National Mediation Board. I wish to clear that up.

I ask unanimous consent to print in the RECORD the October 8, 2009, letter from Sandra Polaski, Deputy Under Secretary of Labor for the Obama administration, sent to Cleopatra Doumbia-Henry, Director of International Labor Standards Department, International Labor Office in Geneva, Switzerland, who was asked a number of questions regarding U.S. labor law as it affects aviation and transportation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF LABOR,
BUREAU OF INT'L. LABOR AFFAIRS,
Washington, DC, October 8, 2009.

MS. CLEOPATRA DOUMBIA-HENRY,
Director, International Labor Standards Department, International Labor Office, Geneva, Switzerland.

DEAR MS. DOUMBIA-HENRY: Enclosed are the observations of the United States Government in Freedom of Association Case No. 2683 concerning the procedures and practices of the National Mediation Board, with particular reference to flight attendants at Delta Airlines. I trust that this information will be brought to the attention of the Governing Body Committee on Freedom of Association.

Per your request, we invited the U.S. Council for International Business to submit their views, and those of Delta, on the complaint. We will transmit these observations as soon as they are available.

Sincerely,

SANDRA POLASKI,
Deputy Undersecretary.

Mr. ISAKSON. I will quote from her answer to question 15.

Unlike the National Labor Relations Act (NLRA), the [Railway Labor Act] does not provide for a decertification process.

This is the Under Secretary of Labor for the Obama administration.

Therefore, the union's certification continues until another union makes a showing of interest to represent the respective class or craft. In this circumstance, as this showing requires authorization from at least a majority of the class or craft, the alleged disadvantage of NMB certifying method works to the advantage of the incumbent union.

I didn't say that; the Under Secretary of Labor said that.

With regard to the examples the distinguished chairman used with regard to bond issues and the Missouri plan and things of that nature, I wish to make a few points.

When you do vote for a bond issue, you vote it up or down. Most government bond issues are 20- to 30-year terms, which means in 20, 30 years, they are over. Organization under the National Mediation Board is in perpetuity. Then the distinguished chairman talked about what I think is called the Missouri plan, which is judges, where you can vote up or down on whether to continue a judge. You do that about every 4 years in the State of Iowa; right? Whatever the judicial term is, it is not in perpetuity. This is in perpetuity, with the narrow exception stated.

Then, the chairman talked about the minimum wage. The minimum wage has risen from $1 to its current level because we periodically had elections to change it. This is permanent.

So when we take the arguments he made about being anti-union or not in favor of unions, the National Mediation Board organization essentially guarantees the organization of a union remain in perpetuity, which is why it ought to require a majority of all people covered.

The chairman talked about an Iowa union that had been decertified. Those employees work under the NLRA. We can't have it both ways. The Railway Labor Act should be like the National Labor Relations Act, under which the decertification process is parallel to the organization process.

I am honored and privileged to represent the State that is home to Delta Airlines. I know what kind of an employer they are, and they do not deserve to be vilified by the Obama Administration. I have a letter I have already asked to be printed in the RECORD, but I would like to read a part of this letter from a Delta employee by the name of Susan Powell of Buford, GA. She writes:

I have invested 31 years into a fabulous career at Delta [Air Lines] and I feel so blessed to have been able to work for such a wonderful company all these years. The intentions of the National Mediation Board are totally transparent and should not be tolerated by Congress—or any other body or individual (including President Obama) who claims to embrace honesty, fairness and ethics. It is abundantly clear to me that motivation of the newest . . . appointees to the National Mediation Board is to pave the way for an Association of Flight Attendants to gain entry into Delta Air Lines—I see no other justification for imposing voting rules on Delta flight attendants contrary to the voting rules applied to union elections at all other carriers.

That is a key point.

I have loved my career at Delta and I am so proud of the monumental efforts my company and my fellow employees have made to emerge from bankruptcy and return to profitability. I watched in horror years ago as the unions at Eastern Airlines singlehandedly brought their own company to its knees—and I was forever grateful that I had chosen to work for Delta, as opposed to Eastern. It is my belief that an election in favor of the AFA will be the ruination of my company and the end of the blissful career I have enjoyed at Delta.

I have tons of letters from Delta employees—including from many who were employed by NMA before the merger—that are just like the remarks made by Susan Powell. This is a great company, a company where, on one of its anniversaries, its employees raised the money internally to buy the company an anniversary jet for their fleet. Delta Air Lines is a great company that has operated under the National Mediation Board's regulations since it was incorporated as an airline carrier in the United States of America. Those regulations should continue without this pro-union change by the Obama Administration, as they should for everybody else in the 75-year history who has been granted their rights under a National Mediation Board regulation, which has served the industry well, served commerce in the United States of America well, and served transportation well. We should not allow two members of an appointed board to overturn 75 years of history and 75 years of precedent.

I reserve the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HARKIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Madam President, are we at 12:20 p.m., the time where we have 10 minutes divided?

The PRESIDING OFFICER. There is 3 minutes until that appointed time.

Mr. HARKIN. I will take 3 minutes.

First of all, in response to my friend from Georgia—and he is my friend; he is a great guy—this person, Ms. Polaski, Under Secretary of Labor, may have written a letter, but as Under Secretary of Labor she does not work for the National Mediation Board. She does not necessarily have the experience of interpreting its laws or procedures. That is the job of the National Mediation Board itself and of Federal judges, which, I have to remind you, upheld the Board's actions 100 percent in this matter.

Secondly, on the matter of decertification, I strongly disagree with my friend from Georgia. There is a procedure under the National Mediation Board, as under the National Labor Relations Act. If a person wants to get rid of the union under the NMB, they can file a petition, if they can get 50 percent plus one person to show an interest—quite similar to the National Labor Relations Act. If they can get 50 percent, they can file a petition with the NMB. The NMB then has an election. If that person wins, that person is not represented by any union, so the union is gone. There is just a little bit of a difference from the National Labor Relations Act, but the outcome is basically the same.

So there is a way. The Senator is right. I would say my friend is right; it is not a formal decertification. But it is a way of getting rid of the union, one way or the other. It may not be formal decertification, but it is a way that the union can be gotten rid of under the NMB.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, how much time now is remaining?

The PRESIDING OFFICER. The Senator has 4½ minutes remaining.

Mr. HARKIN. Madam President, as an agreement between the Senator from Georgia and myself, we have agreed that since he is the author of this joint resolution, he will close out the debate. I think that is proper.

I will just take a little bit of the remaining time on this side again to reiterate why this resolution of disapproval should be defeated.

No. 1, as has been adequately stated many times, it is time to get rid of antiquated, outdated rules that say if you do not vote, it is counted as a ''no'' vote. That does not make any sense.

Again, this idea that it is in perpetuity—it is not. There are ways for people to get rid of unions under the NMB, as under the NLRB. So it is not in perpetuity at all. It is just, again: How should ballots be counted? Should a person who does not vote be counted as a ''no''? That should not be so.

Even if you accept the argument that it is in perpetuity, why should someone who does not vote be counted as a ''no'' vote? On the judges, we say that every 4 years they are up. That is true; they are not kind of in for perpetuity. But why should someone who does not vote be counted as a ''no'' vote? It does not make sense in any system. I do not care what the length of time is or whether it is in perpetuity or for 2 months or 2 days; those who do not vote should not be counted no or yes, one way or the other.

Secondly, the National Mediation Board went through proper procedures in giving notice and comment in rulemaking. As I said, they published it on November 3 of last year, a detailed explanation of why they were considering it. They had 60 days of comment, 25,000 public comments, a public hearing. Thirty-four members of the public testified.

Well, this is what Federal agencies do. They follow the Administrative Procedures Act in doing this, and that is exactly what the Board did.

So no one was misled. No one was kept out of it. There was no evidence to support any claims that one member somehow was excluded or did not have an opportunity to have input into this process.

Again, I understand why this resolution has come up. I understand that for whatever reason, Delta Air Lines does not wish to be unionized. Well, that is fine. That is their right. But there ought to be a process whereby the workers have a fair, open chance to organize, if they want to. It is not illegal in this country to belong to a union—perfectly legal. The National Mediation Board has set up rules and procedures under which workers who work for Delta or for Northwest—the combined group now—can decide whether they want to have a union. To me, that is the American way.

So why should we now say: Well, no, we want that old rule that if you do not vote, it is counted as a ''no'' vote? That is what this is all about. Stripped to its essence, if you vote for the resolution introduced by my friend from Georgia, what you are saying is, if a person does not vote, it is counted as a ''no'' vote. You are also voting to override the National Mediation Board's decision, which has already been upheld by Federal courts.

But, in essence, that is what it is. If you believe a person who does not vote

should have their vote counted as a ''no'' vote, you probably ought to vote for my friend's resolution. I do not think we should.

I think we should uphold good democratic principles, principles by which, I say, bond issues or other ballot initiatives are always done. You do not count someone if they do not vote. We do not do it here. We do not do it anywhere in this country, and it should not apply here any longer. So I ask for a ''no'' vote on the resolution of disapproval so we can have free, fair, and open elections.

The PRESIDING OFFICER. The Senator has used his time.

The Senator from Georgia.

Mr. ISAKSON. Madam President, I keep hearing the argument that you should not count a ''no'' vote; it is undemocratic. Today, at 2:15, the Senate will vote on a cloture motion, and everyone who does not vote is counted as a ''no'' vote as it requires 60 votes out of 100 to get cloture. So we have to make that point from the outset, No. 1.

No. 2, this is not about being antiunion or against unions or promanagement. This is about a 75-year-old history in the United States of America for the essential service of commerce in terms of railroads and airlines. We have historically had the National Mediation Board rule that required a majority of the people who would be affected in the class rather than just a simple majority of those voting for a very precise reason: because it is a permanent decision, as referenced by the quotes in letters from the Under Secretary of Labor.

While I understand the chairman's remark that the Under Secretary of Labor is just the Under Secretary of Labor, she is the Under Secretary of Labor appointed by the President of the United States.

While the chairman says the courts have ruled in favor of this particular ruling of the National Mediation Board, the Supreme Court has twice said they are wrong. Granted, those were in other cases. But twice the National Mediation Board authority has gone to the U.S. Supreme Court, and twice the U.S. Supreme Court has upheld it.

Even all the way back to 1976, President Jimmy Carter, from the State of Georgia, spoke eloquently about the importance of National Mediation Board rules and what it takes to unionize under that versus the NLRB.

So I appreciate very much the arguments the Senator has made, but the facts are quite clear that it is better for the United States of America, it is better for workers in the transportation industry, and it has been historically upheld by the highest Court in the land that the rules of the National Mediation Board serve the people of the United States of America better than any other alternative that was presented.

So with all due respect, I would quote that letter, once again, from the Delta flight attendant who talked about their 31-year experience. Why would you, in the cause of a merger, have a union request for an election pulled out to give a board enough time to change the rules under which that election would take place? It is not fair.

I wish to also say the 1996 Congressional Review Act is very important. Congress ought to have a say-so in the action of boards of the executive branch. We do have a system of three branches of government. We do have a system of checks and balances. But it has obviously been, apparently—as in this case and in others—that this administration has attempted, where it can, to go around the authority of the Senate in advice and consent, by appointing czars or, in this case, to go around the Senate of the United States by using the National Mediation Board.

I would respectfully submit this is a legitimate question—not of whether you are for a union or against one or prefer management and do not prefer a union—this is a debate about extending a 75-year-old precedent which has served the United States of America well and has been upheld in 12 administrations and by the Supreme Court twice. It has been argued favorably by those 12 administrations every time it has been challenged and by the current administration's documentation, which I submitted, which has shown this is a permanent decision at the National Mediation Board.

I would submit, the right thing for us to do is to join together today and vote yes in favor of the motion to proceed to S.J. Res. 30. I respectfully urge my colleagues to do that.

I yield back the remainder of the time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the motion to proceed to S.J. Res. 30.

Mr. ISAKSON. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Alaska (Ms. MURKOWSKI).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 43, nays 56, as follows:

[Rollcall Vote No. 239 Leg.]

YEAS—43

Alexander	Corker	Isakson
Barrasso	Cornyn	Johanns
Bennett	Crapo	Kyl
Bond	DeMint	LeMieux
Brown (MA)	Ensign	Lincoln
Brownback	Enzi	Lugar
Bunning	Graham	McCain
Burr	Grassley	McConnell
Chambliss	Gregg	Nelson (NE)
Coburn	Hatch	Pryor
Cochran	Hutchison	Risch
Collins	Inhofe	Roberts
Sessions	Thune	Wicker
Shelby	Vitter	
Snowe	Voinovich	

NAYS—56

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Goodwin	Nelson (FL)
Begich	Hagan	Reed
Bennet	Harkin	Reid
Bingaman	Inouye	Rockefeller
Boxer	Johnson	Sanders
Brown (OH)	Kaufman	Schumer
Burris	Kerry	Shaheen
Cantwell	Klobuchar	Specter
Cardin	Kohl	Stabenow
Carper	Landrieu	Tester
Casey	Lautenberg	Udall (CO)
Conrad	Leahy	Udall (NM)
Dodd	Levin	Warner
Dorgan	Lieberman	Webb
Durbin	McCaskill	Whitehouse
Feingold	Menendez	Wyden
Feinstein	Merkley	

NOT VOTING—1

Murkowski

The motion was rejected.

DISCLOSE ACT—MOTION TO PROCEED—Resumed

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the motion to reconsider the vote by which cloture was not invoked on the motion to proceed to S. 3628, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 476, S. 3628, a bill to amend the Federal Election Campaign Act of 1971 to prohibit foreign influence in Federal elections, to prohibit government contractors from making expenditures with respect to such elections, and to establish additional disclosure requirements with respect to spending in such elections, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is agreed to, and the time until 2:15 p.m. will be equally divided and controlled between the two leaders or their designees.

The PRESIDING OFFICER. The Senator from Washington.

TAXPAYER ASSISTANCE ACT OF 2010

Mrs. MURRAY. Madam President, I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 4994, taxpayer assistance, and the Senate then proceed to its immediate consideration; that all after the enacting clause be stricken and the text of the Baucus substitute amendment, the text of Calendar No. 572, S. 3793, be inserted in lieu thereof; that the substitute amendment be agreed to, the bill, as amended, be read a third time and passed, and the motion to reconsider be laid upon the table; that the title amendment, which is at the desk, be considered and agreed to.

The PRESIDING OFFICER. Is there objection?

The Senator from South Dakota.

Mr. THUNE. Madam President, reserving the right to object, will the Senator from Washington modify her request to substitute a Thune amendment regarding extenders, the text of which is at the desk?