Then we have all the business community that is behind us—the granite people and the cement people and the general contractors. The list goes on and on. There are many groups that have come together to push forward on this bill.

So I want to mark this moment. I am happy I was able to be on the Senate floor when the conferees were named. It is a great list of conferees.

We have in this bill the RESTORE Act, which will rebuild the gulf after the terrible BP spill, and we have people on this conference who were very instrumental in writing the RESTORE Act, including Senator BILL NELSON and Senator RICHARD SHELBY. Senator VITTER also was involved, and I want to take a moment to thank Senator LANDRIEU, who was a driving force on this bill. There is no question that without her insistence this wouldn't have happened. So what an opportunity we have.

Now, there are certain things I think we should keep out of this conference, and that is things that tear us apart. There is no reason to have controversy built into this conference. We can save those battles for another day. I think, with this conference, we should just all rally around the consensus of what has to be done. If it is something outside the scope of the conference, if it is unanimous and everybody thinks it is a good idea—such as the RESTORE Act—then let's do it.

There is a provision in the bill that helps our rural counties use the proceeds from timber sales for their schools—this is so critical—and for their local governments. One could argue it is not part of the transportation program, but it is a consensus. It is a coming together, and where we can do that it is very important we stick with those consensus items and stay away from the highly charged controversies. We have plenty of time for that. We don't have to put that into this conference. So I look forward to the House naming their conferees so we can get this done.

I also want to say how important it is that we pass the Violence Against Women Act. This bill, which has 61 cosponsors—it is my understanding that is the case—is a strong bill, and it makes sure people who are the victims of violence are taken care of, and it continues a great program that was put together by then-Senator JOE BIDEN.

I remember it well because I was in the House at the time and then-Senator BIDEN, now Vice President BIDEN, doing such a great job, spoke to me and said: Congresswoman BOXER, would you be willing to carry the House version of the Violence Against Women Act? This was in the early 1990s. I looked at the bill, read the bill, and said I would be honored to do so. I was so proud to work with JOE BIDEN on this issue. We had worked together on coastal issues and now we worked together, at that time, on violence against women.

I was able to get a couple of the provisions passed—a couple of, I would say, smaller provisions passed: safety on campuses, campus lighting, and some other things. But the heart of the bill did not pass until I actually was over here in the Senate, when Senator BIDEN really picked up steam and drove that bill through. My understanding is that Senator SCHUMER—at that time in the House—picked up the bill and did the same in the House.

This has been the law of the land—the Violence Against Women Act—since the 1990s, so we don't need to have any arguments about it. I was very glad to hear Senator MCCONNELL say he didn't intend to have any arguments about it because in this bill we cover even more people: people who were brutalized, women who were brutalized, and it is very key.

I see my colleague, Senator HARKIN, has come to discuss a very important matter, a labor matter, and I would tell him I will finish in about 3 minutes, if that is OK with him.

I want to conclude by saying that the Violence Against Women Act is what we call a no-brainer. It is a serious problem in our Nation. Senator REID said three women are killed every day because of violence against women.

The shelters in our States are doing incredible work. They take in women and children. They make sure there is protection and crack down on the violators and there is no reason to argue about that.

The last thing I wanted to talk about in the last couple minutes goes to the heart of what Senator MCCONNELL said in his leader time. I have noticed that almost every time Senator MCCONNELL has a chance on the Senate floor he comes and attacks President Obama and he goes after President Obama and blames him for everything under the sun. I have to say I support Senator MCCONNELL's right to say whatever he wants to say. He has every right to use his leadership powers to attack the President and do it as much as he wants. So I am not complaining about that. But I am just saying it is very unfortunate for this country that the Republican leader in the Senate said, and I quote—I am not quoting directly the words, but this is what he said—that his highest priority was making President Obama a one-term President, and he is carrying it out on the floor of this Senate.

The things he blames this President for are unbelievable. The way he attacks the President for being out around the country—he doesn't attack the Republican candidates for President for traveling around the country. Let's face it, it is a few months to the election. Does he expect the President to stay in the White House? I am glad the President is getting outside. I am glad the President is making speeches. I am glad the President is fighting for students. I am glad the President is fighting for senior citizens. I am glad the President is fighting for small business. I am glad he is fighting for fairness. Why should a billionaire pay a lower tax rate than a secretary? I am glad this President is doing all that. To hear him attacked day after day after day is absolutely discouraging when we have so much work we can do that we can talk about in our leader time. But I have decided I am going to follow this, and every time Senator MCCONNELL does this I am going to use my privileges as a Senator to come down.

Let's never forget, this President inherited the worst economy since the Great Depression from a Republican President who left us bleeding 800,000 jobs a month, who left us with an auto industry flat on its back, who left us with a credit system that was frozen. This President, through his leadership, stepped up and led us out of that mess. The other voices, the naysayers, said: Let Detroit go bankrupt. Stay out of everything. This President didn't listen because he is a fighter for change.

If this floor is going to be used to attack this President, count me in to stand and make sure the record is set straight. I hope we can go back to the work we need to do instead of using the floor of this great body to attack our President, the President of the United States of America. Everyone has a right to do it. Believe me, I don't argue that. But I also have the right as a Senator—and so do others—to come to clear the record on that, and I intend to do that.

I yield the floor.

PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF THE RULE SUBMITTED BY THE NLRB RELATING TO REPRESENTATION ELECTION PROCEDURES—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to S.J. Res. 36, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to S.J. Res. 36, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the National Labor Relations Board relating to representation election procedures.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 2 hours of debate, equally divided, between the leaders or their designees on the motion to proceed.

The Senator from Wyoming.

Mr. ENZI. Mr. President, I yield such time to the Senator from South Carolina as he may need.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, I would like to thank the Senator from Wyoming for yielding but, more importantly, for his leadership on the subject that brings us all to the floor.

The National Labor Relations Board has gotten a lot of attention lately and

for reasons I don't think are too helpful to the cause. Obviously, being from South Carolina, their decision to entertain a complaint against the Boeing Company for moving to South Carolina, a complaint filed by the machinists union that sat on their desk for 1 year and then finally was brought forward by the NLRB to potentially close down the South Carolina site and move the facility back to Washington, thank God, is behind us now.

But at the end of the day, this organization, the National Labor Relations Board, seems to be hell bent on changing processes across the board more for political reason than a substantive reason.

What brings us here today is the rulemaking proposal to change the time for union elections for employees to vote on whether they want to be part of a union. It does away with the preelection consultation, the idea of the employer and the people wanting to represent the employees sitting down and seeing if they can work out a proposal or a compromise; it shortens the election time to as little as 10 days. So if you are in the company in question, you have a 10-day period before the election. The current mean average is 38 days.

I would argue this is being done not to make things more efficient but to change outcomes. Quite frankly, the outcome being desired is to make the union position stronger, not to make the system more efficient. That is what happens.

I expect a Republican President to nominate people to a board such as the NLRB with a business background. I expect a Democratic President to nominate people to the NLRB and like boards with maybe a more union background. But I expect the Board not to take the agency and turn it into a political organization and try to create by rulemaking what we can't create by legislating. That is what brings us here today.

The whole complaint filed by the machinists union in Washington, taking that complaint up that the move to South Carolina was somehow in retaliation against the union in Washington when no one lost their job in the State of Washington and no one's pay was reduced I think was taking the NLRB into an area it has never gone before.

This is just a continuation of that pattern and this is not good because the unelected aspect of our government, the NLRB and similar agencies, has a lot of sway over our economy. At a time when we are trying to make sure we create jobs in America and make it easier for people to locate their companies here, proposals such as this are undercutting what we need to be doing.

This is an unprecedented move. This kind of breathtaking change in the rules has only happened, I think, two or three times, and this was proposed as Mr. Becker was on the way out. Congress, under the Administrative Review Act, has an opportunity to stop this before it is too late. What this is being called on our side is sort of an ambush election.

The point we are trying to make is that by changing this rule to a 10-day period and doing away with preelection negotiations basically creates an environment where people are having to cast votes and not understanding who is going to be representing them or the nature of their decision. Why do we want to shorten an election? Why do we want to do away with the ability to negotiate between the employer and people who want to represent the employees?

I don't see this is addressing a problem that exists. I think this is more motivated by getting at an outcome rather than reforming a process. I hope some of our Democratic colleagues will say this is excessive and unnecessary.

If the Congress doesn't stand in the way between the American people and unelected bureaucrats, who will? This is your chance as a Member of Congress to do something about the unelected side of government that is growing more powerful by the day. We have a chance here to say no to a rule that makes no sense, that is going to skew the playing field and, quite frankly, I think represents the worst of special interest politics.

I hope Senators will take an opportunity to exercise their authority as a Member of Congress and say: Whoa. Time out. We don't need to go down this road. Let's let people understand who will be representing them, let the people who are going to vote in an election regarding unionization of the workplace to have a meaningful understanding of what they are about to vote on. There is no reason to shorten the process to 10 days. I doubt most of us would like our elections to be shortened to 10 days.

This is not about reforming an election process that is broken. It is about trying to change the outcome and skew it to the benefit of one side versus the other. Again, the rulemaking is not necessary. This is a chance for a Member of Congress to stand and say no to the unelected side of government at a time when somebody needs to say no to them.

I just hope and pray we can get some bipartisan support for this because Senator ENZI has done a very good job of trying to explain to the Senate and to our conference as a whole about what awaits the American workforce if this rule is changed, why it is unnecessary. It is not about reforming a broken process; it is trying to get an outcome where one side benefits versus the other.

I just hope my colleagues on the other side of the aisle will look at this as an opportunity for Congress to speak against the excessive rulemaking and what I think is an abuse of a process.

With that, I yield, and I appreciate very much the leadership of Senator ENZI.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senator from South Carolina, particularly for the insight on the way that this particular Board abused his State and found out they were wrong and got it all taken care of. But his comments are particularly valuable in dealing with this shortening of the time as well.

I thank him for speaking and I yield the floor.

Mr. HARKIN. Mr. President, I yield myself such time as I may consume.

For more than 1 year, I have been working on a series of hearings, both in Washington, DC, and in Iowa, focusing on the state of the American middle class.

We have learned that the American middle class is disappearing, falling into the widening gulf between the haves and the have-nots. The people who do the real work in this country are being squeezed to the breaking point. Their paychecks aren't rising. Their benefits are disappearing. Their pensions are disappearing. Their jobs are being shipped overseas.

When we looked into the causes of this crisis, we found that the middle class is not disappearing due to some inevitable effect of forces beyond our control such as globalization and technology. In fact, the decline of the middle class is primarily due to policy failures. We have failed to respond to our changing economy, while at the same time we have allowed many of the underpinnings of a strong middle class, such as a fair minimum wage, strong overtime laws, and defined benefit pensions to disappear.

One of the biggest factors in this downward spiral has been the decline of American unions. As former Secretary of Labor Robert Reich explained when he testified before the HELP Committee last year, when unions were strong, the middle class thrived and our country prospered. In the mid-1950s, more than one-third of all American workers in the private sector were unionized and the unions demanded and received a fair slice of the American pie. Nonunionized companies, fearing their workers would otherwise want a union, offered similar deals. As employers boosted wages, the higher wages kept the machinery of our economy going by giving average workers more money to buy what they produced. That is what the former Secretary of Labor Robert Reich said.

But now, unfortunately, that productive cycle has broken down. Workers have lost their unions, and they don't have money in their pockets to spend and help grow the economy. That is costing us the jobs and holding back our economy.

There are lots of reasons for the decline in unions, but I think again this chart which I showed yesterday is instructive. If we look at the chart, from 1973 to 2010, we will see, first of all, in the green line is the number of workers

covered by collective bargaining agreements. Look how unionization has declined. Here is the union membership. These are the ones covered by collective bargaining agreements. Here is union membership going down the same way. The red line is the middle class share of national income. Look how it tracks it. So as union membership and collective bargaining has decreased, the middle class share of national income has decreased also, almost parallel. Again, lots of reasons, but I think a big one is the broken union election process. It has become so riddled with abuses that people are giving up on it altogether. As I mentioned in my remarks yesterday, the number of union representation elections has declined by an astounding 60 percent between 1997 and 2009. When workers do file for an NLRB election, 35 percent give up in the face of extreme employer intimidation and withdraw from the election before a vote is even held, and that is after they have already signed the card to petition for the NLRB to have an election, one-third of them never get to an election.

The rule we are discussing today cannot solve all of these problems, but as I said yesterday, it is a step in the right direction. It addresses some of the most abusive situations where unscrupulous companies are manipulating the process and creating delays so they can buy more time to intimidate workers.

The primary way management can cause delay is to raise challenges at the preelection hearing. Some of these disputes, such as challenging the eligibility of an individual voter, can certainly wait until after the election to be decided. That is what we do in elections across the country. If a voter's eligibility cannot be confirmed, they vote a provisional ballot until their eligibility can be verified. We don't stop an election from happening until every voter's eligibility can be confirmed. We don't do that. If there is a challenge, they vote a provisional ballot and after the election they see whether they were qualified to vote. Some of these challenges are downright silly, but they have their intended effect, and that is to delay.

In 2002, one employer raised a preelection challenge arguing that the International Association of Machinists was not a ''labor organization'' within the meaning of the statute. The NLRB actually held a hearing on this question and, of course, found that the machinists who had been representing workers since 1888 are indeed a labor union. But the election was delayed by a month to address that one issue.

Some anti-union consultants bragged openly about their ability to abuse the process and create delays. One union-busting law boasted on its Web site how a 27-day hearing contributed to a 5-month delay between filing of a petition and the election at a Massachusetts hospital organizing drive.

Why is delay so important to management who do not want to bargain in good faith with workers? Well, by delaying an NLRB election, they give themselves more time to conduct an anti-union campaign and make it more likely they will win.

One former anti-union consultant wrote a book that is very instructive. Everyone should read it. It is called ''Confessions of a Union Buster.'' He described his strategy as ''[c]hallenge everything . . . then take every challenge to a full hearing . . . then prolong each hearing'' as long as possible, then ''appeal every unfavorable decision.'' The consultant explained that ''if you make the union fight drag on long enough, workers . . . lose faith, lose interest, lose hope.'' Let me repeat that. This is from an anti-union consultant who wrote this book called ''Confessions of a Union Buster,'' and he said, ''if you make the union fight drag on long enough, workers . . . lose faith, lose interest, lose hope.''

The impact on workers is clear. In 2000, workers at Dillard's distribution center in Little Rock, AR, began efforts to organize a union with the Union of Needletrades Industrial and Textile Employees, UNITE for short. The campaign involved a unit of between 500 and 600 workers employed as pickers, packers, forklift drivers, loaders, other warehouse workers, many making just over the minimum wage.

Dillard's management began talking with workers about the union almost immediately after workers began signing cards—before the petition was even filed. Aware that the company was likely to quickly escalate its campaign, UNITE, the union, filed an election petition in the spring of 2000, a couple of weeks after it began meeting with workers. At the time it filed for the election, UNITE had signed union authorization cards from 65 to 70 percent of the workers to join a union.

Well, what happened? Soon after the union filed the election petition, the company began holding mandatory captive audience meetings and one-on-one meetings with all workers. Basically threats were made that if the union were to succeed, the distribution center might lose its competitiveness and be forced to shut down.

The employer also launched legal challenges to the workers' petition. Get this. The management claimed that all professional and white collar workers should be in the election unit—even those at the corporate headquarters in a separate building adjacent to the distribution center.

Well, the company forced a dispute that took months to resolve. The company didn't want the white collar workers in the union, but by challenging it and saying they should be in it, forced the NLRB to have a hearing that took months to resolve.

The company took advantage of this delay to continue its anti-union campaigning. It isolated union supporters by excluding them from captive audience meetings and changing their shifts or job locations. It distributed and posted anti-union literature and continued one-on-one meetings.

Support for the union began to wane as workers' fears grew. Workers felt they were under surveillance at work and could not discuss the union at the worksite or even outside the distribution center before or after their shifts. Workers grew too scared even to accept union materials that their fellow workers handed out outside of the plant gates. Attendance at general meetings and organizing committee meetings fell sharply over the months leading up to the election. After facing 2½ months of intense anti-union campaigning, workers voted against union representation by a margin of two to one. About 3 months before that, over 65 percent to 70 percent of the workers had signed a petition to form a union, but less than 3 months later, they voted two to one not to have a union.

The NLRB has put in place reasonable rules to limit the kind of game playing that the workers from Dillard's experienced. The NLRB hasn't tried to advantage or disadvantage workers or stop employers from spreading their message. All the board has done is send a clear message to employers. They cannot abuse the process to buy themselves more time to intimidate their workers. They get a fair period of time to convey the message, and then the workers deserve their day at the ballot box.

This is not the radical act of an out-of-control board. It won't even affect most employers, union or nonunion, one bit. As I pointed out yesterday, 90 percent of all of the petitions that are filed succeed without having NLRB input anyway. Management and workers get together and work things out. But it is in those 10 percent of companies that go on this massive campaign to intimidate and frighten workers, that is what this rule is aimed at.

Preventing abuses of our laws that keep workers from having a union is a small step in the right direction to help putting the middle class back on track.

When I talk about this, a lot of people say, well, isn't it against the law for management to fire workers for union activities? And I say, yes, it is. But what is the penalty? The penalty is basically nothing.

I pointed this out yesterday, and I will say it again. There was a young man in Iowa who had been organizing a union and was fired. He filed a petition with the NLRB and it took him about 3 years to settle the case. He found out that he had been fired because of union activities and the penalty for the company was to give him all of his back pay minus whatever he earned in between.

How many people can go for 2 or 3 years and not take care of their family and pay their mortgage and pay to put food on the table without having a job? So, of course, that intervening time this person had to work, all the wages were subtracted from whatever the

company had to pay him, and it turned out basically it was nothing. So there is no penalty. As I said, all the employer has to do is pay back wages minus an offset of whatever the worker made in between the time he was fired and the time the decision was made by the NLRB, so there is no penalty for the employers to do that.

So, again, allowing our labor laws to be abused is a policy choice. As I said in the beginning, a lot of the reason for the decline of the middle class in America is because of policy choices that are made here. We have tolerated these policy choices for far too long, these abuses. Working families have suffered as a result; union membership has declined. As I pointed out, the number of workers covered by collective bargaining agreements has declined, and the middle class has declined right along with it. There is much more we need to do to move these trends back in the right direction.

I recently introduced a comprehensive bill, the Rebuild America Act, that I think presents a bold agenda for restoring the American middle class. That agenda—everything from investing in the infrastructure to job retraining, better educational benefits, better pensions, raising the minimum wage—also has restoring the right to form a union to workers who have been unfairly denied this basic freedom. It would provide real penalties for employers who abuse and fire workers to bust unions and would try to restore real voice for the people who do the real work in this country.

I hope that once we vote today and uphold the NLRB's eminently sensible actions, we can move on and have a real debate about some of these important ideas about restoring the middle class in this country and building an economy that works for everyone.

I was listening to the comments made by my good friend from South Carolina, and he alluded to the recent situation with a complaint filed with the NLRB by the attorney for the NLRB. A year or so ago the general counsel's office filed a complaint with the NLRB that the Boeing company in Seattle had retaliated against its workers for union activity, that type of thing. The fact is the NLRB—the body my colleagues are attacking today—never acted on that. The company and the workers settled it. Isn't that what we want? But somehow to listen to my friend from South Carolina, he is saying he is even opposed to letting the general counsel file a complaint. Well, that takes away the basic right of anyone to have their grievances heard. So I hope that is not what my friend from South Carolina meant. I want to point out that I think there was a lot of abuse of the NLRB during that process even though the NLRB was doing exactly what we told them to do: Take into account all of the factors, look at all the evidence before you make a decision. That is what they were doing when it erupted here on the floor and a lot of political pressure was put on the NLRB. There were a lot of threats on the NLRB. And as it turned out, it all worked out because the union and Boeing got together, settled their differences and we moved ahead. That is the way it ought to be in our country.

We should not cut off the right of people to actually file a complaint if they have a complaint. The duty of the NLRB is to investigate and to take into account all of the factors before they issue any findings. But that never happened in that Boeing case because Boeing is a good business. Boeing is one of our great businesses in this country and does a lot for America. So you get the good businesses, and the Machinist Union is a great union, and they worked it out. That is the way things ought to be done, and 9 times out of 10 that is the way it happens.

What we are talking about here is the rules for NLRB to take care of those bad actors who are out there, and to give people who want to form a union at least a level playing field without having all of these abuses and delays and intimidations and things like that.

That is what the issue is about, and hopefully this afternoon we will have a good, affirmative vote to uphold the ability of the National Labor Relations Board to issue this ruling.

I yield the floor.

The PRESIDING OFFICER (Mr. MANCHIN). The Senator from Wyoming.

Mr. ENZI. Mr. President, I yield myself such time as I may consume.

I wish to continue the debate a little bit on the Boeing situation because the company was creating 2,000 additional jobs—reducing none but creating 2,000 additional jobs—in South Carolina at a new plant. The NLRB general counsel, who was not confirmed by this body, went ahead and decided to investigate and work on a complaint and created a lot of concern for 2,000 employees who didn't know whether they would be able to work. The case actually wasn't settled.

I think the National Labor Relations Board realized they had made a mistake and, because of the national controversy it created, actually withdrew the case even though it could have taken about 3 or 4 years through the courts to take care of it, and we covered that situation in one of the hearings Senator HARKIN asked for. I thought the company did an outstanding job.

What we are talking about today relates a little bit to that because the South Carolina folks decertified in the small window they had, which says they weren't pleased with what they had been handed.

So some of these discussions are extremely important, and the time to do those is extremely important. So today we are renewing this debate on S.J. Res. 36, the Congressional Review Act Resolution of Disapproval to stop the National Labor Relations Board's ambush elections rule. This rule is the second formal rulemaking the National Labor Relations Board has pushed through in the last year—their third in the past 75 years. There was only one before this Board decided they would take unusual action. As I mentioned, the first rule has been struck down already by Federal courts because it went far beyond the agency's authority. This ambush elections rule is also being challenged in the courts, but it is set to go into effect in less than a week—on Monday, April 30—and that is why the Senate must act today to stop the National Labor Relations Board from stacking the odds against America's employees and small businesses.

During yesterday's debate, both sides got to air their concerns. I wish to respond to some of what I heard.

There was much talk about the 90 percent of elections that go forward under mutual agreement. The argument was that because both sides were able to come to an agreement and because the wide majority of elections occur in a timely fashion, parties should not mind losing their rights to raise issues prior to the election. This argument is turning the concept of coming to agreement on its head. Yes, it is true that 90 percent of elections occur under mutual agreement and occur in 38 to 56 days, but that is precisely because both sides have the ability to raise issues of concern, such as which employees belong in the bargaining unit, and have them resolved. In other words, both sides have incentives to make fair requests because the other side has the leverage of exercising the right to contest. When all of these rights are taken away and an election is scheduled in as few as 10 days, the result will be that less mutual agreement occurs.

The National Labor Relations Board has taken a process that is working well and becoming swifter year after year and turning it into a contentious process where the small business employer side feels entirely ambushed. If the National Labor Relations Board were truly intending to address the small minority of cases where long delays do occur, they should have drafted a rule that addressed only those cases.

Yesterday both Chairman HARKIN and I quoted Presidents from each other's parties. I quoted John F. Kennedy's statement during labor law debates in 1959 when he was a Senator here saying:

> There should be at least a 30 day interval between the request for an election and the holding of the election.

He went on to say:

> The 30-day waiting period is an additional safeguard against rushing employees into an election where they are unfamiliar with the issues.

I agree that one of the most important reasons for a waiting period is for the employees to learn more about the union they may join. This is in fairness to the employee.

In many cases, the election petition is the first time some employees have ever heard about the union. They want to know what the union's reputation is for honesty, keeping their promises, treating members well, and working well with the employer to make sure the business stays in business. Once a union is certified, it is very difficult for employees to vote it out if they decide to. Employees are barred from petitioning for decertification for a full year after the election and barred as well throughout the term of the collective bargaining agreement.

Employees should have a chance to understand that once they unionize, they will no longer be able to negotiate a raise individually with their employer. Exceptional performance will not be rewarded, and grievances cannot be brought straight to the employer but will instead have to go through the filter of union officials.

Chairman HARKIN quoted former President Dwight Eisenhower. I haven't had a chance to look up the quote's context, but the gist of it was that only a fool would oppose the right of an employee to join a union. My comment on that is that a vote for this resolution does absolutely nothing to diminish the right of any employee to form a union. This resolution will not change the law one bit. If we are able to stop the ambush elections rule, union elections will still occur in a median of 38 days, with nearly 92 percent occurring in 56 days, just as it is now. And I would even venture to guess that the unions will continue to win the majority of elections. Last year they set a new record by winning 71 percent of elections. That is under the old rule. So a vote for this resolution may please both those former Presidents, whom we all admire, and forcing a fast election—an ambush election—may irritate employees into a negative vote.

Now, I know the President issued a policy on this that says that if it comes to his desk, he will veto it, and that is his right. I checked the Constitution. The Constitution says we are an equal branch of government with the President. We do not serve for the President, we serve with the President. That could be a quote from Senator Byrd, who used to sit at that desk and pull out his copy of the Constitution and point out that the President gets to do what he wants to do, but we have a responsibility to do what we need to do.

In this case, one of the administrative branches is overreacting—doing something it should not do—and we need to say no. If it gets to the President's desk and he vetoes it, that is his part of the process, although I think that when the law was written, it should have been that if Congress, which passes the law and grants rulemaking authority, disagrees in the Senate and the House, that ought to be the end of it. It ought to be the end of a rule or regulation. It shouldn't be the beginning of the process where the President can veto it, because he is in charge of the side that created the rule. But our job should be to take a look at these things, decide if they are right or wrong, and if they are wrong, to vote against them as part of the process.

So I think many will be joining me on this resolution of disapproval—at least I hope they will. That is our job and our right.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I yield whatever time he may consume to my good friend the Senator from Connecticut.

Mr. BLUMENTHAL. Mr. President, I join the distinguished leader of the committee on Health, Education, Labor, and Pensions in opposing S.J. Res. 36 and supporting the National Labor Relations Board rule that would very simply modernize the process that workers use to decide whether they want to form a union.

Right from the start, let's be very clear about what is at stake. It is a rule that the National Labor Relations Board has formulated pursuant to the Administrative Procedure Act set by the Congress of the United States after comment that was solicited from all of the relevant stakeholders and people who would be affected by it, and they are rules that are long overdue because of the inconsistency and delays that are endemic to the current process.

As I travel around the State of Connecticut and I hear from people around the country, I consistently hear about problems that exist under the present process for choosing a union. This rule does not determine the outcome; rather, it simply modernizes and improves the process, and it does it by a rulemaking process that is consistent with and pursuant to the Administrative Procedure Act, which is the way the Congress has said it should be done. In fact, it adopts the rulemaking procedure rather than doing it by individual cases, which is the way the U.S. Supreme Court and the courts of appeal have said to the Board it should do more often. So, far from raising constitutional questions or issues of procedural lack of process, the NLRB has acted in accordance with the will of the Congress and the Constitution in formulating this rule.

Why is it necessary? Well, for one thing, there are 34 regional offices of the National Labor Relations Board, and each of them has different policies and practices for processing election petitions. We are talking about petitions that are submitted by workers who want to form a union and can do so by election when at least 30 percent of those employees send the petition to the NLRB. The gap in time is an opportunity for intimidation by unscrupulous employers. Fortunately, they are a small minority of employers—but they exist—who wish to discourage or deter workers from forming a union. That intimidation is unacceptable. We should do everything we can to stop it.

Second, the delays themselves are intolerable. Some of those delays are years—as long as 13 years in some instances—and the gap in time discourages or deters the exercise of rights that are guaranteed under the law.

So this new rule is simply to modernize the process, end intimidation, and make sure that rights are made real, in real time, so that employees can exercise those rights without any discouragement from employers.

Are the employers free to communicate with workers? Of course they are. The rights of communication on the part of the employers are not eliminated by any means. Are they still part of the process? Yes, indeed, employers remain a part of the process if they wish to be. The effort here—in fact, as one of the employers who submitted comments to the NLRB said quite pointedly—from Catholic Healthcare West, a health care company with 31,000 employees, in its comments: ''Reforms proposed by the NLRB are not pro union or pro business, they are pro modernization'' and will ''modernize the representation election process by improving the board's current representation election procedures that result in unnecessary delays, allow unnecessary litigation, and fail to take advantage of modern communication technologies.''

That quote from an employer really says it all.

Some of the litigation is not only against the interests of employees, it also is costly to the employers, especially when it fails to succeed. It creates uncertainties for other employers, and it can block representation and lead again to unnecessary delays.

This rule has an impact on real people in Connecticut and around the country. To give you a couple of examples, registered nurses who are at a number of the hospitals in Connecticut have come to me about the need to reform this process. Members of the employee workforce at T-Mobile, for example—Chris Cozza, a technician at T-Mobile USA in Connecticut, joined with 14 colleagues, came to me to recount his experience. He filed for union representation with the support of the Communications Workers of America, the CWA. He experienced problems of exactly this kind because his rights were delayed and thereby almost denied. When T-Mobile USA filed a claim that officially challenged the status of the CWA as a labor organization, he could see—Chris Cozza and all of us could see—that clearly CWA is a labor organization. This tactic was simply a delaying one, and the NLRB rule would prevent the kind of frivolous challenges and frivolous litigation that occurred there.

Let me conclude by saying, as has been said already, this rule is neither prounion or proemployer. It is simply profairness. It is antidelay,

antifrivolous litigation, and it is profairness in the workplace.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I yield myself such time as I might consume.

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

Mr. ENZI. Mr. President, one of the things I have been checking on here is the statement that was made earlier that one in five people get fired for working on organizing. That statement is based on a phone survey of union activists for their estimate if an employee is terminated during an organizing drive. It is not based on fact. The fact is, unions only filed objections in approximately 1.5 percent of the elections, and that number includes objections based on many issues other than employee terminations.

Under the current law, it is illegal to terminate or discriminate in any way against an employee for their union activities. If this occurs during an organizing campaign, the National Labor Relations Board is required to rerun the election since it created an unfair election. This occurs in about 1 percent of all elections and has been decreasing in recent years. I would expect that to increase in succeeding years if this rule passes because this is an attack on small businesses and the small businesses will not have the necessary information to know what is legal and illegal, especially if they only have 10 days to get their act together.

The National Labor Relations Board can go even further if they believe a fair election is not possible. They can certify the union, regardless of the vote, and order the employer to bargain.

I have information on some of the studies that have been done on this, and the number does not come out nearly that high. Of course it is terrible if there is even one person who is fired for organizing activities but there is recourse that can be done.

I want to raise an important privacy issue that has come up as part of the National Labor Relations Board's ambush elections rule. One section of the initial proposed regulation concerned the private information of employees. It raised so much concern that it was dropped from the final rule. However, the National Labor Relations Board Chairman has publicly stated that he plans to push this and other dropped provisions into law later this year, now that President Obama's so-called recess appointments have created a full board.

Under the current law, employers are required to provide employees' names and addresses within 7 days once an election is set. The proposed rule would not only expand the type of personal information that an employer must turn over, but would require that information to be turned over within 2 days of an election being set. Of course, if we are moving it from 38 days down to 10 days, I can see where they would want it in 2 days instead of the 7 that has been normal. The expanded information that the National Labor Relations Board wants employers to give to unions includes all personal home phone numbers, cell phone numbers, e-mail addresses that the employer has for each employee. It also would demand work location, shift information, and employment classification.

Let's consider this for a moment. The National Labor Relations Board wants to give employers 48 hours to turn over information of employees who are eligible to vote, despite the fact that the employee's eligibility may not even be determined at that point because of the ambush elections rule, the elimination of this preelection hearing so those sorts of things can be worked out as to who is exactly going to be covered. In essence, an employer will be forced to turn over personal information of employees who may not even be in the bargaining unit. The rule even would have required that the employer alphabetize the lists.

The threat of this new invasion of privacy is very alarming to most people. The purpose of the information is so the union organizers can come to your home, call you, e-mail you, find you outside your work location and catch you before and after shifts. There is no prohibition on how many times the organizers can contact you or at what times. There is no ''opt out'' for those employees who simply do not want to be contacted. And there are no protections in place to ensure that the information does not go astray.

While a large part of this debate circles around the shortened election time and what that means for employers, with good reason, I do not want us to forget what this new rule could mean to the privacy of employees. Supporters of expanding the information provided to the unions claim the National Labor Relations Board is merely modernizing this standard. In this time of Internet scams, identity theft, online security breaches, and cyber bullying, protecting personal information is not something to be taken lightly. Union elections can be a very intense and emotional experience for employees and employers alike. The last thing we want is for an individual's personal information, such as an e-mail address, to be used as a harassment or bullying tool by an angered party.

I want my colleagues to know what is at stake in this debate. A successful Congressional Review Act petition also prohibits an agency from proposing any ''substantially similar'' regulation unless authorized by Congress. Therefore, by supporting my joint resolution, we could put a stop to the Board's future attempt to force employers to hand over more personal employee information.

I urge all my colleagues to support this resolution of disapproval. This is one of the most important votes we will have on labor issues this Congress. We need to let the National Labor Relations Board know that their duty as a Federal agency is to be the referee and decide what is fair for the parties involved based on the clear facts of the case. Their job is not to tip the scale in favor of one party or another. Tipping the scale is exactly what the National Labor Relations Board is doing with the ambush elections rule. Congress needs to step up and say ''no'' to the overbearing and burdensome nature of these regulations coming out of so-called independent agencies. You can do that by voting for my joint resolution, S.J. Res. 36.

Mr. President, I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, a couple things.

I keep hearing it stated that: ambush elections. I want to point out, there is no timetable set in these rules—none whatsoever. I keep hearing: 10 days and 7 days and all that. That is not set. There are no timetables at all. As I pointed out, 90 percent of NLRB elections are conducted under voluntary agreements between the parties, and those procedures are unchanged.

The current median time right now between when a petition is filed and when an election occurs is 37 to 38 days. Jackson Lewis, the Nation's biggest management-side law firm, said that—their attorney Michael Lotito told the Wall Street Journal he thinks the time under these rules would be shaved to between 19 and 23 days. Joe Trauger, vice president of the National Association of Manufacturers, says the elections would be held in 20 to 25 days under the new rules—hardly an ambush election.

The other issue I want to briefly mention has to do with the contacts—contacting and the right of privacy I heard here. Right now, the only way a union can contact people is at their homes—at their homes. The only information the union is allowed to get after the petition is filed is the addresses of the workers, their home addresses. What the Board is considering—but has not implemented—is allowing unions to have access to e-mail addresses and/or phone numbers. Well, it seems to me that is a lot less intrusive than going to someone's home.

Now, again, it is much harder, obviously, for a union organizer to go to a home. People go to their homes. They are with their families. They have their children. They are busy. That is more intrusive than e-mailing them, it seems to me. So I would hope we would look upon the possibility that they might say that having their e-mail addresses and phone numbers is less intrusive than going to their homes.

But that is not part of these rules whatsoever. They would still have to contact them at their home, and the only information the employer would have to give would be their home addresses.

Again, keeping in mind what these rules are—they are very modest rules. I keep hearing that: Well, there have only been three rules since the Board was comprised in 1938. Quite frankly, the Supreme Court and appeals courts have said, time and time again, they should do rulemaking because it is open, it is transparent, parties get to be heard. So I think this Board is being more open and more transparent than any Board before it.

This is not anything overwhelming, but it is a step in the right direction to make sure we level the playing field and we do not have these undue delays where the management can intimidate—intimidate—and I gave some examples of it, and I have a whole ream of examples of where management has delayed and delayed and delayed in order to intimidate workers so they would eventually vote not to form a union.

Again, an employer has the right to communicate to their employees all day long—in captive audiences, one-on-one meetings with supervisors. The union can only contact the worker at that worker's house, in the evening or on a weekend. So already the employer has much more opportunity to converse with and to get its views known to its workers than the union has—much more, all day long, at the job, on the job, through supervisors, one-on-one contacts, group meetings, over the loudspeaker, whatever it might be. So already there is much more ability for the management to weigh in on this than it is for the union.

The one thing we are trying to do with these rules is to say: Fine, you can continue to do that. There will still be that disparity between the ability of management to communicate to the workers and the union to communicate, but what these rules are saying is, fine, you can do that, but you cannot continue to do it month after month after month and wear the workers down and intimidate them, make them afraid of losing their jobs. And if you fire one person for union organizing, that sends a chill across everybody else. You say: Well, but that is illegal. Well, it may be illegal, but as I have pointed out, time and time again, there are no penalties for that. It may be illegal, but there are not much penalties for that. Management can always find some excuse—that they may have fired someone for something other than union activity, but everyone would know that person was fired because that person was trying to organize a union.

We are saying you cannot just continue to drag these things out month after month after month. The proposed rules simply say we will have elections, and if there are challenges, if there are challenges by the management as to who can vote in that election, then those challenges would be held until after the election and then see whether those individuals so challenged were really part of that unit and could vote or whether they could not and whether that would even make a difference.

Again, if there were 100, let's say, who signed a petition to form a union, and that was 50 percent of the workers out of 200, and the employer was challenging 5 of those, well, as it is now they could challenge those 5, have a hearing, appeal the hearing, appeal that, and just keep appealing it.

Well, the rules would say, OK, they can say those 5 are not part of it, their ballots would be set aside, and they would have the election. If the election was, let's say, 150 to 20 that they wanted to form a union, those 5 would not make a difference one way or the other. If, however, the election was very close and those 5 would make a difference, then the results would be held in abeyance until such time as it is determined whether those 5 so challenged were part of that bargaining unit or not.

To me, this is a much more fair and decisive way of moving ahead rather than these constant delays and intimidations that go on right now in some of the places—not all, not all, but in some of the places. It is like a lot of times we pass laws not because there are, let's say, broad-based incursions on a person's freedoms or certain things we want to address, but a lot of times we pass laws because there are a few bad actors out there one way or the other and we want to make sure those bad actors are not able to act unreasonably, kind of in violation of what was intended by the National Labor Relations Act.

So that is what they are all about. They are very modest and, I think, lend themselves to a much more reasonable path forward in union organizing and voting.

I ask unanimous consent if there is a quorum call that both sides be charged equally on the time.

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

The Senator from Wyoming.

Mr. ENZI. Mr. President, I yield myself such time as I may use.

The PRESIDING OFFICER (Mr. TESTER). Without objection, it is so ordered.

Mr. ENZI. Mr. President, I do want to talk about this open and fair, transparent process that was just referred to. Much has been said about the flawed policy behind ambush elections we are discussing on the Senate floor. But I want to spend a few minutes discussing the rulemaking process that was followed or not followed for that matter by the National Labor Relations Board.

While the other side portrays the changes as moderate, make no mistake about it, this new rule greatly alters the election system, especially should Chairman Pearce be able to finalize the more controversial provisions that were previously proposed. This entire rule took under 1 year to complete. The National Labor Relations Board introduced the proposed rule on June 22, 2011, and published the final rule only 6 months later on December 22, 2011.

Considering the scope of the rule and how much attention it garnered from stakeholders, it is absurd to think that a Federal agency could promulgate a rule that would have such a major effect on all employers, in only 6 months. As evidence of how critical this rule's impact will be on stakeholders, the Board received 65,957 comments. Let me repeat that. The Board received 65,957 comments during the 60-day comment period. That is an astounding number.

To compare, the Board's previous rulemaking on its notice posting requirements garnered a little more than 6,000 comments. On November 30, 2011, the Board voted to move toward finalizing a new amended proposed rule. The reason for this new amended rule was clear: The Board was going to lose its quorum at the end of the congressional session in late December 2011.

What continues to astonish me is that the Chairman claimed his staff read each of the 65,957 comments, twice, in such a short period of time. In rushing to finalize the ambush elections rule, the Board discarded several well-established internal procedural precedents as well. For example, until the ambush election rule, the Board did not advance a major policy change without three affirmative votes. This was a major policy change.

They never did it without three affirmative votes, whether through rulemaking or a case decision. This was not the case in the ambush elections rule where only two members voted in favor of finalizing the rule. Further, the Board rejected the tradition of providing any dissenting member at least 90 days to produce an opinion. Instead, Chairman Pearce offered to publish a dissent after the final rule was published. The process the Board used to promulgate the ambush elections rule was rushed through for no good reason. Yet in the process it decided to discard years of Board precedent.

I should also mention one of these people, one of the two who voted for it, not three—one of the two who voted for the rule, and there were two who voted for it—was a recess appointment because they knew this body would not stand for that person with the radical views he held, actually claiming before his appointment that he would cause this sort of a thing to happen; that he would even be able to institute, through Board procedures, card check.

Now, that is a pretty radical statement, and that alone was keeping him opposed by both sides of the aisle. There were people on both sides of the aisle who opposed card check.

So two people voted for it; one person voted against it. That person was not allowed the right to put in a dissent opinion. That is wrong. That is not open and transparent.

Now I would like to talk a little bit about the targeting of small business

this regulation does as well. All of our States have a lot of small business. Small business is the backbone of job creation in this country. We need to make sure that process can still follow. Once a petition for representation is submitted, the current median timeframe for a union election to be held is 38 days. That is the median time. The ambush election rule would shorten that timeframe to as few as 10 days.

For small business owners, with the range of company responsibilities and limited resources, this puts them at a severe disadvantage. Most small business owners are not familiar with complex labor laws they have to adhere to during the representation election process. For example, they may not be aware that certain statements and actions could result in the National Labor Relations Board imposing a bargaining obligation without a secret ballot election. They can declare the election over. Furthermore, most small businesses do not have the resources to employ in-house counsel or human resource professionals familiar with these laws.

So holding an ambush election in as few as 10 days does not provide small business owners with enough time to retain a competent labor attorney, consult with them, and then adequately prepare for an election. I have given the reasons before why it is unfair to the employees. But it is also very unfair to a small business owner because their day-to-day responsibilities range from sustaining a competitive product, to managing personnel, to balancing the books at the end of the day. I know. I have been there. I had a shoe store. They have to do all of those things.

The definition by the Federal Government for a small business is 500 or less employees. In Wyoming that would be a big business. My definition of a small business is where the owner of the business has to sweep the sidewalks, clean the toilets, do the accounting, and wait on customers—and definitely not in that order. So those day-to-day responsibilities to keep the business competitive take a lot of time, and given such a demanding schedule, it takes time for a small business owner to fully understand the pros and cons of unionization. It takes even longer for a small business owner to communicate these points to their employees.

Ambush elections make it logistically impossible for small business owners to fully discuss the effects of unionization with their employees, partly because they will not even know what those effects are, and neither will their employees.

A union organizing campaign does not begin on the day an employer receives a petition for representation. It typically starts months or even years before, when professional union organizers start conveying their side of the story to targeted small business employees. They work on it for months. By unjustly curtailing an employer's ability to convey their point of view, ambush elections deny employees the opportunity to hear both sides of the argument on unionization.

The small business employer is also at a disadvantage because the union organizer will be in a position to set up the election to his best advantage, essentially cherry-picking union supporters before the election process begins. The organizers will have had limitless amounts of time to analyze which employees could be argued to belong in the bargaining unit, which may qualify as supervisors, and who is most likely to support a union.

With ambush elections, the National Labor Relations Board will impose the election before the employer has an opportunity to even question those assumptions, especially since we have significantly restricted the one tool—the preelection hearing—that the small businessman would have to question who is in and who is out.

According to a recent Bloomberg study, unions win 87 percent of secret ballot elections held 11 to 15 days, compared to a 58-percent rate when elections are held 36 to 40 days. By shortening the election timeframe, labor unions will undoubtedly win more representation elections—perhaps. The perhaps is that they may really irritate the employees and win less of them. The way that it is held in 11 to 15 days is when the employer and the employees agree on all of the issues and get the election to move forward. So it can happen in a short period of time right now. Otherwise, the median time would not be 38 days.

But I think this rule will alienate those people who have been getting together and arriving at these agreements. So for small business owners, the surge of union bargaining obligations means a less flexible workforce, increased labor costs, and fewer opportunities for job creation. And they are the job creators.

The National Labor Relations Board is only creating more uncertainty for small business at a time when the country needs them to focus on creating jobs. Small businesses account for over half of the jobs in the private sector and produce roughly one-half of the privately generated GDP in the country. In 2010, small businesses outpaced gross job gains of large businesses by 3 to 1.

As the National Labor Relations Board has publicly indicated, ambush elections are only the beginning of a round of regulations aimed at making it easier for unions to win representation elections in American workplaces. Proposed regulations, such as requiring small businesses to compile a list of employee phone numbers and e-mails and then handing them over to union organizers before an election are time consuming. They are costly. They are extremely invasive. Furthermore, they are indicative of how this administration is more concerned about boosting labor union membership than creating jobs.

We have to create jobs. We cannot continue to pick on the small businessman and put him at a disadvantage. This is a rule that is looking for a place to act. It is not one that was needed or requested other than by labor organizers. I think it will have repercussions. So I would ask everyone to vote for the resolution of disapproval so this does not go into effect, although we have been promised, of course, a Presidential veto if it makes it to his desk.

But that is Congress. We have the right to say we do not think the rule is right. The President has the right to say his administration is right and veto the law. But we have to make that statement, and we have to make it on behalf of small businesses and employees.

A lot of this has to do with employee fairness and giving them the time to figure out what the union will do with them and for them and to them.

I yield 3 minutes to the Senator from Alabama for morning business, as I understand it.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

POSTAL REFORM

Mr. SESSIONS. Mr. President, I thank the Senator from Wyoming for his thoughtful remarks on this important subject. I hope our colleagues are listening.

Later today, I will offer a budget point of order on the postal bill. It adds $34 billion to the debt. It violates the agreement we reached last August, in which we said there would be limits to how much debt we would increase and how much spending we would increase.

The first big bill coming down the pike adds $34 billion. Every penny of the new spending is added to the debt. There is no offset to it. Those of us who supported the concept of a limitation on spending—and I didn't think it limited it enough last summer, but many thought it did, but agreed to that limit—have to know this. When I raise that budget point of order, somebody will probably rise and ask for a vote to waive the budget, waive the limitations on spending and debt that we just passed last August.

We need not kill reform of the Postal Service. We need to send this bill back to the committee and let them produce legislation that either spends not so much or doesn't spend money or, if they do spend money, pay for it through cuts in spending that are perfectly available.

GAO has said there is over $400 billion spent each year in duplicative and wasteful programs. We have GSA off in Las Vegas in hot tubs on taxpayers' money. We could pay for this bill if it is so important that we have to do it; if we don't, that is what the vote would be.

I urge my colleagues to understand the importance of it. Our Members who believed it was important to have a

limit on spending in order to gain a debt increase last summer, increase the debt ceiling, should vote against the motion to waive because to do so—to vote for waiving the budget would undermine, in the first real opportunity, the agreement we reached.

I thank the Chair and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I ask unanimous consent to have printed in the RECORD three additional letters of support from the Motor and Equipment Manufacturers Association and National Council of Textile Organizers and the Building Owners and Managers Association International.

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

The Motor & Equipment Manufacturers Association (MEMA) represents over 700 companies that manufacture motor vehicle parts for use in the light vehicle and heavy-duty original equipment and aftermarket industries. Motor vehicle parts suppliers are the nation's largest manufacturing sector, directly employing over 685,000 U.S. workers and contributing to over 3.2 million jobs across the country.

MEMA urges your boss to support S.J. Res. 36 and help overturn the ''ambush election'' rule, which is part of the NLRB's aggressive and unchecked regulatory agenda. Parts manufacturers are very concerned by recent unnecessary and unwarranted actions by the NLRB that threaten employer-employee relations as well as job growth and productivity. MEMA members strongly oppose the NLRB's ambush election rule which would shorten the time frame during which union elections may be held, limiting an employer's ability to prepare for an election and an employee's opportunity to make an informed decision about joining a union.

Please contact Ann McCulloch at amcculloch@mema.org or 202–312–9241 with any questions. Thank you for your consideration.

Sincerely,

ANN WILSON,
Senior Vice President, Government Affairs, Motor & Equipment Manufacturers Association.

BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL,
Washington, DC, April 24, 2012.

Hon. MIKE ENZI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR RANKING MEMBER ENZI: The Building Owners and Managers Association (BOMA) International urges you to support S.J. Res. 36, which will prevent the National Labor Relations Board (NLRB) from moving forward with its ''ambush'' election rule. The rule is an attempt by the NLRB to enact the Employee Free Choice Act through regulation. The NLRB's actions are detrimental to workers, businesses and our economy and must be stopped.

Under the rule, building owners and managers and the companies they do business with could face an election held to determine whether or not the employees want union representation in as few as 14 days after the union files a petition. This would leave little or no opportunity to talk to employees about union representation or respond to any promises by union organizers—no matter how unrealistic. Union organizers lobby employees for months outside the workplace without an employer's knowledge, so these ''ambush'' elections would result in employees receiving only half the story. In an effort to rush the election, the rule also robs employers of free speech and due process rights. In fact, under the rule, the NLRB could even conduct elections before it settles which employees would be in the union. How is a worker supposed to make an informed choice about unions in these circumstances?

The median time from petition to election without this rule is a far more reasonable 31 days. The legislative record shows Congress intended an election period of at least 30 days in order to ''safeguard against rushing employees into an election where they are unfamiliar with the issues.''

The Building Owners and Managers Association (BOMA) International is an international federation of more than 100 local associations and affiliated organizations. Founded in 1907, its 16,500-plus members own or manage more than nine billion square feet of commercial properties. BOMA International's mission is to enhance the human, intellectual and physical assets of the commercial real estate industry through advocacy, education, research, standards and information. On the Web at www.boma.org.

Again, on behalf of building owners and managers across the country, I urge you to support S.J. Res. 36 and help rein in this out-of-control agency.

Regards,

KAREN W. PENAFIEL,
Vice President, Advocacy.

NATIONAL COUNCIL OF TEXTILE ORGANIZATIONS,
Washington, DC, April 24, 2012.

DEAR SENATOR: I am writing on behalf of the U.S. textile industry and the nearly 400,000 workers the industry employs. I am the president of the National Council of Textile Organizations and I urge you to support S.J. Res. 36 when it comes to a vote today. S.J. Res. 36 provides for congressional disapproval and nullification of the National Labor Relations Board's (NLRB or Board) rule related to representation election procedures. This ''ambush'' election rule is nothing more than the Board's attempt to enact the Employee Free Choice Act through the regulatory process and to deny employees and workers access to critical information about unions. In addition, the ''ambush'' election rule strips employers of their rights to free speech and due process. The rule poses a threat to employers and workers alike and needlessly interrupts an employer's day to day business operation.

The National Council of Textile Organizations (NCTO) is a unique association representing the entire spectrum of the textile industry. From fibers to finished products, machinery manufacturers to power suppliers, NCTO is the voice of the U.S. textile industry. There are four separate councils that comprise the NCTO leadership structure, and each council represents a segment of the textile industry and elects its own officers who make up NCTO's Board of Directors.

NLRB statistics note that the average time from petition to election is 31 days, noting that over 90 percent of elections take place within 56 days. NCTO strongly believes that the current election time frames are reasonable, and permit workers time to hear from the union and the employer. The ability to take into account the perspectives of management and the unions allows workers to make informed decisions, which would not be possible under the new ambush election rule if allowed to go into effect. NCTO is particularly concerned about how our small and medium manufacturers would be affected by the rule's time frames; employers will not have the appropriate time to retain legal counsel, or to speak with workers about union representation. The reality is that union organizers are persuading workers for months outside the workplace without an employer's knowledge; these ''ambush'' elections would often result in workers'' hearing only one perspective on union membership. Workers would be made unrealistic promises that can't be kept and be offered guarantees of benefits that unions have no way of attaining. If the employer does not have an opportunity to explain their position and any possible inaccuracies that could be levied by the union, how can a worker make an informed and objective decision regarding representation?

For these reasons, NCTO urges you to vote yes on S.J. Res. 36 when the Senate votes today. If left unchecked, the actions of the NLRB will fuel economic uncertainty and have serious negative ramifications for millions of employers, U.S. workers, and consumers.

Sincerely,

CASS JOHNSON,
President.

Mr. ENZI. Also, there will be key vote alerts from the Associated Builders and Contractors, Associated General Contractors, Brick Industry Association, Competitive Enterprise Institute, Heritage Action for America, International Franchise Association, International Warehouse Logistics Association, National Grocers Association, National Association of Manufacturers, National Federation of Independent Business, National Restaurant Association, National Roofing Contractors Association, National Taxpayers Union, the Retail Industry Leaders Association, and the U.S. Chamber of Commerce.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ENZI. Mr. President, I yield up to 10 minutes to the Senator from Georgia, Mr. ISAKSON.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. ISAKSON. Mr. President, I haven't been able to hear all the speeches, but I commend Senator ENZI on his detailed and eloquent explanation on how we arrived where we are today.

I wish to add a history lesson of my own to tell you my journey in terms of where we are. As a student in college in the 1960s, in business management, I learned a lot about the Industrial Revolution, the labor revolution, the development of labor unions and labor/management practices as they developed from the 1920s until the 1960s and now up until today.

It is absolutely correct that the playing field was unlevel in the 1920s and

1930s. It is absolutely true that we had poor working conditions, safety risks were high, and wage-an-hour issues were debated. There was a place and an appropriate nature for us to level the playing field so management and labor could go together, head-to-head, and negotiate and arbitrate and have binding agreements upon themselves to protect the safety of workers and also improve the environment of the workers in the United States.

For 75 years those laws served us well. All of a sudden, it seems there is a perfect storm. From every corner, the NLRB seems to be making proposals to try to tilt the playing field away from fairness and equity and it is not right.

Last year, 70 percent of the elections for unionization in the United States of America were successful. There is not a problem in terms of people being able to organize and negotiate collectively. The problem is that the regulatory bodies are attempting to circumvent the legislative branch of government and to rule and regulate what they cannot pass on the floor of the Senate.

When Mr. Becker was appointed to the NLRB last year by the President, over the objection of the Senate and during the recess—it was an example of where the President used a recess appointment to go around the lack of approval, and advice and consent of the Senate.

This particular legislation we are talking about is similar to the specialty health care decision. The specialty health care decision allowed unions to create micro unions within the same working body, where there could be a plethora of unions in one store, all to fracture and fragment the ability of a business to cross-train and compete effectively. It is an attack on the free enterprise system and circumvents what our Founding Fathers intended us to do.

We have a legislative branch with the House and Senate; an executive branch with the President, the Vice President, the Cabinet and his appointees; and we have a court system. The President makes initiatives that go through the legislature. The legislative body takes initiatives and passes laws. Ultimately, the courts are the arbiters if either one or both ever challenges the ruling of one or the executive order of another. That is the way it should be. But right now we have a two-legged stool in America. Instead of legislative, executive, and judicial branches, we have a judicial and executive branch trying to run the country. We all know what happens to a two-legged stool. It falls over.

I talked with some businesspeople this morning who talked about the uncertainty of doing business in America. It didn't all have to do with ambush elections or specialty health care movements or special posters to promote unionization in the workplace, but they were part of it. The regulations that come from the administration through the Department of Labor, the National Labor Relations Board, the National Mediation Board, and a plethora of other organizations, are making it difficult for America to do business in a time where it is essential that we do business.

When the stimulus passed 18 to 24 months ago—maybe 30 now—it was designed to bring unemployment down to 6 percent. Unemployment remains above 8 percent, and one of the reasons it does is that the deployment of capital by businesses is not taking place because of the uncertainty of the workplace and what lies ahead, whether it is health care, whether it is ambush elections, card check, or whatever it might be.

So I come to the floor to commend the Senator from Wyoming for taking an initiative that is available to the Senate to bring a resolution of disapproval forward for a resolution of an executive branch body that circumvents the legislature itself. I hope he is successful in sending the message that it is time for us to take American politics and American justice and American legislation back to what our Founding Fathers intended.

Let's stop trying to take a playing field—one that has been level for 75 years, where we have had the greatest labor-management relations in the history of any country in the world—and tear it up or put us into a situation where we are adversaries, as we were 75 years ago. Let's stop the ambush election. Let's stop the arbitrary posting. Let's stop the specialized unionization. Let's stop all of this and return to the laws that have worked for three-quarters of a century. Three-quarters of a century is a great test of time. There is no reason now, through appointments to a regulatory body, to change the history of the Senate and the history of the court system.

I will end by quoting a President of the United States—a Democratic President of the United States—who, on April 21, 1959, was U.S. Senator John Fitzgerald Kennedy. In his campaign for the Presidency, he declared that elections should have at least 30 days between their call and the vote so employees can be fully informed on their choices from both sides of the issue. If it was right for John F. Kennedy on April 21, 1959, it is right for the Senate today, on April 24, 2012.

I commend the Senator from Wyoming on his presentation, his intensity, and his ability to bring this issue before the American people and to the floor of the Senate.

I yield the floor.

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

The PRESIDING OFFICER. The Senator from Iowa has 20 minutes, and the Senator from Wyoming has 12 minutes.

Mr. HARKIN. Mr. President, there are just a couple of things I wish to bring up in response to some of the statements that have been made on the floor.

First of all, I wish to make it very clear that the NLRB has scrupulously followed all legal and procedural requirements for rulemaking under the Administrative Procedure Act, and by increasing the use of rulemaking, it has been the most inclusive and transparent Board in history—in history. This process has given all sides abundant opportunity to provide input to the NLRB. There was opportunity for written comments, written responses to other comments, and even a public hearing.

I would like to point out again that there is no requirement in the Administrative Procedure Act to facilitate a dissent. Even though there isn't, the NLRB's traditional practice has given Member Hayes an opportunity to dissent. He was given that chance. But these practices do not allow him to filibuster or run out the clock to thwart the actions of his colleagues.

The Board filed a notice of proposed rulemaking on June 22, 2011, provided 60 days for filing public comments, and received over 65,000 comments, of which, I might note, all but around 200 were form letters. There were 65,000 comments, and all but around 200 were form letters. But still there were 200 comments, ensuring a wide range of views and stakeholder input. The Board arranged an opportunity for staff from Member Hayes's office to brief congressional staff on his dissent from the notice of proposed rulemaking, and, although not required to do so, the Board also provided an opportunity for oral public comments at a hearing conducted on July 18 and 19, 2011, in which over 60 labor and management lawyers, public interest groups, employer and labor organizations, workers, and other related constituents participated. The Board provided an additional 14 days following the 60-day comment period in which to file written reply comments. Again, this is not required by the APA—the Administrative Procedure Act—or any other law. Then the NLRB held a public vote on a final rule on November 30 and published the final rule in late December. So quite frankly, under the Administrative Procedure Act, which all other agencies follow, the NLRB bent over backward to be transparent and to allow dissent.

I have heard it said that Member Hayes was not allowed enough time. Well, he had his first dissent. But from June 22 until November, Mr. Hayes had all that time to file a dissent if he wanted to—to write a dissent. I mean, is that not enough time to write a dissent? It seems to me that is more than enough time. But that was not done. So I just want to make it clear that I think Mr. Hayes was given more than enough time to write his dissent if he wanted to. He did write one dissent over the proposed rules, but he had the additional opportunity from June 22 until November. Again, the APA, under rulemaking, doesn't entitle him to dissent, but the Board allowed him to

have a dissent if he wanted to. They had access to public comments on the proposed rules. They were given summaries and copies of specific comments the other members found informative. His office had months to incorporate those comments and write a second dissent but chose not to. That was his own choice. That was his own choice. He was not prevented from doing so. That was his own choice.

There are a lot of little items like that which I think are kind of being misinterpreted, but here is the essence of it, right here. Here is the essence of what this is all about. Stripped of all the falderal and all of this and all of that and which Board member was for card check and who wasn't and on and on and on, this is what it is about, right here, this statement. This is Martin Jay Levitt, who was an anti-union consultant who wrote a book called ''Confessions of a Union Buster,'' published in 1993. ''Confessions of a Union Buster.'' Here is what he said:

> Challenge everything . . . then take every challenge to a full hearing . . . then prolong each hearing . . . appeal every unfavorable decision . . . if you make the union fight drag on long enough, workers lose faith, lose interest, lose hope.

That is what it is about. It is about denying people their right under the National Labor Relations Act to fairly and expeditiously have a vote on whether to form a union. This is not new. This has been going on since the 1940s and 1950s, since Taft-Hartley. There have been forces at work in this country since the adoption of the National Labor Relations Act in 1935 to break unions. They do not want to give workers a right to have a voice in collective bargaining. They will go to extreme limits to deny union members their rights. They will do everything they can to try to break up unions. Taft-Hartley was the first of that, and we have had several things since that time.

Our job is to try to make it a level playing field—as level as possible, anyway—and to give workers a right that is not just a right in name only or in words but a real, factual right to form a union and have the election without challenging everything, taking every challenge to a full hearing, prolonging each hearing, appealing every unfavorable decision. As I quoted earlier, if you make the union fight drag on long enough, workers lose faith, lose interest, and lose hope. And I might add, if you drag it on long enough, it gives the employer every opportunity to intimidate workers so they won't join a union or maybe fire people who were active in the union organization drive—to find some reason why they should be fired, anyway. That is what this is about.

What the NLRB has finally done, through an open process, through a rulemaking process, through perhaps one of the most open and transparent processes in the history of the NLRB, is to say: Let's have a system whereby certification votes can be held within a reasonable amount of time. There was no time limit put in there. There is no 7 or 10 days. That is what Mr. Hayes said in his dissent. He just plucked that out of thin air. But that is not in the ruling. That is not in the ruling at all. Most people who have looked at it have said: Well, it may shorten it to 20 to 30 days, somewhere in there. It seems to me that is fair enough. That is fair enough.

But that is really what this is all about, and I hope Senators, when they vote, will recognize that what the Board has done is to take the unfair process we have had for so long and made it more fair for everyone.

I will point out one last time that the procedures the NLRB has come up with, which are under fire right now from the other side, apply to certification votes as well as to decertification votes. If a company wants to decertify a union, then the union can't drag that out days and months at a time. They can't drag that out for decertification either. So it seems to me that on both sides—certification and decertification—we have a level playing field, and neither side can drag it out interminably to try to frustrate the real desires and wishes of the workers.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I yield 8 minutes to the Senator from South Dakota.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I wish to commend the Senator from Wyoming for his great work on the subject.

As Americans know firsthand, we continue to struggle with an economy that is not performing well or meeting the needs of workers. The unemployment rate remains at about 8 percent, as has been the case for the last 28 months. Much of this can be attributed to a lack of certainty on the part of employers.

One need look no further than the regulatory policies being pushed by this administration to understand why job creators are not creating jobs. Back on December 22 of 2011, the technically independent National Labor Relations Board published the final rule on representation-case procedures, better known as the ''ambush elections'' rule. This new rule could allow a union to organize an election in as little as 10 days. This new rule is the most drastic and sweeping modification to the union election process in more than 60 years.

According to the National Labor Relations Board, the median time in which an election is held is 38 days, and 92 percent of all elections occur within 56 days. In fiscal year 2011 the NLRB reports that 71.4 percent of unions won their elections, which is up 3½ percent from fiscal year 2010. It is hard for one to claim that union elections are being held up unnecessarily with these sorts of track records.

The changes put forth by the NLRB will radically change the process of union organizations and will limit an employer's ability to respond to union claims before an election, thereby stifling debate and ambushing an employer and employees. Employers use the time after an election petition has been received to ensure compliance with the National Labor Relations Act, to consult with human resource professionals, and to inform—to inform—their employees about the benefits and shortcomings of unionizing. It is nearly impossible for a small business owner to navigate the regulations of the National Labor Relations Act without the assistance of outside counsel, which will be hard to find in 10 days or less.

On April 21, 1959, then-Senator John F. Kennedy stated, and I quote:

> The 30-day waiting period is an additional safeguard against rushing employees into an election where they are unfamiliar with the issues.

It appears that rushing elections is exactly what the NLRB and big labor are hoping for. After all, unions win 87 percent of elections held 11 to 15 days after an election request is made. The rate falls to 58 percent when the vote take place after 36 to 40 days.

On a decision as important as whether to form a union, workers should have the opportunity to hear from both sides, free from any pressure one way or the other, an opportunity that the NLRB's recent decision would take away.

In addition to ambushing employers with union elections, the NLRB has now decided to recognize micro-unions. The NLRB ruled that so long as a union's petitioned-for unit consists of an identifiable group of employees, the NLRB will presume it is appropriate.

What does this mean for America's small businesses? This means that at your local grocery store there could be a cashiers union, a produce union, a bakers union, the list goes on and on. Micro-unions, coupled with ambush elections, can cause one small business to deal with several bargaining units in the workplace and little time to no time to raise concerns against such actions.

The Supreme Court has expressly stated:

> An employer's free speech rights to communicate his views to his employees is firmly established and cannot be infringed by a union or the NLRB.

The recent actions of the NLRB have all but silenced any freedom of speech once enjoyed by employers. For the State of South Dakota, increased unionization will mean higher costs for the health care industry, driving up health costs for hospitals and consumers. It will also mean higher costs for hotels, tourism, small businesses, and other service industries. The Federal Government should not be acting to slow or hinder job growth in our current economy but should instead be looking for ways to foster job growth.

In addition to radically changing the way in which union elections are organized, the NLRB promulgated a rule requiring most private sector employers to post a notice informing employees of their rights under the National Labor Relations Act. I believe this is yet another example of Federal overreach by this administration that benefits their special interest allies at the expense of American businesses that are currently struggling to create jobs, which is why I introduced the Employer Free Speech Act last year.

If enacted, this legislation would prohibit the NLRB from requiring employers to post a notice about how to establish a union. I am happy to report that on April 17, 2012, the DC Circuit Court of Appeals agreed with me and has stopped the NLRB from enforcing this unnecessary and burdensome rule.

This administration is making a habit of using regulatory policies to strengthen unions and harm the economy. In these difficult times, the last thing government should be doing is putting roadblocks in front of American businesses as they attempt to do their part to turn our economy around and to create jobs.

In the 74 years of the NLRB's existence prior to 2009, the Board had promulgated just one substantive rule. It is time that the NLRB return to its main function, which is to act as a quasi-judicial agency. These actions by the NLRB further push our government down a dangerous path, one in which decisions no longer lie in the hands of those elected by the people but by unaccountable bureaucrats sitting in Washington disconnected from people.

For these reasons and many others, I am supporting S.J. Res. 36, and I want to encourage my colleagues on both sides of the aisle to stand with American employees and employers and to vote to stop the NLRB from moving forward with what is a misguided and deeply flawed ambush election rule.

I congratulate the Senator from Wyoming for getting this matter on the Senate floor and giving us an opportunity to debate it. This is yet another example of an administration that seems to be bent upon creating more excessive overreaching regulations, making it more difficult and more expensive for American small businesses to create jobs and to get the economy growing again. I hope my colleagues will join me in voting to stop this from happening.

NLRB RESOLUTION OF DISAPPROVAL

● Mr. KIRK. Mr. President, I am in support of S.J. Res. 36 and thank the Senator from Wyoming for introducing it.

I worry that the recent direction of the National Labor Relations Board is killing American jobs, not creating them. This resolution concerns a new rule regarding ambush or quickie union elections. But this action is just the latest in a number of other anti-job creation activities at the NLRB.

The case last year against the Boeing Corporation is a perfect example of where the NLRB actions threatened to kill thousands of new U.S. jobs. By threatening to shut down a new plant producing the new 787 Dreamliner in South Carolina, the NLRB's actions would have cost Boeing billions of dollars. This case has made U.S. companies reconsider building new plants at home, costing high-quality American jobs.

I am particularly worried about a proposed rule by the NLRB that would require employers to turn over employee personal contact information to unions, including personal e-mail addresses and cell phone numbers. This is a blatant violation of an individual's privacy. No one should have access to that type of information, unless you want to provide it. As a Congressman, I fought for easy access to opt into the Do Not Call List, so that you will not be disturbed by unwanted telephone calls. This rule would allow unions to have access to that very same information that the overwhelming majority of Americans do not want to be public. The NLRB is completely out of touch with what is important to Americans.

The resolution on the floor of the Senate specifically addresses the new NLRB rule that would shorten the time frame for a union election to as little as 10 days. The new rule is set to go into effect on April 30. These ambush elections rush workers into making quick decisions, which are often uninformed ones, on an issue that directly affects their every day life in the workplace. Forcing workers to make this quick decision runs against the heart of our democratic system, based on the principles of fairness and justice.

Quickie elections will be particularly harmful to small businesses. Small businesses are the engine of our economy and our greatest job creators. Small business owners have a range of responsibilities and fewer resources than larger corporations. They will struggle to respond to the new, accelerated timeframe for elections. Their compliance costs will almost certainly rise; taking money that could have been put into enhancing their business, growing the economy, and creating jobs.

The NLRB continues to find ways to prevent job growth and inhibit our economy instead of enhancing it. This new rule on ambush elections is no different. I thank the Senator from Wyoming, my ranking member on the HELP Committee, for this resolution and I urge its passage.●

Mr. FRANKEN. Mr. President, today I would like to discuss my strong opposition to the resolution before us, the resolution disapproving of the National Labor Relations Board's final rule governing election procedures. This rule seeks to modernize and streamline a process that is currently costly, inefficient, and promotes unnecessary delay.

Let's be clear about what the rule does and does not actually do. This rule does not fundamentally change how workers are permitted to organize. This rule does not prevent employers from talking to their workers about unionization. This rule is not the Employee Free Choice Act by fiat. This rule does not require that an election take place in a set number of days. These are all of the claims that have been levied against this rule, and, factually, none of them are true.

The rule's modifications are purely procedural. Here is one example. Under the current rules, companies often spend weeks litigating the eligibility of a handful of workers even though the election is ultimately decided by 50 or 100 votes. Those disputed votes couldn't have determined the outcome of the election—the only consequence was delay. So under the new rules, disputes about small numbers of voter eligibility can be decided after the election. The workers in question can cast provisional ballots, just as they do in political elections.

These exact circumstances played out in Minnesota. On April 8, 2008, office clerical workers in Virginia, MN, filed a petition for a union election. But because the parties litigated the status of a single employee, the unit was not certified until June 10th of that year—64 days after the petition was filed. Under the new rule, the issue concerning that single employee could have been resolved after the election, and the election would have been conducted with less delay and uncertainty.

These rules don't favor either unions or companies. They favor efficiency and modernization. They are narrowly tailored—targeting only those elections that face the longest delays. A vast majority of election schedules are agreed to by the parties—90 percent. This rule would only affect the other 10 percent. These rules favor better use of resources. These are the types of government reforms that we should be promoting—cutting down on bureaucracy and redtape.

Unnecessary delays hurt workers seeking to exercise their rights in the workplace—whether they are seeking to certify or decertify a union. These rules simply give workers a chance to vote yes or no.

Working families in Minnesota and across this country are still struggling. The middle class—has been ailing for decades. Without a strong middle class folks who can afford to buy a home and a car and send their kids to college—our country's economic future is tenuous. Protecting the ability of working people to have a voice—to vote yes or no—will bring more middle-class jobs with good wages and benefits that can drive our recovery forward.

The NLRB's rules are modest and reasonable. They uphold the principles of democracy and fairness that have shaped our Nation's workplace laws. I urge my colleagues to vote against this resolution.