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.

Mrs. BOXER. Mr. President, I rise in opposition to the Enzi resolution. If enacted, this resolution would prohibit the National Labor Relations Board, NLRB, from implementing commonsense, straightforward changes to the union representation process that will ensure union elections are conducted in a more fair and efficient manner.

The new rules, which will go into effect on April 30, will make it easier and less burdensome for workers and employers to navigate the union election process.

Workers and employers will now be able to electronically file election petitions and other documents. Timely information essential to both sides being able to fully engage in the election process will be shared more quickly. Timeframes for parties to resolve issues before and after elections will be standardized. Duplicative appeals processes that cause unnecessary delays will be eliminated. Both sides will be required to identify points of disagreement and provide evidence at the outset of the election process, helping to eliminate unnecessary litigation.

The modest reforms proposed by the NLRB do not mandate timetables for elections to occur, as some of my colleagues will allege; rather, the new rules simply eliminate existing barriers that get in the way of providing employees and employers with access to an open and fair election process. As Catholic Healthcare West, which employs most of its 31,000 workers in my State of California, wrote during the public comment period: ''[the] reforms proposed by the NLRB are not pro-union or pro-business, they are pro-modernization.''

I urge my colleagues to support modernization and oppose the Enzi resolution.

NLRB ELECTION RULES

Mr. LEVIN. Mr. President, we find ourselves debating yet another effort in the campaign against working men and women in this country. Over and over again in this body, and in State legislatures across the country, some have sought to undermine the ability of their constituents—dedicated teachers, electricians, assembly-line workers, and civil servants, just to name a few—to come together to bargain for fair wages and benefits. The resolution of disapproval before us is just another attempt to weaken unionized labor in this country, and I will not support it.

The representation process we are debating, which is overseen and administered by the National Labor Relations Board—NLRB—is used when a group of workers want to hold a union representation vote or when an employer wants to hold a similar vote to decertify a union.

Now let me be clear. What we are considering is a resolution that would effectively nullify a number of worthwhile rule changes intended to streamline and modernize the process for administering a union representation election. And, if adopted, it would essentially bar the NLRB from promulgating any similar rules in the future.

These changes will help cut down on needless delays that can occur at preelection hearings, eliminate the arbitrary minimum 25 day waiting period following a decision to hold an election, and will clarify the election appeals process. And, the new rules will allow for the use of modern technologies, including email and other forms of digital communication.

The NLRB proposed these amendments last summer, allowed for ample time to consider public comments, and finalized the changes this past December. These are reasonable updates meant to accommodate modern forms of communication and discourage delay tactics that can unfairly stall a representation vote for months on end. The finalized rules will help ensure that the unionization process is fair and timely for employees, employers, and unions. And despite what some of my colleagues have stated, the rules are not encouraging an ''ambush.'' They are encouraging an election. I urge my colleagues to join me in voting against this disapproval resolution.

I yield the floor.

Mr. HARKIN. Mr. President, over the past 2 days my Republican colleagues have raised several arguments about what the NLRB rule will do. I now want to respond to their points and to clarify once again: this is a modest rule that simplifies preelection litigation in the small number of cases where the parties don't reach agreement and must resort to litigation.

First, my colleagues across the aisle have pointed out that unions have recently won about 71 percent of elections, and so, they argue, the current system is completely fair to unions. This is an incredibly deceptive statistic. Unions have filed far fewer petitions in recent years—down from over 4,100 in 2001 to just over 2,000 in 2011. And in almost a third of cases where petitions are filed, the petition is withdrawn before an election. In other words, the process of getting to an election can be so slow, and employer anti-union attacks so potent, that unions are discouraged from going through the entire election process. For the most part, only in the rare cases where support is truly overwhelming or the employer does not oppose the union do unions win.

In a related vein, Republicans have argued that elections are currently held promptly—on average, between 30 and 40 days after a petition is filed—and therefore no change in the rule is needed. But this argument misses the point of the rule. Currently, in the 10 percent of cases that are litigated, it takes around 124 days to get to an election. It takes around 198 days when parties exhaust their appeal rights. This rule addresses those situations where employers engage in excessive—and often frivolous—litigation to slow down the process. Without question, in those cases, it takes far too long and these new NLRB procedures are a desperately needed fix to shorten that time period for the 10 percent of cases that are litigated.

I have also heard the argument that if employers engage in misconduct that interferes with workers' choice during a long election campaign, the NLRB can rerun the election. But the time it takes to get to a second election only compounds the frustration and loss of hope workers suffer when their opportunity to make a choice is delayed for too long. Many unions won't bother to seek a second election, even if there was employer misconduct, if workers are too discouraged.

One of the major improvements in this bill—deferring challenges to voter eligibility until after the election when they are small in number—has also been mischaracterized. Opponents of the rule claim that workers will be confused about who is in the bargaining unit with them. The reality is, challenged voters will be deferred only when they are small in number relative to the size of the bargaining unit. So there will be little or no confusion about the exact individuals in the unit. Moreover, workers will know full well the essential identity of the group they are a part of; individual employees may come and go over time as workers retire or find new jobs, but the identity of the unit is what remains constant. The unit identity is what workers need to know to be able to make an informed choice about whether to vote for a union.

I hear a lot from the other side how this rule will dramatically shorten the time to an election and how it will lead to so-called ambush elections. There is no basis for this prediction. Opponents of the rule can't even agree among themselves how much time the rule will shave off an election. Senator ENZI suggested that this rule will lead to an election in 10 days; Senator BARRASSO suggested it will almost halve the current median time of 38 days. An attorney from the management-side labor law firm Jackson Lewis told the Wall Street Journal that he thinks the time would be between 19 and 23 days. The vice president of the National Association of Manufacturers predicted a hearing 20 to 25 days after the petition is filed.

The reason there are so many different numbers floating around is because the rule simply does not say anything about a timeframe for elections. Certainly it is true that in the 10 percent of cases that are litigated—where the process is abused and delays are rampant—the rule likely will shorten the time period by instituting more efficient procedures. But as to the 90 percent of cases where there is voluntary agreement, the NLRB will continue to work with parties as it always has to arrive at a reasonable election date.