STATEMENT OF GLENN M. TAUBMAN
TO THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS
HEARING: March 4, 2015

Chairman Roe and Distinguished Committee Members:

Thank you for the opportunity to appear today. I have been practicing labor and constitutional law for 32 years, on behalf of individual employees only, at the National Right to Work Legal Defense Foundation. (My vitae is attached as Exhibit 1). I have a unique perspective on the NLRB's "ambush" election rules, which comes from three decades of representing thousands of employees who are subject to the National Labor Relations Act. I have represented employees in countless elections arising under the NLRA, including certification elections, decertification elections and deauthorization elections.

I start today with the premise that *only* employees have rights under the National Labor Relations Act.[1] The NLRA is not about unions or employers: it is about whether the employee has information from both sides to make a free and informed choice. And the key issue under the NLRA is employee free choice.

Given the centrality of employee free choice under the NLRA, I would like to address two major issues. The first is the way the NLRB's new

---

[1] *Lechmere Inc. v. NLRB*, 502 U.S. 527, 532 (1992).

"ambush" election rules skew the process to wholly favor unionization, while invading employees' privacy and depriving them of their Section 7 right to choose or reject unionization in an informed and thoughtful manner. The second issue concerns the way in which the ambush election rules continue the odious practice of blocking decertification elections to entrench incumbent unions, via "blocking charges" and arbitrary "election bars," while simultaneously speeding certification elections. The NLRB's new ambush election rules contain aggressive procedures to help unions win elections and get into power, while hypocritically retaining "blocking charges" and "election bars" that make it almost impossible for employees to exercise their rights to rid their workplace of an unwanted union.

I. THE AMBUSH ELECTION RULES PREVENT EMPLOYEES FROM EXERCISING THEIR SECTION 7 RIGHTS

There is much to criticize in the NLRB's new rules. As an employee representative, I will highlight just a few:

First, the ambush election rules mandate a serious invasion of employees' privacy. The rules force employers to disclose to unions their employees' names, *personal* private home or cell phone numbers, *personal* email addresses, and work schedules, including employees who may be supervisors or whose status in or out of the bargaining unit has not been

determined. Despite employees' pleas,[2] the Board has cavalierly brushed aside all privacy concerns, creating illusory or toothless "remedies" for union misuse of employees' personal information. While Congress has mandated "Do Not Call" lists and other consumer protections against SPAM and internet abuse, the Board has refused to apply those principles here, and refuses to allow employees to opt out of the forced disclosure of their personal information. And, once employees' information is handed over, unions can spread this personal information to union officers, organizers, supporters inside the shop and out, and to the entire internet, if they choose.

The Board places no real restrictions or safeguards on how unions use or disseminate this sensitive personal information. The NLRB can neither take back the information once it is conveyed, nor effectively police how unions use or share this information. The only way to protect employee privacy is for the NLRB not to compel the disclosure of employees' private information to union officials in the first place. Indeed, the American public would be appalled if the U.S. Government forced disclosure of citizens' personal contact information to politically active groups like the NRA,

---

[2] The National Right to Work Legal Defense Foundation's Comments and Supplemental Comments to the NLRB in opposition to the election rules, dated August 18, 2011 and April 7, 2014, respectively, are attached as Exhibit 2. Additionally, the National Right to Work Legal Defense Foundation's amicus brief in one of the federal cases challenging the rule, *Chamber of Commerce v. NLRB*, No. 1:15-cv-09-ABJ (D.D.C. Jan. 5, 2015), is attached as Exhibit 3.

ACORN or the Sierra Club, but the NLRB has issued an edict doing just that for the benefit of a few politically active and sometimes violent special interest groups called labor unions.

Second, despite unions' high win rate in elections held under the current rules – over 60% – the new ambush rules create an aggressive regulatory regime with one goal: to get even more unions in power, even faster. Perhaps worst of all, the rules completely exclude employees' views and participation in the process. Employees have no right to intervene in any election that is called; no input into the scheduling of the election; no input into the conduct of the election; no input into the scope of the bargaining unit or their own inclusion or exclusion from the unit; and no ability to file objections or challenges to a tainted election. Their voices are silenced.

For example, many employees may be unaware that a union organizing campaign is underway in their shop until they are notified of an impending election just days away. But if these employees – even a majority – seek a delay in the election so they can learn more about both sides and the effects of unionization, the NLRB will deny their request. If they ask for clarity as to who will be included in their unit and who will be excluded, their request will be denied. If they want time to research the union that has targeted them, their request will be denied. All of these flaws were pointed out to the NLRB in comments, yet the concerns were ignored or brushed aside.

Under new NLRB Rule 102.64, the Board will not determine before the election whether specific job positions will be included in a proposed bargaining unit. Employees whose status is uncertain, and their co-workers, will proceed through the election process without knowing whether they are in the unit, or even if some of them are statutory supervisors whose activities could taint the election. Those employees will not know whether to participate in any election campaign, as they can only vote "under challenge." Other employees, who might not want to be in a unit with certain classifications of other employees, will be voting in the dark about the scope of the unit.

This is no way to run a democracy. It is akin to a mayoral election in which it is unknown, either before or after the election, whether up to 20% of the potential voters are inside or outside the city limits. Coupled with the Board's *Speciality Healthcare*[3] decision allowing gerrymandered "micro-units," the ambush election rules provide employees with no input into the timing or occurrence of the election, the scope of who is included or excluded, and the ultimate bargaining unit that will result.

The bottom line is clear: the ambush election rules undermine employees' ability to make informed and thoughtful decisions about

---

[3] *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011).

unionization, and violate their right to personal privacy with no right to opt out.

II. REFORM OF THE NLRB'S "BLOCKING CHARGE" RULES

The second issue I want to highlight concerns the Board-created "blocking charge" and "election bar" rules, which make decertification elections almost impossible to obtain. In testimony I gave to this Committee on June 26, 2013, I highlighted several specific cases in which the NLRB allowed unions to game the system and delay decertifications for years, but when those decertification elections were finally held the unions lost overwhelmingly. (A copy of that testimony is attached as Exhibit 4, *see* pages 10-14).

In the Foundation's comments to the Board, we highlighted the unfairness of the "blocking charge" and "election bar" rules, which prevent and delay employees' decertification elections for months or years. We noted that the blocking charge rules do not apply in certification elections, and we asked the Board to act in an evenhanded manner and allow decertifications to proceed under the same basis as certification elections, no matter what elections rules were ultimately adopted. The Board refused, and brushed aside our comments. The ambush election rules keep the blocking charge policies in place, allowing unions to delay indefinitely almost every

decertification in America.

In short, the Board has created aggressive procedures to speed up certification elections and help unions get into power, but ignores blocking charges and election bars that hinder or completely deny employees' ability to decertify the union.