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Obama and Unions Ambush Job Creators

In November 2011, President Obama's National Labor Relations Board (NLRB) approved final language for the controversial "ambush" or "quickie" election rule. This new rule will completely eviscerate employers' rights and stack union elections in favor of labor organizations. The rule goes into effect in just 10 days -- on April 30, 2012.

Rigging Elections to Favor Unions

The Obama Administration's new rules would limit employers' ability to challenge union assertions, leaving workers to go to the ballot box to decide to unionize or not with the election already rigged in favor of the unions.

Currently, labor organizations gather signatures of workers who want to form a union. When they get enough signatures (threshold of 30 percent or more from the bargaining unit), they can file a petition with the NLRB and request a representation election. At that point, there are number of steps for organizers and employers to take – a process that normally happens during a five-week window between when the petition is filed with the NLRB and when a secret-ballot election is held. The median time is 38 days – not a long time for a thoughtful process to play itself out.

The new regulation removes several of these steps that need to take place, allowing the election to be held more quickly. The current window is vital because it allows both sides to make their case to workers. Employers will be at a disadvantage if they are left with less time to respond to unions. Some [experts](#) estimate the window could shrink to as little as 20 to 24 days. In essence, this is not a problem that needed fixing. An extra two weeks does not help workers, it just allows union bosses to ambush job creators.

Job creators are already frequently unaware of the attempts to unionize until the petition is filed and are left scrambling to hire labor attorneys to help them navigate the process. They will now be left in even more of a time crunch, and the rule will deny employers' right to communicate vital information to their workers regarding unionization.

Some of the removed steps in the process include:

- Substantially limiting the opportunity for a hearing or Board review on contested issues of unionization, such as voter eligibility and election misconduct.
- Pre-election hearings will be limited to questions of representation, which is not typically in question. All other employer challenges will have to be handled after the election, when most of them will be irrelevant.
- Because the NLRB rule also prevents appeals on any issues that become moot as a result of the election, employers' ability to challenge any part of the election other than representation will be eliminated.
- Take away employers' ability to file briefs after a hearing, essentially preventing employers from publically expressing concerns for the record.
- Changes the appeal procedures. While the details are vague, it is clear the NLRB regulations eliminate the standard 25-day waiting period that currently allows for pre-election appeals.

All of these measures make it more difficult for job creators to make their case to their workers.

Fighting Back with the Congressional Review Act

In 1996, the Congressional Review Act (CRA) created procedures for Congress to enact a joint resolution of disapproval, which would nullify an agency's rule. The resolution must be introduced within 60 calendar days of Congress first receiving the rule, and the Senate must act on the resolution within 60 session days after the regulation is introduced. The House has no similar time requirement for action.

The resolution cannot be filibustered, and it only needs a simple majority to pass the Senate. If the joint resolution passes in both the House of Representatives and the Senate, it is sent to the President, who can veto it. The only rule to have been overturned through the CRA was a 1996 OSHA regulation on ergonomic standards.

A joint resolution expressing congressional disapproval of the NLRB's ambush election rule was introduced in the Senate (S.J. Res. 36) by Senator Mike Enzi and has 44 co-sponsors. The resolution was introduced in the House of Representatives (H.J. Res. 103) by Congressman Phil Gingrey and has 87 co-sponsors. Both resolutions were introduced on February 16, 2012, and a vote will take place in the Senate before the end of April.

While there are hurdles to stopping the Obama Administration's rules, the NLRB's ambush election regulations must be challenged. They are a clear attempt to silence employers, help Big Labor, and disregard the rights of American workers to make informed decisions in the voting booth.