THE REPUBLICAN STUDY COMMITTEE
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Legislative Bulletin……..……November 30, 2011

Contents:

H.Res. 364 – Designating Room HVC 215 of the Capitol Visitor Center as the "Gabriel Zimmerman Meeting Room" *(Wasserman Schultz, D-FL)*

Order of Business: The resolution is scheduled to be considered on Wednesday, November 30, 2011, under a motion to suspend the rules and pass the resolution.

Summary: H.Res. 364 will designate Room HVC 215 of the Capitol Visitor Center as the "Gabriel Zimmerman Meeting Room."

Additional Information: At approximately 10:10 a.m. on January 8, 2011, a gunman attempted the assassination of Congresswoman Gabrielle Giffords. Gabriel Zimmerman was one of the six people to lose his life in the attack.

Gabriel Zimmerman was the first Congressional staffer murdered in the performance of his official duties. He was a 1998 graduate of University High School in Tucson, Arizona, a 2002 graduate of the University of California at Santa Cruz, and a 2006 graduate of Arizona State University, where he received a Masters in social work. Gabriel Zimmerman was a social worker before joining the office of Rep. Gabriel Giffords as a staffer. He was engaged to be married at the time of the shooting.

"It is fitting and appropriate to have a permanent memorial in the Capitol for the first House staffer to die in the line of duty," Speaker John Boehner wrote recently.

Committee Action: H.Res 364 was introduced on July 21, 2011 and referred to the House Committee on Transportation and Infrastructure.

Administration Position: No Statement of Administration Policy is provided.

Cost to Taxpayers: A report from CBO was unavailable.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? The legislation contains no earmarks.

Constitutional Authority: House rules do not require resolutions to have a Constitutional authority statement.

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H.R. 3094 — Workforce Democracy and Fairness Act (Kline, R-MN)

Order of Business: The bill expected to be considered on Wednesday, November 30, 2011, under a structured rule, H.Res. 470. The rule provides for one hour of general debate equally divided and controlled by the Chair and Ranking Member of the Committee on Education and the Workforce. The rule makes in order consideration of four amendments, which are summarized below.

Summary: H.R. 3094, the Workforce Democracy and Fairness Act, reverts several of the NRLB's changes and clarifies the pre-election hearing process. H.R. 3094 restores the "sufficient community of interest" test for organizing units. Employees in a unit must share similar wages, benefits and working conditions; similar skills and training; common management and supervision; some interchange and contact; similar job functions; and other factors.

H.R. 3094 also establishes that a pre-election hearing may not be held less than 14 days after a petition is filed for a hearing. The legislation clarifies that such a hearing must be non-adversarial and identify all pre-election issues including any questions of unit appropriateness or the NLRB's jurisdiction. It also provides that any party may independently raise relevant issues at any time prior to the close of the hearing process and that appeals of a hearing's result must be reviewed by the NLRB prior to directing an election be held. The legislation directs that no election may be held less than 35 days after a petition is filed for a hearing.

Finally, H.R. 3094 clarifies that employers shall provide only the name of any employees eligible to vote in any election along with one additional form of contact information chosen by the employee in writing.

Background: Approximately 92% of union organizing campaigns result in a "voluntary election agreement" under which employers and unions agree to the date and location of an election and the unit of employees that may vote in the election. The National Labor Relations Board (NLRB) has had a long-established non-adversarial hearing process for resolving issues for the small portion of organizing campaigns that do not result in a "voluntary election agreement." However, the NLRB but has taken several actions over the past few months to introduce unprecedented changes to that hearing process which tilt the advantage to unions at the cost to employer and worker rights.

On August 26, 2011, the NLRB established a new standard for determining the composition of bargaining units in its *Specialty Healthcare and Rehabilitation Center of Mobile* ruling. That ruling overturned the longstanding "sufficient community of interest" test and created a new broader test allowing employees in a "readily identifiable group" with a "community of interest" to form a distinct unit for organizing purposes. The ruling prevents any party, particularly employers, participating in a pre-election hearing from petitioning to expand the unit to include additional employees unless they meet a new stricter "overwhelming community of interest" test. This new test will allow nearly any group of employees to petition for a union election and fragment the workplace, increase labor costs, and void employee protections.

The NLRB also proposed significant changes to the pre-election hearing process in a June 22, 2011 proposed rulemaking, which have been characterized by some as providing for "quickie elections." These changes require all parties to the hearing process to file a Statement of Positions stating their position on the appropriateness of the proposed unit of employees voting, the existence of any bar to the election, the time and location of the hearing, and any other issues they intend to raise at the election. This Statement of Positions is due with seven days of the filing of the petition beginning the pre-election hearing process and, with limited exceptions, any issues not raised in the Statement are waived. Under this new process, elections could be held within 10 days of the filing of a petition for a hearing. The proposed rule also moves the consideration of disputes over individual voter eligibility to a point after the election occurs and eliminates the opportunity for a party of the hearing to appeal for review to the NLRB pre-election.

Additionally, employers would be required to provide expanded information on individual workers before the election including phone numbers, email addresses, work locations, shift information, and classification in addition to the previously required names and addresses. These changes would dramatically hasten the hearing process, prevent parties from raising all issues during the hearing process and move consideration of disputes and appeals to a point after the election occurs, establishing unmanageable mandates for employers and undemocratic procedures for union elections.

Amendments to H.R. 3094: The following four amendments were made in order and are subject to 10 minutes of debate.

Rep. Bishop (D-NY). The amendment states that prior to any filing after an election, the attorney has a duty to assure that:

- "Such a filing is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- "The claims, defenses, positions, and other legal contentions in the filing are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- "The factual contentions in the filing have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or development of the record; and

- "Any denials of factual contentions in the filing are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information."

This amendment would also grant the hearing board the authority to impose sanctions against a party for presenting a frivolous or vexatious filing or matter to the Board, or in cases where the Board finds that an attorney breached his or her duty imposed by this amendment. Sanctions may include litigations costs, salaries, transcript and record costs, travel and other expenses.

In cases where the Board determines that a party has raised a frivolous or vexatious matter for purposes of delaying an election, the Board shall direct that an election be conducted within 7 days. The text of the amendment can be viewed here.

Rep. Boswell (D-IA). The amendment would prohibit certain employers (those that paid executive bonus compensation in excess of 10,000% of the total annual pay of the average worker during the 1-year period before a petition is filed) from engaging in "the dilatory tactic" of raising new issues or positions during a pre-election hearing that were not raised prior to the commencement of the hearing. The text of the amendment can be viewed here.

Rep. Walz (D-MN). The amendment would prohibit certain employers (those that have been found liable for labor law violation against veterans during the 1- year period before a petition is filed) from engaging in "the dilatory tactic" of raising new issues or positions during a pre-election hearing that were not raised prior to the commencement of the hearing. The text of the amendment can be viewed here.

Rep. Jackson Lee (D-TX). The amendment removes language in the bill prohibiting a pre-election hearing being held within 14 days after a petition is filed. The amendment also removed language in the bill prohibiting a union election from being held within 35 days after a petition if filed for a hearing. The text of the amendment can be viewed here.

Committee Action: H.R. 3094 was introduced by Rep. John Kline (R-MN) on October 5, 2011, and was referred to the Committee on Education and the Workforce. H.R. 3094 was amended by the Committee on October 26, 2011 and reported out favorably by a vote of 23-16. The Committee Report, House Report 112-276 was filed on November 10, 2011.

Administration Position: According to the Statement of Administration Policy, "the Administration opposes H.R. 3094 because it would undermine and delay workers' ability to exercise their right to choose whether or not to be represented by a union. H.R. 3094 also attacks the freedom of individuals to choose the co-workers with whom they wish to seek representation."

Cost to Taxpayers: According to the CBO Cost Estimate, "enacting H.R. 3094 would have no budgetary effect. Because enacting the bill would not affect direct spending or revenues, pay-as-you-go procedures do not apply."

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to the CBO Cost Estimate, "H.R. 3094 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments."

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: According to the Committee Report:

> "H.R. 3094 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), (f), (g) of House Rule XXI."

Constitutional Authority: As provided by the legislation's sponsor, Rep. John Kline (R-MN):

> "Congress has the power to enact this legislation pursuant to the following: Article I, section 8 of the Constitution of the United States."

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***Special thanks to RSC Staffer Cyrus Artz who is on a leave of absence to serve his country in Afghanistan. God's speed sir.*