Statement of Senator Orrin G. Hatch
Senate HELP Committee
Nomination of Mr. Craig Becker to the National Labor Relations Board
February 2, 2010

I want to thank Chairman Harkin and Senator Enzi for scheduling today's hearing on the controversial nomination of Mr. Craig Becker to serve as a member of the National Labor Relations Board.

Over my 34 years in the Senate, I have voted to confirm most nominees to the NLRB in both Republican and Democratic administrations. It has only been in the rarest of cases and with the most divisive nominees that I have voted against an Administration nominee to this board.

I note that I am not opposed to President Obama's other NLRB nominees – Democratic union lawyer Mark Pearce and the Labor Counsel for Republicans on this committee Brian Hayes. That, it seems to me, is a good package that working with the current two members of the board would be able to decide cases without a cloud hanging over it.

Both as Chairman and as Ranking Member of this committee over many years, I worked in a reasonable way with Senator Kennedy to agree on balanced package of NLRB nominees – thereby avoiding the need for a committee hearing.

Unfortunately, the nomination of Craig Becker and his inclusion in this package of nominees is not such an occasion.

If anyone warrants a hearing it is Mr. Becker.

I hope he views this hearing as an opportunity to clarify his views to convince the skeptics among us that his controversial writings published throughout his career don't represent his views today.

I hope he explains what he meant when he wrote that "**employers should have no legally sanctioned role in union elections" and also that "employers should be stripped of any legally cognizable interest in their employees' election of representatives."** If employers should have no role in union representation elections,

then employers would be prohibited from insisting on a private, NLRB-supervised secret ballot election to determine employee votes on union representation. Employers could then be forced to accept the equivalent of card check and the increased risks of union intimidation and peer pressure that comes with it.

I hope he explains what he meant when he wrote that “the law leaves the **board discretion** to determine the appropriate parties to hearings in representation cases. **It should exercise this discretion by specifying that the only parties to both pre- and post-election hearings are employees and the unions seeking to represent them."**

I hope he explains what he meant when he wrote about restrictions on employer free speech rights, including whether the same restrictions on the solicitation, distribution of material to and access to employees applies equally to outsiders as it does to employers.

- Does he still believe there should be restrictions on an employer's ability to require employee attendance at meetings to discuss union organizing?
- Does he still believe there should be restrictions on where representation elections are held, when they are held (so-called quickie elections), and whether unions (but not employers) should be allowed to have an observer during the election (similar to poll watchers) to make sure that the election is conducted fairly, that there is no campaigning by employers or unions during the election, and that voters are only those eligible employees entitled to vote in an appropriate agreed-upon bargaining unit?
- Does he still believe unions should be allowed to advocate for increasing the number of strikes by permitting repeated, short-duration, grievance strikes to overcome the current prohibition on partial or intermittent strikes? And I would add with a more than a hint of sarcasm, that this is just what we need in the current economy: numerous, short-term strikes to disrupt production and sales.

These are just some of his controversial views that he needs to explain today. But it doesn't end there. Mr. Becker has written extensively about NLRB decisions that he feels were wrongly decided and should be reversed.

He should also use this hearing to try and convince us that his strong advocacy as a lawyer both with the AFL-CIO and with the SEIU would not interfere with his ability to be a balanced and impartial decision-maker at the NLRB.

He also needs to explain his controversial actions as a member of president Obama's transition team for the Department of Labor while employed by the SEIU and AFL-CIO. He has admitted drafting the Executive Order issued last January revoking the so-called Beck notice-posting requirement for federal contractors and requiring instead the posting of a notice of employee rights under labor law. That executive order was unquestionably in his employer's best interests; in fact, the AFL-CIO called for such actions in its written recommendations for the labor department transition team.

He also needs to explain his controversial work on behalf of ACORN. The controversial organization, linked to numerous instances of voter fraud, has praised Mr. Becker's service in working to organize home care workers.

Finally, and most importantly, he should explain how productive a board member he can be when he is required for at least one year, and possibly longer, to recues himself under the government ethics rules from cases involving the AFL-CIO and the SEIU, when he continues to be employed by both.

Of course, we have had practicing lawyers confirmed to the NLRB in the past where they have been required to recues themselves from cases involving their clients. But this is the first time in my memory – and perhaps ever in the history of the NLRB – where a nominee is from the largest federation of labor unions and one of the largest international unions.

Before we vote, we should at least know how many cases Mr. Becker would have to recuse himself from if he were on the NLRB.

Mr. Chairman, that's a lot of explaining to do. That's why his nomination is so controversial.

Unfortunately, his answers to well over 200 written questions I submitted to him last year were entirely unsatisfactory – his replies, for the most part, merely restated over and over that (1) he was acting as a scholar when he wrote all of those articles, (2) that now suddenly he has no views that would prevent him from being open-minded, and (3) that he could not answer because if confirmed he might be required to rule on a case involving similar issues.

So, Mr. Chairman, I am certainly looking forward to more complete, forthcoming, and candid answers this afternoon.