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Card Check Will Harm, Not Help, American Workers

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Executive Summary

The secret ballot process is fundamental to American democracy. It ensures that individuals can vote their conscience with a shield of privacy. For more than sixty years this simple principle has been central to workplace unionization debates. But the Employee Free Choice Act aims to rob workers of this essential protection.

Instead of secret ballot elections (or any election, really) a union would be recognized once a simple majority of employees sign a union card. This process, known as “card check,” is done publicly and leaves workers vulnerable to harassment, coercion, and other abuse (from either union organizers or companies) to either sign or not sign a card. The bill flies in the face of American democracy and is riddled with many problems, including concerns of legality. Studies indicate that the card check process does not accurately represent workplace preferences regarding unionization and many fear that the elimination of elections will lead to a more, not less, politicized workplace.

Simply put, American workers would be worse off under the Employee Free Choice Act.

Introduction

When it comes to elections, Americans value privacy. From elementary school student council elections all the way to Congressional and Presidential politics, the secret ballot process has always

Talking Points:

- The EFCA robs workers of privacy.
- The EFCA would effectively eliminate secret ballot elections for workplace unionization.
- The EFCA would leave workers vulnerable to coercion and harassment from union organizers and companies.

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been recognized as an essential part of American democracy. And for good reason: privacy helps shield voters from coercion and intimidation and allows them to vote their conscience. But if Congressional Democrats have their way, over a hundred million American workers will no longer be afforded this basic right.ⁱ In fact, workers could be forced to join a union without getting a chance to vote on the issue.

The misnamed Employee Free Choice Act (EFCA) would radically change the way workplace unionization elections operate—namely, it would eliminate the election part. Secret ballot elections would be replaced with publicly-signed union cards, known as a “card check.” The change is being billed by politicians as a boon to workers, but rather than afford workers any new rights, the EFCA simply robs workers of privacy and leaves them vulnerable to coercion and harassment.

The irony seems to be lost on the bill's Democratic sponsors that they are all in office because of a secret ballot election, as is President Obama, who promised to sign the bill into law during the 2008 campaign. Unions have shown similar hypocrisy. While organized labor supports card check over secret ballot elections for unionization, they support the opposite process to derecognize a union!ⁱⁱ But that is no consolation to the millions of American workers who would be robbed of their privacy under the EFCA.

What Would the EFCA Do?

Since Congress enacted the National Labor Relations Act (NLRA) in 1935, most workplaces have organized through secret ballot elections monitored by the National Labor Relations Board. Once organizers have collected signatures from at least 30 percent of workers expressing the desire to unionize, the union submits the information to the company and requests recognition. Companies can choose to recognize the union based solely on this card check, but more regularly request an election.ⁱⁱⁱ

The privacy of the secret ballot system protects workers from strong-arm tactics by either the unions or the company in question before and after a vote. All of that would change under the EFCA.

Elections would no longer be necessary. Instead, a union would be recognized once a majority of workers publicly signed a card supporting unionization. In fact, once a majority of cards have been signed, holding an election would be illegal.^{iv}

Problems

The EFCA is rife with problems, including legality. Richard Epstein, a professor of law at the University of Chicago, argues that many aspects of the law, including its mandatory arbitration provisions and limits on free-speech rights, are unconstitutional.^v But even if EFCA were legal, it still has countless flaws, many of which are outlined below.

Harassment and Coercion

One of the biggest concerns with EFCA is the potential for harassment and coercion. Unlike a secret ballot scenario, card check ensures that union organizers know exactly who has and has not signed a union card. Since workers aren't given an opportunity to vote "no" in card check, organizers are free to approach the same individual again and again to pressure them to change their mind. This approach can quickly jump from simple peer pressure to outright harassment. Take the case of Faith Jetter, for example. Jetter, a housekeeper, filed a court declaration in a case against the Hotel Employees and Restaurant Employees Union detailing the harassment she faced: calls to her home, intense pressure to sign a union card, and organizers seeking personal information on her.^{vi} She also maintains that union organizers mislead her and other employees about what they were signing.^{vii}

Unfortunately, this is not an isolated incident; union intimidation is a real problem for workers. Since 2000, thousands of cases have been filed against unions for improper conduct, including: 1,417 for coercive statements, 416 for violence and assaults, 546 for harassment, and 1,325 for threatening statements.^{viii} Not all of those cases dealt directly with elections, but they point to troublesome trends in union tactics and abuses which are clearly relevant to card check.

Card Check Does Not Accurately Reflect Workers' Preferences

Even unions recognize that the card check process does not accurately reflect workers' preferences. Union organizing manuals, for example, warn that a signed union card does not mean a worker wants to join a union.^{ix} That's why, under the current system, union organizers generally call for an election only if they have a supermajority of cards signed (at least 60 to 70 percent).^x They use this strategy to avoid losing an election (in which case they have to wait at least a year to try again). Studies have shown that even with 75 percent of cards signed, a union only has even odds of winning an election.^{xi} So, many employees sign cards publicly, but vote against unionization in the privacy of the voting booth. This suggests that publicly signed cards through the card check process are not an accurate representation of workers' preferences—and unions know it.

Constant Campaigning

Under the current guidelines, workers have the opportunity to hear both company and union representatives before casting their vote. Under the EFCA, there would be no election in which the company could present its case—workers would only hear one side of the story, from union organizers. It is naïve to think that companies would sit back idly and risk sudden unionization. More likely, companies would engage in a constant stream of negative campaigning to ward off potential unionization.^{xii} They would have every right to do so. But would workers really be better off in this sort of highly politicized environment?

Conclusion

Workers certainly have the right to unionize. They also have the right to a free and fair election. The EFCA undermines this important right and leaves workers vulnerable to harassment, coercion, and other forms of abuse. If Congress truly wants to support American workers, a good place to start is by protecting privacy in union elections. To do anything else would fly in the face of American democracy.

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Endnotes

ⁱ James Sherk, "Employee Free Choice Act Would Disenfranchise 105 Million Workers," Heritage Foundation *Webmemo* No. 1768, January 7, 2008, at <http://www.heritage.org/Research/Labor/wm1768.cfm>.

ⁱⁱ James Sherk, "Unions Know that Card Check Does Not Reveal Employees' Free Choice," Heritage Foundation *WebMemo* No. 1386, March 7, 2007, at <http://www.heritage.org/Research/Labor/wm1386.cfm>.

ⁱⁱⁱ James Sherk, "Employee Free Choice Act Effectively Eliminates Secret Ballot Organizing Elections," Heritage Foundation *Backgrounder* No. 2175, August 27, 2008, at <http://www.heritage.org/Research/Labor/bg2175.cfm>.

^{iv} *Ibid.*

^v For example, see: Richard A. Epstein, "The Employee Free Choice Act is Unconstitutional," *The Wall Street Journal*, December 19, 2008, at http://www.cato.org/pub_display.php?pub_id=9857.

^{vi} Michelle Bernard, "Big Labor Versus Workplace Democracy," *Townhall.com*, October 31, 2008, at <http://iwf.org/news/show/20833.html>.

^{vii} *Ibid.*

^{viii} James Sherk, "The Truth About Improper Firings and Union Intimidation," Heritage Foundation *WebMemo* No. 1393, March 12, 2007 (revised and updated June 20, 2007), at <http://www.heritage.org/Research/Labor/wm1393.cfm>.

^{ix} For examples, see: James Sherk, "Unions Know that Card Check Does Not Reveal Employees' Free Choice," Heritage Foundation *WebMemo* No. 1386, March 7, 2007, at <http://www.heritage.org/Research/Labor/wm1386.cfm>.

^x James Sherk, "Employee Free Choice Act Effectively Eliminates Secret Ballot Organizing Elections," Heritage Foundation *Backgrounder* No. 2175, August 27, 2008, at <http://www.heritage.org/Research/Labor/bg2175.cfm>.

^{xi} *Ibid.*

^{xii} For example, see scenarios laid out in: Richard Berman, "Employers could be blindsided by unions," *The Orlando Sentinel*, February 4, 2009, at <http://www.orlandosentinel.com/news/opinion/views/orl-opberman0409feb04,0,1522554.story>.