

NACD KEY ISSUE: THE “EMPLOYEE FREE CHOICE ACT”

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Protecting the right of workers to have a private ballot election on the question of union representation.

BACKGROUND

The Employee Free Choice Act (EFCA) does three main things:

1. Amends the National Labor Relations Act (NLRA) to allow union certification based upon signed employee authorizations, effectively eliminating an employer’s right to call for a federally supervised election by secret ballot for employees to decide the matter.
2. Provides a new process for bargaining of labor agreements.
3. Prescribes new penalties for unfair labor practices.

Under current law, the National Labor Relations Act (NLRA) allows employees to decide whether they wish to be represented by a particular union through a federally supervised private ballot election process. Once a certain number of employees have signed their name authorizing an election, the National Labor Relations Board (NLRB) oversees these elections and provides detailed procedures to ensure that they are fair and free of fraud. This process also ensures that employees are able to cast their votes confidentially without pressure from union representatives or other employees. It also protects employees from adverse actions resulting from their votes.

EFCA would remove the federally supervised ballot election process. Signatures from a simple majority of employees would immediately make a union the legal representative of employees and give the union collective bargaining rights for all of the employees. If no contract agreement between union and management can be reached, both sides must accept third-party binding arbitration.

LEGISLATIVE UPDATE

In 2007 the House of Representatives passed the “Employee Free Choice Act” by a vote of 241-185. Because of the controversial nature of the bill, 60 votes were needed in the Senate; and the Senate failed to achieve this 60-vote threshold on a 51 to 48 vote. The bill expired at the end of 2008, creating the need for reintroduction in the new Congress in 2009.

Congressman George Miller (D-CA) reintroduced the Employee Free Choice Act, H.R. 1409 on March 10, 2009. As of April 8 the bill had 224 cosponsors. It is a virtual certainty that the bill will pass the House again with ease once brought up for a vote.

Senator Ted Kennedy (D-MA), Chairman of the Health, Education, Labor, and Pensions Committee, introduced the Senate version of the “Employee Free Choice Act,” S. 560, on March 10, 2009. The bill has 39 cosponsors, and once again the fate of the bill is in the hands of the Senate to reach the 60-vote threshold.

This bill is a top priority of both the Democratic Leadership and the Obama White House. Given the increased Democrat majority in the Senate, the formula for passage in 2009 had been simply to retain the 59 Democrats and the one previous Republican supporter, Senator Arlen Specter (R-

PA). However, the still empty MN seat, which is likely to be filled by Al Franken (D-MN), and the defections of two prior supporters, Senators Specter and Blanche Lincoln (D-AR), has left the bill three votes short of the 60 needed for cloture, or to proceed with consideration.

Despite the 3-vote shortage, this issue is far from over for the 111th Congress. Interest groups are pouring money into marketing and grassroots campaigns around the country, and candidates up for reelection in union-friendly states in 2010 are specifically being targeted. This issue may be the most hotly contested policy debate over the next year and a half with significant implications on Senate races throughout the country.

NACD POSITION

NACD strongly opposes the “Employee Free Choice Act.” By replacing private ballots with a card check procedure, this legislation would strip workers of their privacy in making a decision on whether or not they want to be represented by a union. Rather than having the right to a confidential ballot, workers would have their signatures or non-signatures of the union organizing cards made public to union organizers, their employers, and their co-workers, leaving them vulnerable to threats and intimidation from union leaders, management, or both.

Federal courts have repeatedly ruled that private ballot elections are the fairest and most foolproof method to determine whether a union has the support of a majority of employees. For example, the Second Circuit Court of Appeals stated that “It is beyond dispute that the secret ballot election is a more accurate reflection of the employees’ true desires than a check of authorization cards collected at the behest of a union organizer.”

If the American electoral process for choosing its President is based upon the principle of a private ballot, why shouldn’t the same philosophy extend to other personal choices made by American citizens?

The only way to guarantee worker protection from coercion and intimidation is through the continued use of federally supervised private ballot elections in order to protect the confidentiality of personal decisions about whether or not to join a union. NACD urges Congress to protect the rights of workers by rejecting the “Employee Free Choice Act.”