



Employee Free Choice Act (also known as the Card Check bill)

Overview

The Employee Free Choice Act, better known as Card Check, has the potential to dramatically reshape the economic and political landscape of our country. It strikes at the fundamental nature of our democracy: the right to a secret ballot.

Card Check is the top priority of a newly reenergized organized labor movement and it's the leading edge of a strongly anti-business agenda being pursued by many of today's labor unions who firmly believe that their time has come and that they are on the verge of winning significant victories.

What is the Card Check Bill? How does it work?

The principle purpose of the Card Check Bill is to make it easier for unions to organize. Under current law, if union organizers collect signatures from at least 30 percent of the employees in a bargaining unit, the federal National Labor Relations Board will hold an election to determine whether to certify the union. This process, established and refined through decades of experience, carefully balances the interests of employees, unions, and employers in order to ensure that workers can hear all sides and then make up their minds and vote in private, without intimidation or coercion. Today a majority of elections are held within 39 days and a majority of union elections are won by organized labor.

Because union density has dropped so low (to about 7.5 percent in the private sector), organized labor is seeking to change the rules and make it easier to organize. The card check bill would do just that – instead of determining whether a union would be certified through a federally-supervised secret ballot election, the union would be certified the moment it collected a majority of signed authorization cards. The Card Check Bill would therefore eliminate the campaign period and the legal requirements that regulate it, not to mention eliminating the ability of employees to make an informed decision in private. Instead, employee decisions on unionization would be made in front of union organizers greatly increasing the opportunity for coercion and pressure in the union organizing process.

A secondary, and less well known, purpose of the bill is to amend collective bargaining law so that when a union is recognized for the first time government arbitrators will set all the terms and conditions of the union contract unless the union and the employer can meet unrealistic timelines. Today, the law requires that the parties bargain in good faith and recognizes that the union, representing workers, and the employer are in the best position to determine whether an agreement is acceptable and whether compromising on one goal in order



to achieve another is acceptable. The Card Check Bill's mandatory interest arbitration provisions would remove any incentive for the employer or the union to adopt realistic bargaining positions, as each would be posturing for the arbitrator, and would give the arbitrator control of the most basic business decisions. It would also deny employees the right to vote on ratification of the contract.

Finally, the Card Check Bill would increase penalties for employers, but not for unions or others, who violate union organizing laws.

The Post Card Check Environment:

If Card Check passes, a significant number of employers who haven't worried about union organization or have held it at bay, could see large segments of their workforce rapidly unionizing whether workers really want to or not. Small businesses which have not been attractive targets for union organizers in the past will see rapid union penetration into their workforce.

Card Check goes beyond just adding members. With an increase in membership comes expanding revenue in the form of dues, an exponential increase in the resources that could be put into politics, and a much larger and more robust influence on Capitol Hill. Unions have an ambitious legislative agenda. Potential impacts could include:

- Petitioning the National Labor Relations Board to allow the creation of “mini-unions” – small cells of organized employees within workplaces that don't represent a majority of workers, but which can force employers to bargain with them on pay and benefits.
- Broad expansion of Family Medical Leave Act, including paid time off, paid sick leave and the application of FMLA even to the smallest employers.
- Passing legislation to resurrect the Clinton administration's rejected ergonomics regulation — imposing billions of dollars of new costs on businesses.
- Added mandates and funding to encourage aggressive enforcement by federal regulatory agencies such as OSHA.
- Expansion of the Americans with Disabilities Act and the Equal Pay Act to trigger more class action lawsuits against employers.
- Repeal of the existing statute of limitations and caps on damages for most employment discrimination lawsuits.

Legislative and Political Landscape:

In 2007, Card Check passed the House of Representatives by a vote of 241-185. The bill had a slim majority of support in the Senate, but fell to a filibuster on a 51-48 vote. 60 votes are needed to end a filibuster (known as cloture).

The political dynamics have changed as a result of the 2008 elections. Card Check advocates have expanded their majority in the House and in the Senate.



Summary

Consideration by the House is expected early in 2008 followed by the Senate debate. Sixty votes is a significant but reachable goal for the bill's proponents. However, the bill's sponsors and organized labor have forgotten that there are people like you, who care about democratic values and who care about freedom in the workplace. The people who want to take away your secret ballots and take over your workplaces are already out on the field. We all need to make sure we're in the game as well.

Minnesota Business Leaders is a coalition powered by the U.S. Chamber of Commerce along with chambers, associations, and businesses to save the secret ballot.





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{SAMPLE LETTER}

Date

Senator Klobuchar/Congressman Walz
302 Hart Senate Office Building
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RE: Employee Free Choice Act

Dear Senator/Congressman:

We at {**Insert Company Name**} strongly oppose H.R. 800/S. 1041, the “Employee Free Choice Act.” We urge you to oppose this legislation, and not cosponsor this legislation.

We believe this bill would undermine long standing principles of workplace democracy and fairness and result in employees having less ability to determine if they wish to be represented by a union. The Employee Free Choice Act (EFCA) is being promoted by organized labor as labor law reform to level the playing field and allow employees to more easily form unions. This bill does not represent “reform” in any sense of the word. Rather, the legislation will radically restructure 60 years of carefully crafted labor law balances that have served both unions and employers well for many decades.

The bill consists of three provisions, each of which is unacceptable:

Elimination of Secret Ballot: This legislation mandates that a union be recognized if a majority of employees in a designated bargaining unit sign authorization cards. This is the provision from which the nickname for the bill, “card check,” comes. If this provision is enacted, the current system where a federally supervised election process with secret ballots determines whether employees will have a union in their workplace would be effectively eliminated. The secret ballot ensures that neither the employer nor the union knows how someone votes. If the bill becomes law, no union would take their chance on an election when getting a few more signatures would guarantee them victory. In contrast to the secret ballot, the card check process would expose employees to a “free for all” environment where any tactic for getting a signature could be used. It has been well established through court cases, precedent under the National Labor Relations Act, and testimony on Capitol Hill of former union organizers that the card check process of obtaining signatures is routinely characterized by harassment, intimidation, and coercion, including employees being threatened in their homes and other locations away from the workplace.

Writing contracts through government imposed arbitration: The second provision would result in contracts being written by federal arbitrators instead of the process of collective bargaining and negotiating. Currently, after a union has been recognized, the parties bargain to a first contract where there are protections to make sure both sides negotiate in good faith. Under EFCA, if a first contract is not agreed to within 120 days (which is an extremely short time period for these negotiations) the matter would have to be submitted to binding interest arbitration and a contract developed by a panel with likely no

understanding of the business, or the competitive forces it faces, would be imposed on the company for two years. This contract would cover precise details of how that business would operate for the duration of the contract such as the wages, benefits, ability to use employees most productively, and how many employees would be used for specific tasks. This process would virtually always result in a contract that is beyond what the employer is prepared to accept and provides a strong incentive for the union to undermine the collective bargaining process to ensure that the process lasts long enough to end in binding arbitration. Finally, this provision would result in employees losing a second vote since they would have no opportunity to ratify the contract as they currently have in most cases. In a recent poll of registered voters conducted by the Chamber, 75 percent of the respondents preferred a system that encourages good faith negotiations, while only 16 percent preferred a system where government arbitrators write the contract. While the card check provision has received most of the attention in the media, this provision is regarded as equally offensive to employers.

Unreasonable and one-sided penalty expansion: Finally, the Employee Free Choice Act imposes dramatic new penalties on employers for violations of the National Labor Relations Act, but not a single new penalty on unions or labor organizers. Under one provision of the new penalty structure, employers would be vulnerable to an injunction reinstating a dismissed employee if that employee, or the union seeking to represent him or her, merely alleges that the dismissal was because of union activity. Such a low threshold makes a mockery of traditional labor law due process.

The Employee Free Choice Act would have a particularly devastating impact on small employers who, as the primary source for new jobs, would be counted on to reverse the current economic downturn.

We urge you to oppose this legislation and vote “no” to this bill.

Respectfully Submitted,

{Insert:}

Name

Company Name

Address

City, State, Zip

Email Address

Phone Number