



Action Alert

Oppose the Anti-Democratic EMPLOYEE FREE CHOICE ACT

“CARD CHECK”

POSITION

The National Grocers Association (N.G.A.) is vehemently opposed to H.R. 800 and S. 1041, the Employee Free Choice Act, commonly referred to as “card check.” The right to a private ballot is a cornerstone of our democracy. It is the American standard at the ballot box, allowing voters to make tough and even controversial election choices without fear of reprisal or intimidation.

H.R. 800 and S. 1041 seek to undo the democratic right of a free election and would strip away a worker’s right to a private ballot election supervised by the National Labor Relations Board (NLRB) during union organizing drives and make their vote public. The NLRB and the Supreme Court have recognized for decades that the secret ballot is the best way to give employees the freedom of choice, not the signature of a card check that may be misleading, signed under union pressure, and not truly reflective of the employee’s intentions. No election, no choice, no vote.

BACKGROUND

Under the National Labor Relations Act (NLRA), if a group of employees in an appropriate collective bargaining unit wish to select a union to represent them, the NLRB will hold a secret ballot election based on a petition supported by thirty percent of the employees in the unit. The NLRB administers the election by bringing portable voting booths, ballots, and a ballot box to the workplace. The election process occurs outside the presence of any supervisors or managerial representatives of the employer. No campaigning of any kind may occur in the voting area. The only people who are allowed in the voting area are the NLRB agent, the employees who are voting, and certain designated employee observers. The NLRB representative is present to oversee the entire voting process to ensure that neither the employer nor the union can determine how an employee voted. Currently, if a majority of the workers voting in the election cast votes in favor of the union, the NLRB will certify the union as the exclusive bargaining representative of all employees in the unit. Ninety-four percent of the NLRB supervised elections take place within 60 days of the petition and over 50 percent are won by unions.

Under the proposed legislation, employees fill out an authorization card (“card check”) indicating whether or not they are interested in forming a union and the union is deemed to be recognized if more than 50 percent of the workers simply sign the card. Card check procedures are unreliable and invite undue pressure, coercion and abuse. Employees are forced to fill out the cards in front of union organizers and their fellow employees who support unionization. Even under current law, Courts have recognized that “Workers sometimes sign union authorization cards not because they intend to vote for the union in the election but to avoid offending the person who asks them to sign, often a fellow worker, or simply to get the person off their back, since signing commits the worker to nothing (except that if enough workers sign, the employer may decide to recognize the union without an election.)” NLRB v. Village IX, Inc.

The legislation is also unfair because the granting of union representation based upon signature of the cards denies employees the opportunity to hear any employer rebuttal to the promises made by the unions.

Binding Arbitration. Perhaps more egregious is the legislation's unprecedented requirement that would impose contract terms on employers through a process of mandatory, binding arbitration. If an employer and a union are engaged in bargaining for their first collective bargaining agreement and are unable to reach an agreement, then either party can refer the matter to the Federal Mediation and Conciliation Service. If FMCS is unable to bring the parties to agreement after 30 days of mediation, then the dispute is referred to binding arbitration and results are binding for a minimum of two years. This binding arbitration requirement upsets the balance in our labor laws, denies the workers the ability to vote on their contract, creates disincentives to compromise, and is likely unconstitutional.

Today the law also prohibits employers from interfering with a union election. The NLRA already prohibits employers from making threats or reprisal or force or promising benefits that might interfere with an election. Employers engaging in such conduct are subject to strict NLRB sanctions and penalties.

STATUS

H.R. 800 passed the House by a mostly partisan vote of 241-185 in 2007. The legislation was brought up in the Senate but the Democratic leaders failed in their attempt to override a filibuster that required 60 votes. H.R. 800/S. 1041 was rejected because there were only 51 votes in favor of ending the filibuster to 48 against. The elections have resulted in greater Democratic majorities in the House and Senate. The Senate now has 57 Democrats and 40 Republicans with 3 races still to be decided in Alaska, Georgia and Minnesota. New bills will be introduced in the House and Senate in 2009. The House is expected to vote in January or February of 2009 and the Senate is expected to follow later in the year after the House acts.

N.G.A. is a steering committee member of the Coalition for a Democratic Workplace that consists of over 500 organizations that have joined together in opposition to H.R. 800/S. 1041, and are leading the efforts to oppose this anti-democratic legislation and to preserve the right of employees to a NLRB supervised private ballot election. President-elect Obama is supporting the union backed legislation.

ACTION NEEDED

1.) This is the most important battle between employers/employees and unions since the unions failed in their attempts to pass labor law reform in the 1970s. The grassroots pressure must begin now and remain constant. Retailers, wholesalers and other employers need to act now by writing and calling their Representatives and Senators in all out opposition to the card check legislation. Tell your Representatives and Senators to oppose this legislation that is designed to do nothing more than to tilt the union organizing playing field in favor of unions and deny employees their right to a private ballot election. Congress will return the week of November 17 for a week or two, so that is a good time to contact their office.

You can call the Capitol switchboard and ask for your Representative at 202.225.3121 and Senators at 202.224.3121.

To fax or e-mail a letter to them, go to www.house.gov or www.senate.gov and click on their name to get their fax number or email address.

2.) Make a contribution today to the Campaign to Preserve Competition and Consumer Choice so N.G.A. can continue to oppose the anti- democratic card check and support the Coalition for a Democratic Workplace!