



## WEST VIRGINIA CHAMBER

### **Card Check Bill - 'Undemocratic' Elimination of Workplace Secret Voting**

One of organized labor's top legislative priorities for the new Congress is the deceptively-named Employee Free Choice Act (EFCA), better known as the Card Check Bill. Business organizations strongly oppose this legislation, which would upend decades of settled labor law in order to give organized labor an unfair advantage in union organizing, at the expense of both employees and employers. The measure also would end the tradition of allowing workers to use secret ballots when voting whether or not to unionize.

#### History

Many national business organizations and chambers of commerce, including the W.Va. Chamber of Commerce, are opposing the "Card Check Bill," which was blocked in the U.S. Senate in 2007. That year the EFCA passed the U.S. House of Representatives by a vote of 241-185. West Virginia Representatives Alan Mollohan (D-1<sup>st</sup>) and Nick Rahall (D-3<sup>rd</sup>) voted for passage, while Representative Shelley Moore Capito (R-2<sup>nd</sup>) voted against passage. Over on the U.S. Senate, the measure was defeated in June 2007 by a procedural vote. Senators Robert C. Byrd and Jay Rockefeller voted to support the bill.

Among others opposing this measure are former U.S. Senator and presidential candidate George McGovern (D-South Dakota), who has come out against the "Employee Free Choice Act" and is urging his fellow Democratic lawmakers to "re-evaluate their support." McGovern made his thoughts known in an opinion piece that was published in the *Wall Street Journal* on August 8, 2008.

*"Voting is an immense privilege. That is why I am concerned about a new development that could deny this freedom to many Americans," McGovern wrote. "As a longtime friend of labor unions, I must raise my voice against pending legislation I see as disturbing and undemocratic overreach not in the interest of either management or labor."*

*"The legislation is called the Employee Free Choice Act, and I am sad to say it runs counter to ideals that were once at the core of the labor movement," McGovern continues.*

#### Background

The National Labor Relations Act (NLRA), enacted more than 70 years ago, established a system of industrial democracy that is similar in many respects to the nation's system of political democracy. This system allows employees to determine whether they wish to be represented by a particular union through a secret ballot election process strictly overseen by the National Labor Relations Board (NLRB). It protects the interest of unions and employers but most importantly, employees, ensuring that all sides have an opportunity to make their case, and then guarantees employees are able to express their decision in private, by secret ballot — free from coercion and intimidation.

EFCA would amend the NLRA by giving unions the right to achieve recognition solely through the "card check" process, permitting labor unions to avoid secret ballot elections. Under card check, union organizers collect signatures of employees on authorization cards and present them as representing the true intent of the workers. The United States Supreme Court noted in 1969 that secret ballot elections are a more reliable indicator of employee support. *Gissell Packing Co.* As one Court of Appeals observed: "*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.”*

Passage of EFCA would also take away an employer’s bargaining rights to seek a contract to meet its competitive needs. Instead, a third party arbitrator could decide the terms and conditions of the collective bargaining agreement if the union and company cannot agree to a first contract within 120 days.

The proposed legislation also includes provisions to increase penalties on employers for certain violations of the NLRA. The fact that these provisions apply only to employer violations and not to union violations illustrates the bias inherent in EFCA. Union coercion is just as inappropriate as employer coercion.

### **The Chamber’s Position**

The West Virginia Chamber of Commerce opposes the “Employee Free Choice Act” because the measure’s card check process would expose employees to abuse, threats, and intimidation all in the name of the union accumulating the required number of signatures. The bill also would elevate this inferior card check process to the principle method of recognizing a union, thereby eliminating the employees’ long-standing right to secret ballot elections.

- Under the proposed legislation, an open voting process would replace the existing secret-ballot election to determine union representation. A union could form if more than 50 percent of the workers sign a card saying they want to join.
- It also expedites the process of collective bargaining through graduated mediation and arbitration. If an agreement cannot be reached within 90 days, the parties can request a federal mediator. The process allows 30 days for mediation to reach an agreement before proceeding to binding arbitration, the results of which are effective for two years. Time limits can be extended by mutual agreement by both parties.

Passage of the Employee Free Choice Act will have serious repercussions on employers and could escalate unionization activities against both large and small employers.

### **SPEAK UP -- TAKE ACTION**

Please write a letter to these congressional representatives and ask them to reconsider and vote against the Employee Free Choice Act:

The Honorable Robert C. Byrd  
United States Senate  
311 Hart Senate Office Building  
Washington, DC 20510

The Honorable John D. Rockefeller IV  
United States Senate  
531 Hart Senate Office Building  
Washington, DC 20510-4802

The Honorable Alan B. Mollohan  
U.S. House of Representatives  
2302 Rayburn House Building  
Washington, D.C. 20515

The Honorable Nick Rahall  
U.S. House of Representatives  
2307 Rayburn House Building  
Washington, D.C. 20515

Provided is a U.S. Chamber web site that provides more information about the EFCA:  
<http://www.uschamber.com/issues/index/labor/cardchecksecrbal.htm>