



## **Employee Free Choice Act Or more aptly “The Secret Ballot Destruction Act”**

---

Union sponsored legislation inappropriately called the Employee Free Choice Act (EFCA) is under consideration in the U.S. Congress. This legislation would rob American workers of their rights to a fair election, free of fraud and coercion, when determining whether or not they wanted to be represented by a union. The current method of secret ballot elections would be replaced with a card check system.

Associated Builders and Contractors believes that the preferred method for determining whether or not employees want a union to represent them is a secret ballot election overseen by the National Labor Relations Board (NLRB). The NLRB provides detailed procedures that ensure a fair election, free of fraud, where employees can cast their vote confidentially without peer pressure or coercion from unions or employers. Union leadership now claims that secret ballot elections are an impediment to union organizing and thus, should be replaced with a "card check" system. Under such a system, employees could be forced to cast their vote in front of union organizers and fellow employees who support unionization.

ABC strongly opposes the EFCA any other efforts to overturn established NLRB procedures that guarantee a fair union election through secret ballot voting.

### **Facts**

#### **Secret ballot elections have been supported by the NLRB, the U.S. Supreme Court, Rep. George Miller and the AFL-CIO**

- In a brief to the Ninth Circuit Court of Appeals, the NLRB stated “Congress and the Supreme Court regard a secret ballot election conducted under the Board’s auspices as the preferred method for resolving representational disputes in the manner that best ensures employees free and informed choice”.
- The AFL-CIO has expressed support for secret ballot elections, arguing that in decertification petitions secret ballot elections, “provide the surest means for avoiding decisions which are the result of group pressures and not individual decisions”.

#### **Card Check Elections Invite Coercion & Abuse**

Because in certain cases it may appear clear that a union enjoys a majority of employee support, the current law allows employers to waive the secret ballot election requirement and recognize a union that produces signed union authorization cards from over 50% of the employees. Unfortunately, unions have abused this provision by launching attacks on employers in an effort to pressure them to agree to card elections, even where it's not clear that the union enjoys the support of a majority of the employees.

**SOUTHEAST PENNSYLVANIA CHAPTER ASSOCIATED BUILDERS & CONTRACTORS, INC.**

430 WEST GERMANTOWN PIKE · EAST NORRITON, PA 19403 · 610-279-6666 · [www.abcsepa.org](http://www.abcsepa.org)

It is not surprising that the history of NLRB case law is full of examples where card check elections have been challenged on coercion, misrepresentation, forgery, fraud, peer pressure and promised benefits. In testimony before the House Subcommittee on Workforce Protections, an employee described the various misrepresentations and coercive tactics used by union organizers in card check elections, including threats of termination, deportation and loss of 401(k) and health benefits: for not signing a card; and promises of green cards, termination of supervisors, and free turkeys for employees who did sign cards.

### **Existing Procedures for Secret Ballot Election Ensure Fair Elections**

The most recent National Labor Relations Board statistics available show that unions won 62.5% of the 752 representation elections held from October 2007 through March 2008. In addition, NLRB statistics show that only 6.3% of the 1,540 representation elections conducted during fiscal year 2006 were challenged by labor and management. Also, 93% of representation elections in fiscal year 2008 were held within 56 days. The numbers simply do not reflect a flawed NLRB representation election system.

The unions themselves have recognized the fallacies of the card check system. In *A Guidebook for Union Organizing* published by the Industrial Union Department of the AFL-CIO, it states that, "NLRB pledge cards are at best a signifying of intention at a given moment. Sometimes they are signed to 'get the union off my back.' In other cases, the employer urges workers to sign the cards to get a premature election. In still others, workers sign to scare the boss into a raise. Whatever the reason, there is no guarantee of anything in a signed NLRB pledge card except that it will count toward an NLRB election".

### **The Law Already Protects Against Employer Interference with Elections**

The NLRA currently prohibits employers from making threats of reprisal or force or promising benefits that might interfere with an election. Prohibited acts include threats of physical force or loss of job or benefits, or promises of pay raises, promotions or other benefits. If employers engage in such conduct, and their behavior disrupts election conditions, the NLRB may order the employer to bargain with the union even where the union lost the election.

### **There is Zero Foundation for Statistics Cited in Support of the Bill**

Supporters of the bill routinely cite a 2000 study by Kate Bronfenbrenner to support the need for the legislation, including allegations that 36% of workers who vote against a union do so because of employer pressure. Yet, the Bronfenbrenner study simply does not contain any such statistics. In fact, the study is not a survey of employees at all. Rather, it is almost entirely based on uncorroborated claims of union organizers - hardly an unbiased source. Not surprisingly, the statistics in the study are unreliable. For example, the study claims that employers illegally fire employees in at least 25% of all organization drives. But a quick review of numbers produced by more a reliable and unbiased group - the NLRB - shows at most employees are illegally fired in 1.6% of organization drives, and in each of those cases the union has filed objections.

**SOUTHEAST PENNSYLVANIA CHAPTER ASSOCIATED BUILDERS & CONTRACTORS, INC.**

430 WEST GERMANTOWN PIKE · EAST NORRITON, PA 19403 · 610-279-6666 · [www.abcsepa.org](http://www.abcsepa.org)