



## **S. 842 and H.R. 1696 Deprive Workers of Secret Ballot Elections**

***The U.S. Chamber of Commerce vigorously opposes this legislation, or any other efforts to overturn the established NLRB procedures that guarantee a fair union election through secret ballot voting.***

*Under current law, 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 may cast their vote confidentially without peer pressure or coercion from unions or employers. Union leadership, however, has found secret ballot elections an impediment to organizing, preferring instead “card check” procedures, where employees are forced to cast their vote in front of union organizers and fellow employees who support unionization. Although current law permits use of card check procedures in certain circumstances, the NLRB and the Supreme Court, among others, have explicitly said that card checks are inferior to secret ballot elections as a method for discerning whether employees wish union representation. Nonetheless, Sen. Edward Kennedy (MA) and Rep. George Miller (CA) have introduced the Employee Free Choice Act (EFCA) (S. 842 & H.R. 1696), bills that give unions the right to waive secret ballot elections. Proponents of the bills claim the legislation is necessary because of delays in NLRB elections and possible employer coercion during the election process. But, as outlined below, the NLRB holds the vast majority (94%) of elections within 60 days of the petition and the law already prohibits employers from interfering with a union election.*

**Existing Procedures for Secret Ballot Voting Ensure Fair Elections** Under the National Labor Relations Act (NLRA), employees generally determine whether or not they want union representation through a secret ballot election held by the NLRB. To ensure a fair election free of employer and union coercion, the NLRB follows strict procedures.<sup>1</sup> An NLRB agent is present and oversees the entire voting process to make certain that neither the employer nor the union can determine how an individual employee votes. Throughout the election, both employer and union representatives are able to monitor the process. However, they are strictly observers and may not speak with the voters or see how a particular employee votes. The NLRB holds elections fairly promptly—typically within 60 days of the petition.<sup>2</sup> Although union leadership alleges that they have problems succeeding in secret ballot elections, unions actually win in over 50% of them.<sup>3</sup>

**The NLRB, the Supreme Court, Rep. George Miller, and the AFL-CIO All Have Supported Secret Ballot Elections** In a recent 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 employee free and informed choice.”<sup>4</sup> Similarly, a letter sent by Rep. George Miller and 15 other members of Congress to Mexican government officials said, “We understand that the secret ballot is allowed for, but not required, by Mexican labor law. However, we feel that the secret ballot is absolutely necessary in order to ensure that workers are not intimidated into voting for a union they might not otherwise choose.”<sup>5</sup> Even the AFL-CIO has expressed support for secret ballot elections, arguing that in

<sup>1</sup> See *Information for Voters in NLRB Elections*, (detailing procedures) available at [http://www.nlr.gov/nlr/shared\\_files/brochures/election.asp](http://www.nlr.gov/nlr/shared_files/brochures/election.asp).

<sup>2</sup> See *NLRB General Counsel Memorandum 05-01*, (93.6% of elections held within 56 days) available at [http://www.nlr.gov/nlr/shared\\_files/gcmemo/gcmemo/gc05-01.pdf](http://www.nlr.gov/nlr/shared_files/gcmemo/gcmemo/gc05-01.pdf).

<sup>3</sup> See *Number of Elections Decreased in 2004; Union Win Rate Increased for Eighth Year*, DAILY LABOR REPORT (BNA) (May 3, 2005).

<sup>4</sup> Brief for the National Labor Relations Board as Amicus Curiae in the *Chamber of Commerce of the United States v. Bill Lockyer* at 5 (citing *Linden Lumber Div., Sumner & Co. v. NLRB*, 419 U.S. 301, 307 (1974); *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 596 (1969)).

<sup>5</sup> August 29, 2001 letter to Junta Local de Conciliación y Arbitraje del Estado de Puebla from Reps. George Miller, Dennis Kucinich, Bernard Sanders, William Coyne, Lane Evans, Bob Filner, Martin Olav Sabo, Barney Frank, Joe Baca, Zoe Lofgren, Calvin Dooley, Fortney Stark, Barbara Lee, James McGovern, Marcy Kaptur, and Lloyd Doggett.

*decertification* petitions secret ballot elections “provide the surest means of avoiding decisions which are the results of group pressures and not individual decisions.”<sup>6</sup>

**Card Check Procedures are Unreliable and Invite Coercion and Abuse** Because in certain cases the union may clearly enjoy a majority of employee support, the 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, however, unions have abused this provision in the law by launching attacks on employers, called corporate campaigns, in an effort to pressure companies to agree to card check elections even where it’s not clear that a majority of the employees support the union. Thus, it’s not surprising that the annals of NLRB case law are packed full of examples where card check elections have been challenged on coercion, misrepresentation, forgery, fraud, peer pressure, and promised benefits.<sup>7</sup> In recent 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. The tactics included 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.<sup>8</sup>

**There is no Foundation for Statistics Cited in Support of the Bill** Supporters of the bill continually cite a 2000 study by Kate Bronfenbrenner<sup>9</sup> to support the need for the legislation, including allegations that 36% of workers who vote against a union do so because of employer pressure.<sup>10</sup> Yet, the Bronfenbrenner study simply does not contain any such statistics. *Indeed, 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.<sup>11</sup> The reality is that people vote against unions because organized labor has not set agenda that is relevant to today’s workforce. This is reflected in recent showing that a majority of public simply is not likely to join a union.<sup>12</sup> Other statistics cited in support of the bill are equally unreliable. For example, the study claims that companies illegally fire employees in at least 25% of all organization drives. But a quick review of numbers produced by more reliable and unbiased source—the NLRB—shows that, at most, employees are illegally fired in 1.6% of organization drives.<sup>13</sup> As detailed below, if the NLRB concludes in those cases that an employer has illegally fired an employee, it can order the employer to bargain with the union even if the union loses the election.

**The Law Already Protects Against Employer Interference with Elections** The NLRA 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.<sup>14</sup> 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.*

<sup>6</sup> Joint Brief of the United Automobile, Aerospace, and Agricultural Implement Workers of America, the United Food and Commercial Workers, and the AFL-CIO in *Chelsea Industries and Levitz Furniture Co. of the Pacific, Inc.*, Nos. 7-CA-36846, 7-CA-37016 and 20-CA-26596 (NLRB).

<sup>7</sup> See *July 23, 2002 Testimony of Daniel V. Yager before the House Subcommittee on Workforce Protections* (listing over 100 cases involving challenges to card check elections), available at <http://edworkforce.house.gov/hearings/107th/wp/uniondues72302/yager.pdf>. Also see *Conair Corp. v. NLRB*, 721 F.2d 1355, 1378 (D.C. Cir. 1983) (outlining a NLRB study where statistics show unreliability of card check elections).

<sup>8</sup> See *July 23, 2002 Testimony of Bruce G. Esgar before the House Subcommittee on Workforce Protections*, available at <http://edworkforce.house.gov/hearings/107th/wp/uniondues72302/esgar.htm>.

<sup>9</sup> Kate Bronfenbrenner, *Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organization* (September, 2000), available at <http://www.ustdrc.gov/research/bronfenbrenner.pdf>.

<sup>10</sup> See <http://www.aflcio.com/aboutunions/voiceatwork/efca.cfm>.

<sup>11</sup> Bronfenbrenner at 12-15.

<sup>12</sup> David Denholm, *Nationwide Attitudes Toward Unions*, available at the Public Service Research Foundation's Web site at <http://www.psr.org>.

<sup>13</sup> Stan Greer, *Big Labor's Cockamamie Campaign Against Secret-Ballot Elections For Workers* (October 2002) at 4, available at <http://www.nilr.org/Big%20Labors%20Cockamamie%20Campaign.pdf>.

<sup>14</sup> See *Information for Voters* at 5, available at [http://www.nlr.gov/nlr/shared\\_files/brochures/election.asp](http://www.nlr.gov/nlr/shared_files/brochures/election.asp); *General Shoe Corp.*, 77 NLRB 124, 126 (1948) (NLRB may regulate employer conduct that is prejudicial to a fair election, even if the conduct is not, on its own, considered a unfair labor practice under Section 8).