HOUSE REPUBLICAN CONFERENCE
CHAIRMAN MIKE PENCE

Question and Answer:
The Employee Free Choice Act

March 10, 2009

We understand the secret ballot is allowed for, but not required….However, <u>we feel that the secret ballot is absolutely necessary</u> in order to ensure that workers are not intimidated into voting for a union they might not otherwise choose.

—Letter signed by House Education and Labor Committee Chairman George Miller (D-CA), along with 15 other Democrat Congressmen, to a labor mediation board in Mexico, August 29, 2001

In anticipation of the re-introduction of "card check" legislation (H.R. 800 in the 110th Congress), the Republican Conference has compiled a document providing background on the bill.

What would the Employee Free Choice Act (EFCA) do?

The bill requires the National Labor Relations Board (NLRB) to certify union representation in cases where a majority of workers have signed petitions naming a labor organization as the workers' representative—the "card check" provision. The bill also imposes mandatory binding arbitration on unions and employers that fail to reach an initial collective bargaining agreement and increases penalties against employers for unfair labor practices during the periods surrounding union organizing and initial collective bargaining.

It's a secret ballot—thank the Lord!

—House Rules Committee Chairwoman Louise Slaughter (D-NY), commenting on last year's Democratic Caucus election of Henry Waxman as Energy and Commerce Chair

Would "card check" end workers' right to a secret ballot?

Yes. The bill states that if the NLRB receives a petition signed by a majority of workers supporting union recognition, "<u>the Board shall not direct an election</u> but shall certify" the union or entity in question as the employees' representative.

Will the Employee Free Choice Act hinder economic growth and raise unemployment?

Yes. A recent study found that every 3% increase in the number of union-organized workers as a result of EFCA would lead to a 1% increase in unemployment. While supporting the right of workers to organize using the secret-ballot process, many Members may be concerned that EFCA's provisions designed to force unionization will harm the very employees which the bill is designed to protect.

Would "card check" procedures apply to the process to de-certify unions?

No—union de-certification would still require secret ballot elections. Some Members may therefore question why advocates of the legislation—if they wish to grant workers the "free choice" to decide whether to certify a union—do not want workers to dis-affiliate without a secret ballot vote.

Does the public support workers' right to a secret ballot?

Overwhelmingly—and across party lines. A January poll by the Coalition for a Democratic Workplace found that 86% of the public, 88% of union households, and 86% of Obama voters believe that workers' votes in union organizing elections should remain private.

All votes shall be by secret ballot…

—House Democratic Caucus, Rule IV

What do House Democrats think about workers' right to a secret ballot?

They support it—at least when it comes to their own Caucus. Rule IV of the House Democratic Caucus requires secret ballot elections for all leadership and Committee leadership posts and permits any 10 Members to request a secret ballot to elect rank-and-file Members to committees. Some Members may question why House Democrats presume to abolish workers' right to a secret ballot which they guard for themselves.

Must "card check" signatures be collected within a certain time period in order to be valid?

No. The bill requires the NLRB to certify union representation "if the Board finds that a majority of the employees...has signed valid authorizations"—regardless of whether these signatures occurred months, years, or even decades previously. The bill also includes no process for an employee to revoke his or her authorization, meaning that a worker's signature could be counted for purposes of certification even though the worker no longer desires to be represented by the union in question.

Are there other controversial provisions in the Employee Free Choice Act?

Yes. Section 3 of the bill would require employers to submit to mandatory, binding arbitration if a union and an employer cannot reach a collective bargaining agreement within 130 days. Many Members may be concerned that this provision may give unions an incentive to delay the negotiating process, in the hopes of having the Federal Mediation and Conciliation Service impose pro-worker contract terms upon the employer during the arbitration process.

Aren't the arbitration provisions in the Employee Free Choice Act similar to the binding arbitration provisions that employers use against consumers?

No. While some companies use arbitration clauses as a way to settle disputes with customers or other companies, those disputes involve two parties that have already agreed to a contract. The "card check" legislation would take the unprecedented step of having federal mediators impose a contract on an employer. Many Members may be greatly concerned by the prospect of the federal government dictating the terms of employment to private businesses.

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