



The Threat to the Secret Ballot Continues

Proponents of EFCA Push On

“I've fought to pass the Employee Free Choice Act in the Senate. And I will make it the law of the land when I'm President of the United States of America.” – Sen. Barack Obama, *Remarks before the AFL-CIO* (April 2, 2008)

“People have been trying to get in the way of unions being able to organize. So the Employee Free Choice Act is number one on our agenda... We have to now unite. We have to expand our labor movement. The way to do that is to walk in and organize by merely signing your name to a piece of paper just like you do when you go register to vote.” – Sen. Joe Biden, *Remarks at the United Mine Workers of America Fish Fry* (September 20, 2008)

“We will pass the Employee Free Choice Act. It's not a matter of if, it's a matter of when, we may have to wait for the next president to sign it, but we will get this thing done.” – Sen. Barack Obama, *Chicago Tribune* (March 4, 2007)

“We will keep coming back year after year after year.” – Sen. Sherrod Brown, *Washington Post* (June 27, 2007)

“Another reason many unions are hesitating to endorse a Democratic candidate is their overall happiness with the eight hopefuls. All have endorsed labor's main legislative priority, a bill that would make it easier to unionize workers. This is a pro-worker field of dreams.” – Bruce Raynor, president of Unite Here, *Washington Post* (August 6, 2007)

“They may have lost a battle over legislation [Employee Free Choice Act] making it easier for unions to organize workers, but they can still win the war by electing a labor-friendly president in '08.” – AFL-CIO Pres. John Sweeney, *speech to 500 UWUA delegates* (June 27, 2007)

“We had no grandiose ideas that we'd get 60 votes. ... We need a bigger majority in the Senate and we need to replace one of the most anti-union presidents of the United States. The AFL-CIO will require any candidate it supports for president to back the EFCA.” – AFL-CIO Pres. John Sweeney, *Boyer, Cincinnati Inquirer* (June 28, 2007).

“If we have to wait until 2009 to get the president's signature, that's what we're willing to do.” – AFL-CIO Pres. John Sweeney, *AP* (June 26, 2007)

The bill [Employee Free Choice Act] could then become law in 2009. The minimum wage (legislation) came up every year for 10 straight years, and it took 10 years to get it passed. That is how the pressure to pass major legislation is built.” – Bill Samuel, director of legislation for the national AFL-CIO, *The Denver Post* (June 22, 2007)



“We want to send a strong message to the country; we’ll be back with the next president to get it done.” – Anna Burger, secretary-treasurer of the Service Employees International Union, *Politico.com* (June 26, 2007)

“In 2009, we’ll have a real opportunity and a real chance in putting this into law...”
– Gerald McEntee, president of the American Federation of State, County and Municipal Employees (AFSCME), *Politico.com* (June 26, 2007)



“Employee Free Choice Act” = Employee **Forced** Choice Act

- The so-called Employee Free Choice Act (H.R. 1409/S.560) would take away a worker’s right to a federally supervised private ballot when deciding whether or not to join a union. It would replace the private ballot with a biased and inferior process called “card check” which allows a union to organize if a majority of workers simply sign a card. **Under this system, the workers’ votes are made public to the employer, the union organizers and co-workers.**
- At a time when we spend tremendous resources to foster and support free elections around the world, **it makes no sense to roll back the clock** on our own workplace elections by abolishing federally protected private ballots.
- EFCA is fundamentally incompatible with protecting the interests of individual liberty and the principles of a sound democracy. If Congress passes this proposal, they will be **stripping away federally protected private ballots from the hands of American workers.**
- No one, employers and union organizers alike, should fear an election conducted by private ballot. It is the only manner in which to protect an individual’s freedom to choose without subtle or overt coercion. **The only way to guarantee worker protection is through the continued use of a federally supervised private ballot so that personal decisions about whether to join a union remain private. Private ballots protect free choice.**
- Swapping federally supervised private ballot elections for a card check process **tramples the privacy of individual workers** who should not have to reveal to anyone how they exercise their right to choose whether to organize with their co-workers in a union.





EFCA's Mandatory Arbitration Provisions Deny Workers the Right to Participate in the Bargaining Process

The Employee Free Choice Act (EFCA), H.R. 1409/S.560, contains an unprecedented requirement that would mandate the federal government impose contract terms on private employers through a process of mandatory, binding interest arbitration. The arbitration requirement not only disrupts the careful balance established by our nation's labor laws, but also denies workers the ability to vote on their contract, creates disincentives to compromise, and is likely unconstitutional.



Current Law Requires Negotiation in Good Faith

- o After a union is certified, current law requires the union and the employer to bargain in good faith.
- o How is the current "good faith" bargaining requirement enforced?  NLRB may issue bargaining orders to both sides; and order back-pay for wronged employees.  If a union is frustrated by an employer's good faith disagreement, it has the very significant leverage of calling a strike.



Workers Could Not Vote on the Union Contract

- o Mandatory, binding arbitration removes union employees from this process and would let the arbitrator impose a binding contract without an employee vote.




Interest Arbitration Removes Incentive to Bargain

- o The incentive to reach agreement decreases if the parties have reason to believe an arbitrator might be prevailed upon to select one proposal over another.



Binding Arbitration was Rejected in Wagner Act (1935) and Taft-Hartley (1947)

- o When it passed the NLRA, Congress explicitly rejected binding arbitration as incompatible with the concept of collective bargaining.  The accompanying Senate Committee Report said, "the essence of collective bargaining is that either party will be free to decide whether proposals made to it are satisfactory."
 - o The Supreme Court noted that if the NLRA had including binding arbitration provisions, then it likely would be an unconstitutional infringement on the right to contract (*NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937))
 - o When Congress amended the NLRA in 1947 with the Taft-Hartley amendments, it included explicit language that good faith bargaining "does not compel either party to agree to a proposal or require the making of a concession."



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Support for Private Ballot Elections Widespread Across Regional Lines

Opposition to EFCA Independent of Geographic Location

WASHINGTON – According to a national survey, voters across the country, regardless of region, overwhelmingly disapprove of the so-called Employee Free Choice Act (EFCA). The EFCA would deny workers the right to a federally-supervised private ballot election when deciding to join a union and instead force this decision to be made publicly, subjecting the workers to the possibility of experiencing significant coercion and pressure.

More than 80 percent of the Eastern region of the United States support the right to private ballots, along with an identical 74 percent of the Midwest, South and West, respectively. Extending to all regions of the country, a clean 90 percent of union households support the right of a federally-supervised private ballot election for workers on whether or not to join a union.

A large majority of voters in every geographical region in the United States also voiced disapproval of any act of Congress that would deny workers this right, and approximately 70 percent of each region also confirmed they would be less likely to vote for a candidate for a congressional office who voted in support of EFCA.

Please tell me whether you agree or disagree with the following statement: “Secret ballot elections are the cornerstone of democracy and should be kept for union elections.”

| | Ea st | Mid west | Sou th | Wes t |
|-----------|------------------|---------------------|-------------------|------------------|
| Ag | 81 | 74% | 74 | 74% |

There is a bill in Congress called the Employee Free Choice Act which would replace a federally supervised secret ballot election with a process that requires a majority of workers to simply sign a card to authorize organizing a union and the workers’ signatures would be made public to their employer, the union organizers and their co-workers. Do you support or oppose Congress passing this legislation?

| | Ea st | Mid west | Sou th | Wes t |
|-----------|------------------|---------------------|-------------------|------------------|
| Su | 16 | 14% | 13 | 14% |

Would you be more likely or less likely to vote for a member of Congress who voted in favor of taking away a worker’s right to have a federally supervised secret ballot election to decide whether to organize a union?

| | Ea st | Mid west | So uth | Wes t |
|------------------------|------------------|---------------------|-------------------|------------------|
| More Likely | 9% | 8% | 8% | 8% ### |

Americans Want To Protect A Worker's Right To Have A Federally Supervised Private Ballot Election When Deciding Whether To Organize A Union

Americans almost unanimously believe that every worker should continue to have the right to have a federally supervised private ballot election when deciding whether to organize a union. Conversely, an overwhelming majority opposes the Employee Free Choice Act, which would replace a federally supervised private ballot election with a process that requires a majority of workers to sign a card to authorize organizing a union. The strong voter sentiment to protect a worker's right to a federally supervised private ballot election is evident among all voter demographics including party affiliation and union households. Voters feel so strongly about this issue that they will hold members of Congress accountable for their position during next year's elections. Voters are overwhelmingly less likely to vote for a member of Congress who votes in favor of the Employee Free Choice Act. On the other hand, voters are very likely to rally behind and vote for a member of Congress who votes to protect a worker's right to a private ballot election.

Three in four voters (76%) agree that "secret ballot elections are the cornerstone of democracy and should be kept for union elections".

Please tell me whether you agree or disagree with the following statement? "Secret ballot elections are the cornerstone of democracy and should be kept for union elections."

| | | | | | | |
|--|-----------------------|---------------------------------|--|-------------|-------------|-------------|
| | T o t a l | U n i o n H H | N o n U n i o n H H | R e p | D e m | I n d |
|--|-----------------------|---------------------------------|--|-------------|-------------|-------------|

Almost 9 in 10 voters (87%) agree that "every worker should continue to have the right to a federally supervised secret ballot election when deciding whether to organize a union".

Please tell me whether you agree or disagree with the following statement? "Every worker should continue to have the right to a federally supervised secret ballot election when deciding whether to organize a union."

| | | | | | | |
|--|-----------------------|---------------------------------|--|-------------|-------------|-------------|
| | T o t a l | U n i o n H H | N o n U n i o n H H | R e p | D e m | I n d |
|--|-----------------------|---------------------------------|--|-------------|-------------|-------------|

Four in five voters (79%) oppose the "The Employee Free Choice Act", which would replace a federally supervised secret ballot election with a process that requires a majority of workers to simply sign a card to authorize organizing a union.

There is a bill in Congress called the Employee Free Choice Act which would replace a federally supervised secret ballot election with a process that requires a majority of workers to simply sign a card to authorize organizing a union and the workers' signatures would be made public to their employer, the union organizers and their co-workers. Do you support or oppose Congress passing this legislation?

| | | | | | | |
|--|-----------------------|---------------------------------|--|-------------|-------------|-------------|
| | T o t a l | U n i o n H H | N o n U n i o n H H | R e p | D e m | I n d |
|--|-----------------------|---------------------------------|--|-------------|-------------|-------------|

When asked to make a choice whether a worker's vote to organize a union should remain private or be public information, 9 in 10 voters (89%) say it should remain private.

M&A McLaughlin & Associates

With a federally supervised secret ballot election, each worker's ballot remains private. With the card signing process, the information would be made public and union organizers, employers and co-workers would know how each worker voted. In deciding whether to organize a union, do you think a worker's vote should remain private or be public information?

| | Total | Union HH | Non Union HH | Rep | Dem | Ind |
|--|-------|----------|--------------|-----|-----|-----|
| | | | | | | |

Nine in ten voters (89%) believe having a federally supervised secret ballot election is the best way to protect the individual rights of workers. Only 6% thinks the Employee Free Choice Act's card signing process is better.

If an election were held to decide whether workers would organize a union, which one of the following types of elections is the best way to protect the individual rights of workers? 1. Having a process where a union is organized if a majority of workers simply sign a card and the workers' signatures are made public to their employer, the union organizers and their co-workers. 2. Having a federally supervised secret ballot election where workers privately vote yes or no on whether to authorize union representation.

| | Total | Union HH | Non Union HH | Rep | Dem | Ind |
|--|-------|----------|--------------|-----|-----|-----|
| | | | | | | |

Nine in ten voters (89%) believe having a federally supervised secret ballot election is the better way to prevent interference or intimidation by employers or labor unions. Only 6% thinks the Employee Free Choice Act's card signing process is better.

In your opinion, which election process is better to prevent interference or intimidation by employers or labor unions?

- 1. Having a process where a union is organized if a majority of workers simply sign a card and the workers' signatures are made public to their employer, the union organizers and their co-workers.**
- 2. Having a federally supervised secret ballot election where workers privately vote yes or no on whether to authorize union representation.**

| | Total | Union HH | Non Union HH | Rep | Dem | Ind |
|--|-------|----------|--------------|-----|-----|-----|
| | | | | | | |

Seven in ten voters (70%) say that they would be less likely to vote for a member of Congress who voted in favor of taking away a worker's right to have a federally supervised secret ballot election to decide whether to organize a union.

Would you be more likely or less likely to vote for a member of Congress who voted in favor of taking away a worker's right to have a federally supervised secret ballot election to decide whether to organize a union? If it would make no difference, just say so.

| | Total | Union HH | Non Union HH | Rep | Dem | Ind |
|--|-------|----------|--------------|-----|-----|-----|
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Methodology: This poll of 1,000 likely general election voters in the United States was conducted between January 28-31, 2007. An oversample of 120 union households was conducted, which brings the combined total of union households to 400. All interviews were conducted via telephone by professional interviewers. Interview selection was random within predetermined election units – in this case, the fifty states. These units were structured to correlate with actual voter turnout in a general election. This poll of 1,000 likely general election voters has an accuracy of +/- 3.1% at a 95% confidence interval. The 400 sample of union households has an accuracy of +/- 4.9% at a 95% confidence interval.