



## NLRB Attacks Secret Ballots in Union Representation Elections

*The ability to vote via secret ballots with no coercion or outside pressure is a vital safeguard in democratic elections, but the National Labor Relations Board (NLRB) under President Biden tried to eliminate secret ballots in union representation elections, needlessly exposing workers to intimidation, harassment, and coercion.*

### **SECRET BALLOTS ARE THE GOLD STANDARD**

Secret ballot voting is the gold standard of democracy for good reason. It preserves voter privacy and election integrity. When considering union representation elections, the secret ballot process guarantees voters can vote their conscience in an NLRB-supervised voting booth, ensuring no one is standing over their shoulder watching how they vote or pressuring them to vote a certain way – whether that be a union organizer, colleague, or their employer.

Card check, on the other hand, is a system in which union organizers can approach employees (at any time, in any place, and as many times as necessary) to present them with an authorization card and ask for (or demand) their signature. Card check is notoriously flawed.<sup>1</sup> It leaves workers vulnerable to coercion and harassment by union organizers and their supporters by forcing them to express their support or opposition to union representation in front of others. The Supreme Court and numerous Courts of Appeals have consistently recognized that authorization cards are “admittedly inferior to the election process” and are subject to “abuses” and “misrepresentations.” Employers “concededly may have valid objections to recognizing a union on that basis.”

Unions use card check to intimidate workers into supporting unionization, as was demonstrated in a [2007 Congressional hearing](#) where several former union organizers detailed the extensive tactics unions use to get signatures. Card check is also used to both hide the campaign from the employer and expedite it, with the goal that employees never hear from employers about the negatives of the union and unionization, leaving workers without the information they need to make such an impactful decision.

Unions also often lie to workers about what signing an authorization card actually means. Cards are contractual documents that say the employee gives the union the authority to be their exclusive bargaining representative. By signing, the employee is giving up their rights to speak on their own behalf about wages, benefits, and other working conditions. There are no laws in place that limit what a union can say to workers during a union organizing drive, allowing them to lie or mislead workers however they see fit.

### **NLRB AND GENERAL COUNSEL ACTIVELY WORKED TO ELIMINATE SECRET BALLOTS**

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<sup>1</sup> CDW White Paper, “How Neutrality and Card Check Agreements Harm the American Worker,” May 2023, available at [https://myprivateballot.com/wp-content/uploads/2023/05/CDW-White-Paper\\_Neutrality-and-Card-Check-Agreements\\_May-2023-FINAL.pdf](https://myprivateballot.com/wp-content/uploads/2023/05/CDW-White-Paper_Neutrality-and-Card-Check-Agreements_May-2023-FINAL.pdf).



Under current law, to petition for a representation election, a union must produce signed authorization cards from at least 30% of the workers in the proposed bargaining unit. If the union produces cards from over 50% of the proposed unit, the employer may voluntarily recognize the union without an election.

The NLRB General Counsel under President Biden, Jennifer Abruzzo, however, wanted to force employers to agree to card check in most circumstances, essentially depriving most workers of secret ballot elections. She advocated in amicus briefs in two Board cases – *Cemex*<sup>2</sup> and *Starbucks*<sup>3</sup> – that the Board should replace secret ballots in most union representation elections with card check. The General Counsel's position relied on an NLRB case from the 1940s called *Joy Silk*, which has since been overturned and abandoned by the Board. Her arguments fly in the face of the Supreme Court decisions that have unequivocally established the superiority of the secret ballot process.

In August 2023, the NLRB issued its decision in *Cemex*, officially imposing the card check framework and expanding the Board's ability to impose unions on employees without a secret ballot election. The Board made the change without soliciting input from the public via comment or amicus briefs.

The Board itself is also attacking private ballots. In 2024, the Board issued a final rule limiting employees' right to petition the agency for a secret ballot election when a union claims majority support via card check.<sup>4</sup> The NLRB under the first Trump administration provide employees with a 45-day window to petition the Board for a secret ballot election following an employer announcement that it has voluntarily recognized a union based on card check. Without this short time frame, employees would not have the opportunity to access the Board's election process (and thereby secret ballots) for as long as four years. The Board fails to provide any rationale for this new rule, which strips employees of the fundamental right to vote privately.

Additionally, the NLRB Chair under President Biden, Lauren McFerran, advocated for the adoption of electronic voting in union representation elections, which is, in essence, card check by another name.<sup>5</sup> Electronic voting provides no NLRB supervision of the voting process and allows for the coercion, intimidation, and harassment of workers as they place their votes.<sup>6</sup> Moreover, the National Mediation Board, several states, and various foreign

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<sup>2</sup> <https://www.nlrb.gov/case/28-CA-230115>

<sup>3</sup> <https://www.nlrb.gov/case/14-CA-290968>

<sup>4</sup> NLRB "Fair Choice-Employee Voice" Notice of Proposed Rulemaking, November 4, 2022, available at <https://www.federalregister.gov/documents/2022/11/04/2022-23823/representation-case-procedures-election-bars-proof-of-majority-support-in-construction-industry>.

<sup>5</sup> <https://www.nlrb.gov/case/18-RC-263185>

<sup>6</sup> CDW White Paper, "Online Voting in Union Representation Elections: The Latest Attempt to Eliminate Workers' Right to Secret Ballots," July 2022, available at [https://myprivateballot.com/wp-content/uploads/2022/07/Online-Voting-in-Union-Representation-Elections\\_Latest-Attempt-to-Eliminate-Secret-Ballots\\_July-2022.pdf](https://myprivateballot.com/wp-content/uploads/2022/07/Online-Voting-in-Union-Representation-Elections_Latest-Attempt-to-Eliminate-Secret-Ballots_July-2022.pdf).



countries have all shelved online voting programs because of the costs and cybersecurity concerns of implementing electronic voting.

### **CONGRESS WANTS SECRET BALLOTS – ONLY FOR CERTAIN WORKERS**

Democrats in Congress have been protecting secret ballots but only when convenient.

Democrats in the House of Representatives passed a resolution allowing Capitol Hill staff to unionize but mandated that they can only do so via secret ballot elections. Additionally, union lobbyists were able to secure language in the United States-Mexico-Canada (USMCA) trade agreement requiring Mexico to “[p]rovide in its labor laws that union representation challenges are carried out ... through a secret ballot vote.” The agreement also required Mexico to adopt legislation requiring that labor contracts have “majority support” among employees, with an independent agency verifying that “a majority of workers . . . demonstrated support . . . through a personal, free, and secret vote.”

Clearly Democrats understand just how critical the secret ballot process is to ensuring a fair election, but what's good for the goose must be good for the gander. Secret ballots are the best method of determining workers' true feelings about union representation in the workplace, and it should be guaranteed to all workers. Congress and the NLRB should recognize the critical importance of the secret ballot and work to protect workers' right to vote their conscience.