

# Card Check

## Undermining Employees' Right to Freely Choose or Reject Union Representation

### Summary

### Background

Organized labor is seeking to rewrite U.S. labor law with legislation that would abolish secret ballot elections during union organizing drives. Forcing workers out of the voting booth and subjecting them to a public “card check” scheme takes away privacy, power and choice from U.S. workers. Legislation to enact card check in Congress has been underway. There also have been several attempts in California through the Agricultural Labor Relations Act and other sectors not covered by the National Labor Relations Act. In California, agricultural employees and employers are covered by the Agricultural Labor Relations Act.

A card check campaign could happen in any workplace, large or small. Union organizers themselves oversee the card check process that requires an employer to recognize a union as representing their employees once that union produces evidence that a majority of the employees have signed authorization cards. In a card check union drive, the worker simply signs a card and everyone knows how each worker voted—co-workers, bosses and the union organizers. Instead of giving workers freedom to choose with a private secret ballot, card check leaves workers wide open to coercion, pressure, and outright intimidation and threats by union organizers. According to organized labor, card check would provide opportunities for increased wages and benefits, but in reality, card check simply eliminates the secret ballot election in union organizing.

In Congress, the Employee Free Choice Act (EFCA) not only proposes card check, but further proposes to allow a federal arbitrator to write the labor agreement if the parties don't reach agreement within 120 days—an extraordinarily short time for negotiating first contracts. The contract would be imposed with no ability for either employers or employees to challenge it. It can be unnecessarily risky to put a federal government bureaucrat in charge of a company's fate.

### Current Law

Currently, if employees wish to unionize, a secret ballot vote can be arranged and conducted by the National Labor Relations Board or its state equivalent. This gives both sides the opportunity to make their case on whether unionization would be the best for the workers. Then the individual employees vote by secret ballot. If a majority wishes to unionize, they become a union and start collective bargaining procedures. If a majority does not wish to unionize, they stay non-unionized.

### Prior Action

Card check legislation is threatening labor law in California and in Congress. Card check efforts in California have been underway and repeatedly rejected by Governor Arnold Schwarzenegger for several years. While the U.S. House of Representatives is prepared to pass the EFCA, as the **2010 Business Issues and Legislative Guide** went to press, the 60 votes needed for the act to pass the U.S. Senate had not materialized.

### 2009

- In Congress, the Employee Free Choice Act is introduced in each house—S.560 (Kennedy; D-Mass.) is introduced in the U.S. Senate and H.R. 1409 (Miller; D-Martinez) is introduced in the U.S. House of Representatives. Contrary to the implication of its title, the so-called Employee Free Choice Act would strip workers of their right to privacy in union organization elections.
- Debates over the struggling national economy and health care reform have taken center stage, forcing the EFCA to the sidelines. The bill had no formal hearings and amidst concerns over negative economic impacts by some Democrats, compromise proposals have surfaced. The so-called compromises or alternatives include “quickie” elections and expanded union access to employees.
- In California, SB 789 (Steinberg; D-Sacramento) proposed unionization through card check for California's agricultural employees, thus undermining the process that now guarantees, through secret-ballot elections, a fair vote and the expression of employees' true sentiments on the selection of a collective bargaining representative. This act would have hurt California's businesses by driving up costs, making employers less competitive in a global market. This bill was vetoed by Governor Schwarzenegger.

### 2008

## Card Check (continued)

- AB 2386 (Núñez; D-Los Angeles) would have created a new, unsupervised “mediated election” that would have sidestepped the Agricultural Labor Relations Board (ALRB) election supervision requirement by allowing a union to become the bargaining representative of a farm employer’s employees if a majority of them simply return to the ALRB via postal mail something similar to an absentee ballot. But under this system, the union organizers themselves may give the ballots to the employees, tell the employees what to mark on the ballots, and then collect and deliver the ballots to the ALRB. This is simply “card check” repackaged, exposing workers to intimidation and coercion by union organizers and denying employees their right to a secret-ballot election. This bill was vetoed by Governor Schwarzenegger.
- SB 867 (Cedillo; D-Los Angeles) proposed a card check scheme to organize independent child care providers, which would hurt California’s competitiveness by artificially increasing labor costs for California child care providers, thereby reducing the pool of money available for subsidized child care for working parents. The bill was vetoed by Governor Schwarzenegger.

### 2007

- The U.S. House of Representatives passed the Employee Free Choice Act, H.R. 800. In the U.S. Senate, S. 1041 fell just nine votes short.
- AB 1164 (De León; D-Los Angeles) proposed a card check scheme to organize independent child care providers. The bill was vetoed by Governor Schwarzenegger.
- SB 180 (Migden; D-San Francisco) and SB 650 (Migden; D-San Francisco) proposed card check for California’s agricultural workers, which would have hurt the competitiveness of California agriculture producers, driving businesses out of state, killing jobs and increasing loss of farmland by increasing labor costs for California producers who must compete in a global market with lower average operating costs. Higher costs in California’s agriculture industry would have resulted in higher costs for everyone. Both bills were vetoed by Governor Schwarzenegger.

### 2006

- SB 697 (Kuehl; D-Santa Monica) proposed a card check scheme to organize independent child care providers. The bill was vetoed by the Governor.

### CalChamber Position

The CalChamber opposes the card check method of unionization and believes that workers are better protected from interference and intimidation by casting their vote privately with a secret ballot. To take away employees’ access to a private, secret ballot is undemocratic. Furthermore, the CalChamber remains opposed to any compromise proposal that creates similar legislation threatening the private ballot, imposing any form of binding interest arbitration or imposing unfair, one-sided penalties.

### Reasons for Position

- Card check takes away a worker’s right to choose, freely and anonymously, whether to unionize by replacing the private ballot with a scheme that allows a union to organize if a majority of workers simply sign a card.
- Union organizers themselves oversee the card check process, and the workers’ votes are made public to the employer, the union organizers and co-workers, leaving the door open to intimidation from union organizers.
- To take away employees’ access to a private secret ballot is undemocratic.

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