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# House and Senate Republicans Introduce Amendments to National Labor Relations Act to Require Secret-Ballot Elections In Response to Proposed Employee Free Choice Act

**by Jay P. Krupin and Steven M. Swirsky**

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On February 25, 2009, Republican members of the House and Senate concurrently introduced bills to amend the National Labor Relations Act ("NLRA" or the "Act") to mandate that employees have the right to secret-ballot elections when deciding whether they want to be represented in collective bargaining by a union. Representative John Kline of Minnesota sponsored H.R. 1176, the Secret Ballot Protection Act, with 103 co-sponsors, while Senator Jim DeMint of South Carolina sponsored S. 478, the companion bill in the Senate, with 18 co-sponsors—all Republicans. Both versions of the amendment are intended to counter a bill, the Employee Free Choice Act ("EFCA"), that House and Senate Democrats plan to reintroduce sometime this year.

The EFCA, which was passed by the House but not the Senate in 2007, and is expected to be reintroduced later this year, would eliminate the Act's provisions for secret-ballot elections and require employers to recognize and bargain with unions when a majority of employees sign cards authorizing the union to represent them. While the EFCA would not completely eliminate the possibility of secret-ballot elections, as a practical reality, in the form in which the Act passed the House in the last Congress, an employer could not insist on a secret-ballot election to determine whether the majority of employees in the proposed bargaining unit wanted a union to represent them. Thus, any union that could collect signatures from a majority of employees would have no reason to seek recognition through a secret-ballot election when it could more easily obtain recognition through a card-check process.

Although the precise language of the House and Senate versions of the proposed amendment to protect secret-ballot elections have not yet been published, House and Senate Republicans' 2007 proposed amendments to the NLRA, titled The Secret Ballot Protection Act (H.R. 866, 110th Cong. [2007]) and The Secret Ballot Protection Act of 2007 (S. 1312, 110th Cong. [2007]), similarly intended to counter EFCA, offer insight as to what the present amendment likely might entail. Both versions of the 2007 proposed amendment, which lapsed without being voted on by the Senate when the 110th

Session of Congress concluded, would have changed existing law to provide that employees could only designate a union as their collective bargaining representative through a secret-ballot election conducted by the National Labor Relations Board, an agency of the Executive Branch of the federal government. The amendment would not, however, affect any collective bargaining relationships existing before the amendment's effective date.

The preemptive introduction of the proposed secret-ballot amendment sets the stage for debate on this controversial topic, particularly if supporters of the secret-ballot proposal are successful in their reported strategy of bringing the issue to a vote in the Senate before the EFCA is voted on in the House, the chamber in which support for the EFCA is reported to be stronger.

We will keep you apprised as Congress addresses both the proposed secret-ballot election amendment to the NLRA, and the pending 2009 version of EFCA, when it is introduced later this term.

Information regarding House Bill 1176 and Senate Bill 478, and the text of H. R. 866 and S. 1132 from the 110th Session of Congress are available online from the Library of Congress Web site, at: http://thomas.loc.gov/

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