



## **Background on 'Employee Free Choice Act'**

Under current law, individuals interested in organizing a union must file a petition with the National Labor Relations Board (NLRB). This petition must demonstrate that 30 percent of potential union members want to have a union organizing election. Generally, the potential union members sign an authorization card indicating their desire to join a union. Importantly, within 45 days of receiving the petition, the NLRB then will conduct a secret ballot election to let employees decide whether they want to join the union. The secret ballot election allows employees to choose in private whether or not they wish to join the union.

Instead of using a petition to force an election, under this bill, if an organizing campaign can collect signed authorization cards or a petition from more than 50 percent of the employees (this is often referred to as the "50 plus one" rule as the cards must be collected from 50 percent of the employees plus one more employee), the employer would be required to recognize the union. There would be no secret ballot election in such a case.

H.R. 1409 /S. 560 outlines penalties against employers that illegally fire or discriminate against workers for their union activity during an organizing or first contract drive. It also will require the NLRB to seek a federal court injunction against an employer whenever there is reasonable cause to believe that the employer has discharged or discriminated against employees, threatened to discharge or discriminate against employees, or engaged in conduct that significantly interferes with employee rights. It further authorizes the courts to grant temporary restraining orders or other appropriate injunctive relief.

This proposal also triples the amount of the employee's back pay when an employee is discharged or discriminated against during an organizing campaign or first contract drive. Finally, the bill will provide for civil fines of up to \$20,000 per violation against employers found to have willfully or repeatedly violated employees' rights during this process.

### **Analysis**

Many unions and their supporters believe that the NLRB elections are stacked against those who wish to form a union. They believe that it is unfair to give the employers the secret ballot election option when a majority of employees have expressed support for a union, asserting that employers are able to leverage more anti-union votes when the election is held in private.

H.R. 1409/S. 560 would leave that decision in the workers' hands and allow them to choose which avenue to form a union.

Supporters also believe that the current penalties against employer intimidation are too soft and do not provide an effective deterrent against such interference. They believe that the stronger penalties in H.R. 1409/S. 560 will send an appropriate message to employers to give their workers the freedom to choose whether to form a union.

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Opponents of H.R. 1409/S. 560 believe that it will have the converse effect. Rather than employer intimidation, it will encourage union intimidation. They contend that the authorization process will allow those who support the formation of unions to coerce employees into signing the card, as the votes will now be made public, instead of the private votes offered through secret elections. Without the regulated and secret election system provided by the NLRB, the proposed open authorization card process will be vulnerable to bullying and deceptive tactics. Furthermore, the authorization cards would be susceptible to fraud through forged signatures.

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