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## Should labor law allow unionizing without voting?

Yes: Organizers now face many unfair hurdles

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BY JAMES J. BRUDNEY

Relations between employees and management have changed dramatically since the 1950s, but our nation's labor law remains frozen in the era of tailfins and fedoras. The Human Rights Watch Report detailing Wal-Mart's ruthless anti-union tactics is just the latest evidence of how outmoded our law has become. Wal-Mart's 1.3 million U.S. workers, none represented by a union, hardly need reminding. But a bill recently passed by the House of Representatives and awaiting debate in the Senate offers hope by providing workers with a fair chance to form unions.



Currently, workers can form a union in one of two ways: sign authorization cards or initiate an election process supervised by the National Labor Relations Board. However, labor law allows workers to secure union representation through signed cards only if their employers agree to go along. While some employers remain neutral in an organizing campaign and recognize the union if a majority sign up, most employers insist on an extended election campaign so that they can attack unions and browbeat their supporters.

Over weeks or months, employers hold lawful mandatory meetings at which they "predict" dire consequences if the union wins, and supervisors meet one-on-one with employees to probe for evidence of union sympathies. Employers also can use unlawful tactics, especially firing union supporters, knowing that remedies are woefully weak and can be delayed for years. It is no surprise that employers and their advocates wax eloquent about the election campaign as the "crown jewel" of our labor-relations system. For workers seeking union representation, the elections process often is a crown of thorns.

The Employee Free Choice Act would allow a majority of employees to choose union representation by signing valid authorization cards. Elections could occur if employees prefer them, or if a union and employer agree on them. But the bill would give employees the same option employers have: relying on majority signup to create a recognized union.

Although the election-based approach enjoyed wide support for many years, it now needs reform. Employers always have had the ability and authority to oppose unions. Since the 1970s, however, American businesses have exercised this authority with increasing ferocity.

Three-fourths of U.S. employers hire union-avoidance consultants to run anti-union campaigns, to the tune of several hundred million dollars a year. Worker coercion and intimidation have risen accordingly. Union supporters were illegally fired in one in four elections as of 1990, compared with one in 20 elections during the 1950s. A recent report estimated that actively pro-union workers face almost a 20 percent chance of being fired during a union-election campaign. Other studies indicate that almost half of all private-sector employees who do not have a union wish they did; more than half of those workers say that management resistance is the main reason they don't have one.

Some observers worry the bill will replace employer coercion with union coercion. But there is very little evidence of union coercion or misrepresentation over the 70 years that authorization cards have been used to demonstrate union support. In Canada, where labor laws long have allowed union majorities to be certified based on cards, there have been remarkably few union coercion cases. That should not be surprising. Unions have little leverage to coerce employees even if they were so inclined. Unlike employers, they lack power over employees' livelihoods.

Others argue that employers deserve a fair chance to make their case against unions; majority sign-up could result in employers being surprised before this can occur. But employers have had the chance to promote a nonunion regime well before the union makes an appearance, and many do so as standard procedure.

Finally, opponents claim that secret-ballot elections are the American way. But an election to create a unionized workplace will never resemble a contest in which an incumbent can be voted out of office and the two sides wield comparable resources. Employers control the workplace; they have the ability to identify pro-union employees and the power to deter or punish them. Under the bill, employees would be allowed to choose whether they wish to run that election gantlet.

The need for labor-law reform is linked to a larger national conversation. Over the past 30 years, the shrinking role of unions in the American economy has been accompanied by stagnating earnings and a growing gap between workers in the upper and lower tiers. Those developments are hardly due to an outmoded labor law alone. Globalization, improved technology and other broader economic changes present challenges as well as opportunities for American workers and employers.

But labor-law reform is a vital piece of the puzzle. Enactment of the bill would allow many more workers to secure enhanced wages and benefits and a stronger voice in their workplaces, through union representation and collective bargaining.

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