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Senate

Senator Orrin Hatch

Statement for the Record

On the Introduction of the Employee Rights Act

Mr. President, today I have introduced the Employee Rights Act, a comprehensive workers' rights bill that would address many issues plaguing America's workers.

Our nation's labor laws were designed to preserve the rights of employees to join labor unions and engage in collective bargaining. Contrary to what some may think, I am not anti-union and I do not want to stand in the way of unionization if the decision to unionize is truly the will of the employees. However, I believe that the right not to join a union is equally important. It is this right that far too often goes overlooked under our current laws, and particularly under policies implemented by unelected bureaucrats at various administrative agencies.

I'm under no illusions that this legislation will be noncontroversial. There will most certainly be opposition. Indeed, I fully expect the unions and their supporters to come out against the Employee Rights Act, and characterize it as a radical, anti-union bill.

But, Mr. President, that just isn't the case. There's not a single provision in this bill that will empower employers at the expense of the union. The only parties whose position will be improved by the Employee Rights Act are employees. Anyone whose real concern is preserving the rights of individual workers should support this bill. Let me take a few minutes to go over the specific provisions.

First, the bill would conform and equalizeunfair labor practicesby unions with those of employers under the National Labor Relations Act. Currently, under Section 8 of the NLRA, employers face penalties if they "interfere with, restrain, or coerce employees" in the exercise of their rights under the Act. The same section punishes labor organizations only if they "restrain or coerce" employees in the exercise of those same rights.

There is no reasonable or logical justification for this difference, and workers should have the benefit of equal protection against abuse from both sides. That is why, under the Employee Rights Act, both sides will be held to the higher standard.

Next, my bill would ensure that employees are guaranteed a right to a federally supervised, secret ballot vote before a union can be certified. According to the NLRB, 38 percent of all unions certified in 2009 did not have to go through a secret ballot election. Instead, these unions were able to use card checks to unionize employees. True enough, in such cases, employers voluntarily opted to recognize the union without demanding a secret ballot election. But what about the workers who wanted a secret ballot vote?

There is, of course, a long-standing debate over the integrity and appropriateness of card check elections. But even the most committed union supporter must admit that the card check process is unregulated and less reliable than a secret ballot vote. Indeed, that's exactly why the unions prefer it. Anyone who claims otherwise is either lacking in common sense, on a union's payroll, or both.

We've all heard the accounts of unions obtaining signatures through deception and intimidation. And, we've all heard about union organizing campaigns and boycotts that have all but forced employers to give up their right to demand a secret ballot vote. Well, Mr. President, under the Employee Rights Act, that right will belong to the employees, and it will be guaranteed.

For the record, the American people agree with me on this issue. Earlier this year, the Opinion Research Corporation conducted a poll of 1,000 adults that addressed a number of these issues. All told, 75 percent—three out of every four—were somewhere between strongly supportive and somewhat supportive of a rule requiring that all employees be given the right to a secret ballot election when deciding whether to join a union.

Mr. President, there's no way around it. If you are pro-worker—and not just pro-union—you have to support the right to a secret ballot.

Next, my bill would require every unionized workplace to conduct a secret ballot election every three years to determine whether a majority of employees still want to be represented by the union.

According to the Bureau of Labor Statistics, less than 10 percent of current union members voted for the union at their workplace. Most union members simply took jobs at sites that were already unionized, many of which require union membership as a condition of employment.

Under current law, if any of these employees want to decertify a union, they must go through an arduous process. It is a nearly impossible task. In addition to overcoming the many procedural hurdles provided by laws and regulations, they are required to speak out publicly against the union and subject themselves to public criticism, if not outright intimidation. Not surprisingly, very few even make the effort.

As a result, millions of American workers belong to unions they never voted for and will never get to vote for. No one who claims to support the rights of workers can argue that this is a good thing. Every citizen is guaranteed an opportunity to vote out their representatives in state, local, and federal governments. Yet, a union, once certified, is in place for perpetuity. This just shouldn't be the case.

Once again, I'm not alone in my thinking. In the same survey I cited earlier, 75 percent—again, three quarters of those polled—supported a change that would require unions to be periodically recertified.

So, Mr. / Mdme. President, this proposal is not outlandish or punitive. It is simply common sense. It is fair to both employers and unions, and, far more importantly, it's fair to workers.

Another provision of the bill would put a stop to the NLRB's current proposal to shorten the required length of time between the filing of a union certification petition and an election, commonly referred to as thequickie or snap election proposal.

With this proposed rule, which is set to be finalized later this year, the pro-union NLRB hopes to help unions catch unwitting employers unprepared. Although there is no specific timeline in the proposal, experts have concluded that, if the regulation is finalized, union elections could occur within 7 days of a union filing a petition. Even worse, the proposal would eliminate many of the pre-election opportunities to appeal the petition and to resolve fundamental issues, like the size and scope of the bargaining unit.

There is no need for this new rule. According to the NLRB, the average time between the filing of a petition and an election is 39 days. This gives both the union and the employer an opportunity to communicate their perspective on union membership to employees and ensures that workers are able to make informed decisions.

Though the current rule is eminently reasonable and appears to be working well for everyone, including the unions who already win the majority of elections, the Obama Administration can't risk losing the support of Big Labor. Richard Trumka, President of the AFL-CIO, recently remarked that this and other similar so-called reforms are effectively consolation prizes for the Democrats' loss in the fight to pass the deceptively-named Employee Free Choice Act.

Indeed, the Obama Administration, for obvious reasons, has consistently been all too eager to stack the deck in favor of the unions. And, since they haven't been able to do it through the legislative process, they're trying to do so via regulation.

Sadly, employees are caught in the middle. The NLRB doesn't care if they have enough time to consider all their options. They simply want to make sure the unions win more elections. To combat this, the Employee Rights Act would preserve substantive and procedural protections in the election process and ensure that workers have an opportunity to make informed decisions.

The bill would also prevent a union from ordering a strike or work stoppage unless it obtains the consent of a majority of the affected workforce through a secret ballot vote.

This is important because the rules governing when and how a union can order a strike are not uniform. They are determined by each union's constitution. There is no federal rule whatsoever requiring that unions obtain majority support before they can force members into unemployment and possible replacement.

Many would be surprised to

learn that union strike funds—kept to provide financial assistance for striking union members—rarely pay more than 20 percent of an employee's salary during a work stoppage. And, more often than not, a member cannot receive any compensation for lost wages unless they participate on a picket line.

Isn't it only fair to give workers an opportunity to weigh in before a union orders a strike? Most people seem to think so. According to the same poll I mentioned earlier, 74 percent of Americans support this proposal.

Another provision of the Employee Rights Act would prevent an employee's union dues or fees from being used for purposes unrelated to the union's collective bargaining functions—including political contributions and expenditures—without that member's written consent.

Exit polls have shown that America's union members are almost evenly split between Democrats and Republicans, yet more than 90 percent of union political contributions go to Democrats. This is, not to put too fine a point on it, the reason why I expect strong opposition to this bill.

However, I'd like anyone who would oppose this provision to explain to me why it is fair to force workers to contribute to political campaigns at all, regardless of the party on the receiving end. Once again, the only people who would object to empowering individual workers in this way are those who have a vested interest in the status quo.

When asked about this issue, 78 percent of those polled agreed with this idea.

The Employee Rights Act would do several more things. It would make unions liable for lost wages, unlawfully collected union dues, and even liquidated damages if they coerce, intimidate, or discipline workers for exercising their rights under the NLRA, including the right to file a decertification petition. Any union found to have unlawfully interfered with the filing of a decertification petition would be barred from filing objections to the subsequent decertification vote.

The bill would also strengthen prohibitions on the use or threat of violence to achieve union goals, overturning an egregious Supreme Court decision that all but exempted unions from federal racketeering statutes.

And, it would allow all affected workers—union and non-union alike—the same rights as union members to vote to ratify a collective bargaining agreement or to begin a strike.

These are not outlandish proposals. They would simply introduce some long-overdue common sense into our labor laws. Not surprisingly, polls have demonstrated that each of these ideas has broad support among the public.

Mr. President, we've had many fierce debates in this chamber about the role of labor unions in our nation's economy. In fact, I have been on the floor several times in the last week decrying the steps taken by the Obama Administration when it comes to helping out Big Labor.

But truthfully, I'm not interested in stopping unions from organizing or preventing collective bargaining. I simply want to protect the rights of individual workers and ensure that, if they do opt for union representation, that choice is freely made and fairly determined.

For too long, American workers have been treated by union leaders as little more than human ATMs. They claim to be progressives, supportive of equality and democracy and the working man. This bill is consistent with those principles, providing working men and women with a real and meaningful voice in decisions regarding unionization. It is supported by the National Right to Work Committee, and I am proud to have Congressman Tim Scott of South Carolina introducing companion legislation in the House. I urge all of my colleagues to support the Employee Rights Act. I yield the floor.