Oppose Efforts to Impose Pro-Organized Labor Rules through Regulation

One of the American economy's greatest strengths is individuals' and businesses' ability to adapt to changing conditions. However, in the case of labor markets, many workers and employers remain subject to an array of obsolete New Deal-era labor regulations that discourage innovation and hamper flexibility. The old adversarial model of labor relations has little to offer to the 21st century workforce, which is characterized by horizontal company structures and greater job mobility—flexibility which employers and workers need to better ride out economic downturns.

The collective bargaining model that has predominated in the U.S. since the New Deal, when 1935 the National Labor Relations Act (NLRA) was enacted, has been one based on compulsory monopoly representation. Under this system, when employees at a given workplace vote on whether they want to be represented by a union, that union becomes the exclusive bargaining agents for all the workers there—including workers who did not vote to be represented by the union.

This violates workers' First Amendment rights to freedom of association and freedom of speech—by forcing them to join unions as a precondition of employment and to support political activity with which they may not agree through the compulsory payment of union dues. Abolishing unions' monopoly bargaining privilege, which is codified in the NLRA would end this anachronistic system.

Meanwhile, Congress should resist measures that would make the situation worse, such as the misleadingly named Employee Free Choice Act (EFCA), which would allow unions to circumvent secret ballot elections through "card check organizing, enjoin a federally appointed arbitrator to impose a contract on a newly unionized companies if the union and management do not reach an agreement after 120 days, and increase employer penalties for "unfair labor practices," which would give unions another blunt instrument with which to pressure employers.

Having failed to enact EFCA into law, organized labor and the Obama administration have indicated a willingness to make an end run around Congress by imposing some of EFCA's provisions through the regulatory process, mainly through the National Labor Relations Board (NLRB).

The NLRB is now considering allowing remote electronic voting (E-Voting), which would allow unions to conduct organizing elections via phone or the Internet. The NLRB says it wants to keep the voting secret but it would not be hard for a union organizer using a laptop computer or some other mobile device to pres-

sure an individual worker to vote for the union. Allegations of mail fraud and voter intimidation were rampant in a 2009 mail election fight in California. E-Voting could lead to similar intimidation and fraud.

The NLRB is also considering expedited elections, which essentially would function as ambush elections. Employers would have very little time to respond to union organizing campaigns, thus giving the union a significant advantage.

In addition, the NLRB has decided to revisit its 2007 *Dana Corp.* decision, which affirmed employees' right to call for a secret-ballot decertification election in instances where a union has been certified through card check.

Congress should resist any efforts to impose parts of EFCA, or other rules that tilt the playing field in favor of unions against employers.

Ivan Osorio and F. Vincent Vernuccio