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Chad Alan Goldberg: Secret ballot is a red herring

Chad Alan Goldberg
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The Employee Free Choice Act would make it easier for workers to organize by strengthening the penalties for unfair labor practices, ensuring mediation and arbitration when newly certified unions cannot get a first contract, and allowing employees -- not their employers -- to choose how they form unions: casting ballots or signing cards authorizing union representation.

The bill's majority sign-up provision draws the most criticism. Employers oppose the Employee Free Choice Act to protect their power and profits, but they appeal to democratic principle to undermine public support for it. In a typical denunciation, a Wal-Mart spokesman warned (incorrectly) that the bill "would effectively eliminate ... the right to a secret ballot election." Likewise, the Coalition for a Democratic Workplace, a federation of business groups, decried the hypocrisy of lawmakers who "use a secret ballot to protect themselves" but would allow its circumvention in union-organizing elections.

Such high-sounding principles notwithstanding, it is employers who show hypocrisy and disregard for democratic practices. To say that the majority sign-up option would invite illegal intimidation of workers implies that the current system is free of such intimidation. But according to the National Labor Relations Board, corporations have in recent decades increasingly engaged in unfair and illegal labor practices, threatening, interrogating, spying on, suspending, and outright firing workers for pro-union activities. Such extensive intimidation and retribution by employers shows that the current system is neither free nor fair and that the secret ballot fails to provide the protection that employers claim.

Moreover, secret voting is not as indispensable to democracy as opponents of the Employee Free Choice Act suggest. States did not begin to adopt the secret ballot until 1888, which means that for more than a century it was not even a part of American democracy. Even today, there are many contexts in which Americans continue to vote openly without questioning the legitimacy of the results: school boards, town meetings, roll-call votes in Congress, and even (in contested elections)

Wal-Mart shareholders' meetings. None of this means that Americans should never vote secretly, only that we do not and need not take the rigid position that secret voting must be mandatory in every situation.

Finally, in their zeal to attack the majority sign-up option as undemocratic, opponents of the Employee Free Choice Act recall only the abuses of public voting and not its democratic benefits. Perhaps the most eloquent statement of those benefits was provided by John Stuart Mill, the British philosopher celebrated for his defense of representative democracy, individual liberty, and women's rights.

Secret voting, Mill lamented, encourages the view that one is "under no obligation to consider the wishes or interests of any one else." This view is deeply opposed to the ideal of solidarity at the heart of both democracy and unionism. How one votes, Mill pointed out, does not concern oneself alone; voting always involves the exercise of power over others, which makes it a public trust. Accordingly, the vote must express the voter's consideration of what is best for all, not merely a personal preference. Publicity, Mill argued, ensures this kind of public-spirited voting.

While the secret ballot isolates citizens and privatizes the voting process, open voting encourages citizens to discuss and justify their views and decisions to the political community of which they are a part and to orient their preferences to the public good. In this way, citizens educate one another, hone their judgment, and develop the virtues they need to participate effectively in self-rule.

Through their unions, American workers have struggled to extend democracy from the polling booth to the workplace. The Employee Free Choice Act would reinvigorate this endeavor -- not despite public methods of organizing, but because those methods dovetail with democratic ideals of transparency, publicity, and public-spiritedness.

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