

# CLIENT ALERT

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## Employee Free Choice Act

### Free Choice Or No Choice At All

By  
Michael A. Gamboli, Esq.  
Michael J. Murray, Esq.

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Michael A. Gamboli



Michael J. Murray

One of the most controversial pieces of legislation making its way through Congress is the "Employee Free Choice Act" (H.R. 800). Adoption of H.R. 800 would dramatically change the way unions are certified and thus represents the most significant change in the National Labor Relations Act in over 50 years.

Presently, a union may only be certified as a collective bargaining agent through a secret ballot election of employees administered by the National Labor Relations Board (NLRB). Secret ballots are designed and used to prevent management or labor unions from unduly influencing employees through fraud, coercion or other inappropriate tactics. The secret ballot process is of course a cornerstone of our democracy, and is favored by the NLRB and the Supreme Court. Organized labor, claiming that the secret ballot unfairly favors management, has proposed H.R. 800, which would allow certification of a labor union where management is simply presented with authorization cards signed by a majority of employees in the workplace. In fact, with the authorization system (called a

"card check" system) union organizers, not the government, oversee the process and employees may be required to cast their vote in front of not only their employer, but union organizers and co-workers. Once a majority of the company's employees signs a card consenting to the union, the union is automatically certified as the workers' bargaining agent. Not surprisingly, organized labor has designated H.R. 800 as its number one priority in the current legislative session.

Those opposed to the legislation claim that non-secret elections are ripe for abuse, and cite many examples where non-secret elections have been successfully challenged on the basis of coercion, misrepresentation or fraud. Further, opponents argue (quite correctly) that organized labor has conveniently forgotten that it succeeds in most secret elections, and what is really happening is that organized labor's numbers are dwindling and they believe the passage of H.R. 800 is a way to reinvigorate nationwide union membership by easing the requirements for union certification.

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Authors  
Michael A. Gamboli, Esq.  
Michael J. Murray, Esq.

As members of the Firm's Employment and Labor Group, both Mr. Gamboli and Mr. Murray have significant experience representing employers in union matters, including union avoidance and union organizing drives, disputes before the National Labor Relations Board, grievance and arbitration matters, and collective-bargaining negotiations and contract administration.

If you have questions about this Client Alert or other Employment and Labor law issues, please feel free to contact Mr. Gamboli or Mr. Murray.

Despite opposition and the fact that similar legislation has died in committee in prior years, with the shift in control on Capitol Hill, H.R. 800 is making its way through Congress with little difficulty. On February 14, 2007, the House Education and Labor Committee approved the bill, and the full House passed the legislation on March 1, 2007 by a vote of 241-185. Employers need not panic just yet as the legislation must still pass the Senate and even then most commentators believe that President Bush will veto any form of H.R. 800 that actually makes it to his desk.

In the meantime, expect propaganda from both sides of this issue to become more pronounced. Major unions such as the AFL-CIO and Change to Win are allocating significant time and money to support H.R. 800, arguing that the secret ballot process discriminates against unions. However, opponents such as the National Retail Federation and the U.S. Chamber of Commerce are equally committed to defeating the bill, arguing

that unions are trying to avoid competition and that the only way to ensure fair elections is to make them secret and have them overseen by an independent party. If the legislation does pass, organized labor will undoubtedly engage in a very active nationwide campaign to organize large and small work places pursuant to the card check provisions.

Not to be left out, Rhode Island has pending similar legislation, Senate Bill 0684, which, similar to H.R. 800, would amend the State Labor Relations Act to provide for the certification of a union through presentation of authorization cards demonstrating interest in union representation by a majority of the employees in the bargaining unit.

On both federal and state levels, this fight is just getting started, and should prove to be one to watch during the coming months.

*Stay tuned.*

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Providence Office  
180 South Main Street  
Providence, RI 02903-7120  
Tel: 401-861-8200

SouthCoast Office  
128 Union Street  
Suite 500  
New Bedford, MA 02740-6254  
Tel: 774-206-8200

Boston Office  
101 Federal Street  
Suite 1900  
Boston, MA 02110-1800  
Tel: 617-342-7361

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