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Unions Use Corporate Campaigns to Circumvent Employees' Right to Vote

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Corporate campaigns have become organized labor's preferred tactic to recruit new dues-paying members. In a corporate campaign, unions hit companies with constant negative publicity, litigation, and regulatory investigations that put severe financial pressure on the firm. In most cases the company has done nothing wrong, but the union will not let up until it agrees to recognize the union without a worker vote. Corporate campaigns help unions organize workplaces where most workers oppose unionization and put non-union employees out of work. To prevent unions from pressuring companies into giving up their workers' rights, Congress should allow blackmail suits against unions employing corporate campaigns and act to guarantee every worker the right to vote on joining a union in privacy.

Unions Oppose Letting Workers Vote. Union membership has fallen steadily since the 1950s. Today just 12 percent of Americans belong to a union, the lowest number since Franklin Delano Roosevelt's presidency.¹ Falling membership, and thus less dues income, has put financial strains on organized labor.

To recruit new dues-paying members, unions have turned to card-check organizing instead of traditional secret ballot elections. In card checks, organizers visit a worker's home, give a one-sided sales pitch, and ask the worker to sign a union authorization card on the spot.² If workers do not sign immediately, the organizers return again and again until they do. Unions usually have little difficulty obtaining signatures from a majority of workers at a company using card checks.

Once they do so, they present the cards to the company and demand union recognition without letting workers first cast a private vote. Unions know that many workers who do not want to join a union will sign cards just to get organizers to stop harassing them at home but then vote against the union in the privacy of the voting booth.³ Under the current law, however, employers may insist that their employees get to vote before recognizing the union. Labor activists want to change the law to take away organizing elections. But for now, unions must convince a company to waive its employees' right to vote in order to organize a firm where most workers do not want to join.

Financial Attacks. Very few companies will voluntarily take away their employees' right to vote.⁴ Consequently, unions have turned to corporate campaigns to force companies to do so. In a corporate campaign, unions use every tool at their disposal to put severe financial pressure on a non-union company. The assault continues until the company agrees to card check in place of a vote. Bruce Raynor, President of UNITE HERE, explained that employers "think we are out of our minds and the result is we win...because we're willing to do what's necessary. We're not businessmen, and at the

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end of the day, they are. If we're willing to cost them enough, they'll give in."⁵

Unions have many ways of putting pressure on companies. In most corporate campaigns, unions or union-backed front groups allege corporate misconduct in order to generate negative publicity and drive away customers. For the union, the truth of these allegations is beside the point.

For example, unions attempting to exert pressure on the New Otani Hotel in Los Angeles distributed flyers to tourists arriving at the airport alleging that the hotel had roaches in the kitchen, served spoiled food at its restaurants, and had received numerous health code violation citations. These sensational allegations were unsubstantiated and based on anonymous employee "tips." Virtually all the health code violations were for trivial matters such as the height of a sneeze guard.⁶ Despite being highly misleading or false, the allegations drove away customers.

Unions also bring external pressure to bear on companies. They file charges alleging regulatory violations and goad the government to investigate the firm. These government investigations are intended to both generate bad publicity and to cost the company money to defend itself. One union organizing guidebook explains:

Private companies are subject to all sorts of laws and regulations, from the Securities and

Exchange Commission to the Occupational Safety and Health Act, from the Civil Rights Act to the local fire codes. Every law or regulation is a potential net in which management can be snared and entangled. A complaint to a regulatory agency can cause the company managerial time, public embarrassment, potential fines, and the cost of compliance. One well placed phone call can do a lot of damage.⁷

That is exactly what happened to Sutter Health in California, which faced union-instigated investigations from the IRS, the Department of Defense, the Department of Health and Human Services, the Health Care Finance Administration, the Federal Trade Commission, and the National Labor Relations Board.⁸ Most of the charges were baseless, but the union succeeded in its goal of imposing financial harm.⁹ The unions' ultimate goal is not good corporate citizenship but pressing the company to deny its employees their right to vote.

Corporate Campaigns Hurt Workers. Unions claim that they wage corporate campaigns to stand up for workers. Their actions, however, show that their principle goal is signing up more dues-paying members. Unions frequently sacrifice workers' interests during corporate campaigns when it helps them organize more workers.

1. Department of Labor, Bureau of Labor Statistics, "Union Members in 2006," News Release, January 25, 2007, at www.bls.gov/news.release/union2.nr0.htm (March 29, 2007).
2. James Sherk, "How Union Card Checks Block Workers' Free Choice," Heritage Foundation *WebMemo* No. 1366, February 21, 2007, at <http://www.heritage.org/Research/Labor/wm1366.cfm>.
3. James Sherk, "Unions Know that Card Check Does Not Reveal Employees' Free Choice," Heritage Foundation *WebMemo* No. 1386, March 7, 2007, at <http://www.heritage.org/Research/Labor/wm1386.cfm>.
4. Brudney, James J., "Neutrality Agreements and Card Check Recognition: Prospects for Changing Paradigms," *Iowa Law Review*, Vol. 90, 2005, at SSRN <http://ssrn.com/abstract=625383> (see section C). While the article focuses on the reasons companies voluntarily agree to card-check, Brudney notes these cases are the minority and most companies agree to card-check to avoid the financial costs associated with a corporate campaign.
5. Testimony of Professor Jarol B. Manheim, George Washington University, before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, July 23, 2002, at <http://republicans.edlabor.house.gov/archive/hearings/107th/wp/uniondues72302/manheim.htm>.
6. Testimony of Ron Kipling, Director of Room Operations, New Otani Hotel, Los Angeles, before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, July 23, 2002, at <http://republicans.edlabor.house.gov/archive/hearings/107th/wp/uniondues72302/kipling.htm>.
7. Dan La Botz, "A Troublemakers Handbook: How to Fight Back Where You Work and Win!," Published by Labor Notes, January 1991.
8. Testimony of Jarol B. Manheim before the Subcommittee on Workforce Protections.
9. *Ibid.*

Corporate campaigns exist to pressure companies to waive their employees' right to vote. Workers strongly oppose losing their right to vote, but that does not deter labor activists.¹⁰ Companies attacked in an organizing campaign often ask for a secret ballot election to determine whether their employees want to unionize, but unions refuse these requests.¹¹

Unions oppose elections because they know that card checks allow them to organize workplaces where most workers do not want to join a union. United Food and Commercial Workers Organizer Joe Crump candidly stated that with a corporate campaign and card checks "you don't need a majority or even 30 percent support among the employees."¹² "Waging economic war on an unorganized company" obviously alienates workers, but Crump advises organizers to do so regardless because "if you had massive employee support, you probably would be conducting a traditional organizing campaign."¹³ Many union organizers value an employee's views only when that worker wants to join a union.

Sometimes corporate campaigns have a different goal: to put non-union firms out of business so they cannot undercut their unionized competitors. Crump explained that the UFCW aims for

[E]ither a ratified, signed collective bargaining agreement with a previously non-union employer or a curtailment of a nonunion operator's business, including shutting the business down.... [A]fter a three-year struggle, the battle with [nonunion grocery store] Family Foods is over. Do we represent the employees? No. The company went out of business.¹⁴

Unions would rather nonunion workers lose their jobs because of a corporate campaign than have those workers compete against union members.

What Congress Should Do. Congress should act to protect companies and their workers from corporate campaigns. First, Congress should make it clear that federal blackmail statutes do cover corporate campaigns. Currently unions argue that corporate campaigns are protected activities under federal labor law. Although lawyers debate this claim, Congress should remove the ambiguity by clearly allowing blackmail suits against unions engaging in corporate campaigns.

Second, because unions use corporate campaigns to pressure companies into waiving their workers' right to a private vote, Congress should take this option away from employers. Congress should pass legislation guaranteeing every worker the right to vote before joining a union and preventing companies from recognizing a union on the basis of publicly signed cards. Workers should not lose their right to vote because unions put financial pressure on their employer.

Conclusion. Union membership has fallen for decades, and organized labor needs new members to remain viable. Unions have turned to card check to allow them to organize at companies where most workers do not want union representation. But because few companies voluntarily agree to waive their employee's right to vote in privacy, unions have turned to corporate campaigns. These are designed to force a nonunion company to recognize a union without a vote or to put the company out of business. Too often, companies suffer bad publicity, litigation, and government investigations due to union pressure tactics and not their own wrongdoing. Congress should protect the rights of American workers by clearly including corporate campaigns in federal blackmail statutes and by passing laws guaranteeing workers a private vote before their workplace organizes.

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10. James Sherk, "Workers Reject Card Checks, Favor Private Ballots in Union Organizing," Heritage Foundation *WebMemo* No. 1363, February 16, 2007, at <http://www.heritage.org/Research/Labor/wm1363.cfm>.

11. See testimony of Ron Kipling before the Subcommittee on Workforce Protections.

12. Joe Crump, "The Pressure is On: Organizing Without the NLRB," *Labor Research Review*, Volume 18, Fall/Winter 1992, p. 43.

13. *Ibid*, page 42.

14. *Ibid*, pp. 34–35.