Backgrounder

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Time for Congress to Work Under the Same Rules as the Private Sector

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Abstract: *All too often, Congress imposes restrictive and burdensome regulations on employers in the private sector—while conveniently exempting itself from these same rules. Many Members of Congress are currently urging passage of the misnamed Employee Free Choice Act and RESPECT Act, which, again, would leave Congress untouched. This paper demonstrates the hypocrisy of such an approach, and urges Congress to either swallow its own medicine or to extend the same rights to the private sector that it claims for itself.*

Many Members of the current Congress support passage of the misnamed Employee Free Choice Act (EFCA) and the RESPECT Act—laws that would push workers into joining unions. They argue that unions benefit workers and the economy. Yet Congress's own employees do not have the right to form a union—making Congress exempt from the consequences of the very union laws it might pass. If Congress believes—as it claims—that unions do not excessively burden private-sector employees and employers, Congress should allow its own staff to unionize under the National Labor Relations Act (NLRA). Congress should not exempt itself from the rules and regulations it imposes on businesses across the country.

Organized Labor Lobbies for More Power

Most non-union workers—81 percent, according to a recent Rasmussen poll—do not want to form unions at their workplaces.[1] Federal employment

Talking Points

- Many Members of Congress support the misnamed Employee Free Choice Act (EFCA) and the RESPECT Act—laws that would tilt the legal landscape to push workers into joining unions.
- Congress argues that unions benefit workers and the economy. But Congress's own employees do not have the right to form a union—making Congress exempt from the consequences of the very union laws it might pass.
- Congress has developed two separate sets of labor polices: one for the private sector, another for itself.
- If Congress actually believes—as it claims—that unions do not excessively burden private-sector employees and employers, why does Congress prevent its own staff from unionizing?
- Congress should not press workers to join or not join unions, but stay neutral between both choices. Congress should stop forcing private-sector employers to swallow a pill that Congress refuses to swallow itself.

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law and modern human resource policies, as well as the increasing focus on individual skills in the workplace, have reduced the need for union representation. Consequently, private-sector union membership has fallen sharply over the past 25 years. Today, just 7.6 percent of private-sector workers belong to a union, down from 16.5 percent in 1983.[2]

Congress should not stack the deck by pushing workers into collective bargaining.

Organized labor has responded by lobbying strongly for legislation that increases union power over employees and employers in order to make it easier to recruit new dues-paying members. The Employee Free Choice Act (EFCA) is anything but—abolishing secret-ballot elections for union formation, making it hard for workers to turn down a union's offer to join. It also empowers government officials to dictate contracts to newly organized workers and firms in the private sector. The RESPECT Act similarly penalizes the workplace. By narrowly defining "supervisors" as employees who spend a majority of their time hiring or disciplining employees, the RESPECT Act would re-establish the strict and hierarchical labor-management divisions that characterized the workplace until the mid-20th century. Instead of allowing workers the freedom to decide whether to join a union, EFCA and the RESPECT Act would pressure workers to unionize.

Many Members of Congress support these bills. They argue that unions improve the workplace and that these proposals will not unduly hinder business operations or curtail workers' rights. If this is true, Congress should live under the same law.

Congressional Staff Not Covered by Unionizing Statutes

Since the National Labor Relations Act applies only to the private sector, congressional employees are prohibited from forming unions. Section 2 .2 of the NLRA specifically excludes public-sector employers from the act's definition of "employer":

> The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act…

In order to enforce the Federal Service Labor-Management Relations statute, which allows federal employees to organize and bargain collectively, Congress created the Federal Labor Relations Authority (FLRA) in 1978.[3] However, because the Federal Service Labor-Management Relations statute *excludes* legislative employees, including those working in "the personal office of any Member of the House of Representatives or of any Senator," congressional employees remain unable to organize.

Should Congress Play by Its Own Rules?

Congress should not stack the deck by pushing workers into collective bargaining. The law should leave that choice to employees and should neither encourage nor discourage unionizing. If, however, Congress believes that unionizing best protects the rights of private-sector employees and does not harm business operations, Congress should allow its own staff to organize and bargain collectively under the same laws it wants to impose on private-sector workers. Although unionizing the Hill is hardly a desirable outcome, it is curious that Congress refuses to apply the laws it devises for the private sector to its own workplaces. Legislatively speaking, it would be fairly simple—Congress could simply include itself under the National Labor Relations Act's definition of an employer.

1. Rasmussen Reports, "Only 9% of Non-Union Workers Want to Join a Union," March 16, 2009. Sample of 1,000 adults conducted March 13–14, 2009, with a margin of error of + or – 3 percent.
2. Barry T. Hirsch and David A. Macpherson, "Union Membership and Coverage Database from the Current Population Survey: Note," *Industrial and Labor Relations Review*, Vol. 56, No. 2 (January 2003), pp. 349–354.
3. The FLRA does not cover employees of the United States Post Office.

"Card Check" Impact on a Congressional Office

Many Members of Congress argue that replacing secret-ballot elections with publicly signed cards ("card check") and allowing government arbitrators to impose contracts on employees and employers will not excessively burden business operations. Again, if this is what Members of Congress truly believe, why do they not apply the provisions of EFCA to their own staff?

If Congress extended the NLRA to include itself, card check would also apply to congressional offices. If EFCA passed, congressional staff, too, would lose the privacy of the voting booth. Additionally, 100 days after a majority of staff in a congressional office signed union cards and began bargaining for a contract their union could request mediation by the Federal Mediation and Conciliation Service (FMCS). EFCA mandates that "the FMCS shall refer the dispute to an arbitration board established in accordance with such regulations as may be prescribed by the service."[4] In essence, under EFCA's arbitration clause, the government would be able to dictate key private-sector businesses decisions.

EFCA supporters simply dismiss private employers' fears that unknowledgeable bureaucrats could impose impossible contracts and bankrupt their firms.

Many private-sector employers have argued against giving government bureaucrats this level of control over their businesses. They fear that unknowledgeable bureaucrats could impose contracts that prove impossible to work with, and could bankrupt their firms. Congressional supporters of EFCA have simply dismissed these fears. Yet, if EFCA applied to Congress, government officials would determine how many people each Member of Congress hires, as well as their salaries, promotion procedures, and their retirement and health benefits.

Redefining Supervisors

Some Members of Congress have proposed eliminating the NLRA's definition of "supervisor" in the RESPECT Act.[5] Under the NLRA, unions are not allowed to accept company supervisors as members because they help manage the company. If the RESPECT Act became law, the only employees who would be considered supervisors would be those who spend a majority of their time hiring, transferring, suspending, laying off, recalling, promoting, discharging, rewarding, or disciplining other employees. Very few employees at any firm spend the majority of their time on these matters.[6]

If Congress applied the RESPECT Act to itself, chiefs of staff and legislative directors would become part of the collective bargaining unit. Very few of them spend a majority of their working time hiring, promoting, and laying off employees. As a result, most chiefs of staff and legislative directors would become members of the union bargaining unit. Consequently, automatic seniority promotions—not decisions by Members of Congress—would determine who served in these positions. Grievance procedures would make it next to impossible to lay off ineffective legislative directors and chiefs of staff. This could reduce their effectiveness on the job. Yet, Congress wants to return private-sector supervisors to the bargaining unit, claiming no undue hardship will result.

Unions Ban Merit Wages

Giving congressional staffers the same *rights* to collectively bargain as private employees would also impose on Congress the same *restrictions* that the National Labor Relations Act (NLRA) imposes on private workers and their employers. In the non-unionized private sector, most workers are

4. James Sherk, "EFCA Authorizes Government Control of 4 Million Small Businesses," Heritage Foundation *WebMemo* No. 2341, March 12, 2009, at *http://www.heritage.org/Research/Labor/wm2341.cfm*.
5. James Sherk and Ryan O'Donnell, "How the RESPECT Act Hurts Companies and Employees Alike," Heritage Foundation *Backgrounder* No. 2277, May 28, 2009, at *http://www.heritage.org/Research/Labor/bg2277.cfm*.
6. *Ibid*.

evaluated on the basis of merit, earning promotions, raises, and bonuses according to their performance. Congress also operates this way: 57 percent of congressional offices offer annual merit-based raises.[7] Like non-union private-sector employers, Members of Congress generally treat workers as individuals and reward individual exemplary performance with higher pay. Employees can get ahead by working hard.

The NLRA makes earning raises very difficult for union members. Employers are not allowed to pay individual union members more than dictated by their contracts without negotiating with the union bosses—who rarely agree to merit raises. Most union contracts base salaries on seniority systems and job classifications.[8] As a result, no matter how productive an individual union member is, he cannot earn more than the amount specified in his union contract.

Congress has developed two separate sets of labor polices: one for the private sector, another for itself.

Union members chafe under this restriction because they, like anyone else, want the opportunity to get ahead. Employers want to use incentives that result in worker productivity that raises wages *and* profits. If Congress believes that preventing merit bonuses does not hinder productivity, it should not hesitate to allow its own workers to unionize and accept that consequence. If Congress believes that merit pay improves productivity, it should allow unionized private-sector employers to offer merit pay as well. The proposed Rewarding Achievement and Incentivizing Successful Employees (RAISE) Act would lift the wage ceiling that unions impose on their members.[9]

Time for Congress to Live by Its Own Rules

Congress has developed two separate sets of labor polices: one for the private sector, another for itself. If Congress believes that expanding collective bargaining through legislation like the RESPECT Act and EFCA benefits workers and improves the workplace, it should have no difficulty living under these same laws and allowing its employees to organize under the National Labor Relations Act. The same restrictions Congress wants to impose on union and non-union private-sector employees—the seniority wage ceiling, government-imposed contracts, eliminating the secret ballot during union organizing drives, and the loss of managerial status for supervisory employees—should also apply to Congress.

It is time for Congress to stop forcing private-sector employers to swallow a pill that Congress refuses to swallow itself.

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7. ICF International, "2006 House Compensation Study: Guide for the 110th Congress," Chief Administrative Office, U.S. House of Representatives, survey conducted July–August 2006.
8. David Metcalf, Kirstine Hansen, and Andy Charlwood, "Unions and the Sword of Justice: Unions and Pay Systems, Pay Inequality, Pay Discrimination and Low Pay," *National Institute Economic Review*, Vol. 176, No. 1 (2001), pp. 61–75; Richard B. Freeman, "Union Wage Practices and Wage Dispersion Within Establishments," *Industrial and Labor Relations Review*, Vol. 36, No. 1 (October 1982), pp. 3–21; and Assar Lindbeck and Dennis Snower, "Centralized Bargaining and Reorganized Work: Are They Compatible?" *European Economic Review*, Vol. 45 (2001), pp. 1851–1875.
9. S. 1184, H.R. 2732

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