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January 14, 2011

U.S. Plans to Sue 4 States Over Laws Requiring Secret Ballots for Unionizing

By STEVEN GREENHOUSE

The [National Labor Relations Board](#) announced on Friday that it planned to sue Arizona, South Carolina, South Dakota and Utah in an effort to invalidate recently approved state constitutional amendments that prohibit private sector workers from choosing a union through a process known as card check.

The [labor board asserts](#) that the amendments conflict with federal laws and are pre-empted by those laws.

The state amendments were promoted by various conservative groups concerned that Congressional Democrats and [President Obama](#) would enact legislation allowing unions to insist on using card check, in which an employer recognizes a union as soon as a majority of workers sign pro-union cards. That method makes it possible for employees to unionize without elections. But Congressional Republicans blocked such legislation.

Under current law, employers can insist that secret ballots be used when unions are trying to organize private sector employees. But unions had hoped that the card check bill would make it easier to unionize workers because card check lets them gather majority support, often without giving

employers the opportunity to campaign against the union.

The four states would require using secret-ballot elections when workers are deciding whether to unionize even though federal law makes card check an option.

Voters passed the amendments requiring elections as ballot initiatives in November, giving 60 percent approval in Utah, 61 percent in Arizona, 79 percent in South Dakota and 86 percent in South Carolina.

The labor board said, "The four amendments differ in language, but all conflict with federal law by closing off a well-established path to union representation recognized by the [Supreme Court](#) and protected by the National Labor Relations Act."

The board has asked its acting general counsel to inform the states that he will file suit, if necessary, to enjoin the state measures.

State officials said they would vigorously defend the amendments. Mark Plowden, a spokesman for South Carolina's attorney general, said: "South Carolina voters spoke overwhelmingly to ensure that their ballot votes are kept between them and their maker — not to be influenced by union bosses. If that right is challenged, our office is prepared to defend it in court."

Mark Shurtleff, Utah's attorney general, said he was preparing a detailed legal rebuttal that he would ask the three other states to join.

"We believe we're on very strong ground on this one," he said. "The right to a secret ballot vote is as fundamental as the birth of this nation. We can't believe you can change that by federal law."

But several law professors said that since the federal government had traditionally overseen labor law, state law should be pre-empted.

"Secret-ballot elections are usually the best way to determine employee choice, but they are not the only way permitted by federal law," said Samuel Estreicher, a labor law professor at [New York University](#). "The states have no authority dictating which method employees use in deciding whether

to be represented by a union.”



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