

TO:  
Industry Leaders

FROM:  
Jade West, Senior Vice President-Government Relations  
National Association of Wholesaler-Distributors

**“I put a little caveat in my floor statement: Card check is going to come back. It’ll be reconsidered. And we may be, America may be looking at a Senate which has 60 or more Democrats, and I think that behooves Republicans and the business community to try to resolve this.” Senator Arlen Specter, quoted in “Politico,” March 26, 2009**

You have no doubt heard about Pennsylvania Senator Arlen Specter’s welcome announcement that he will oppose cloture on the Employee Free Choice Act. Senator Specter’s announcement was obviously great news, and denies labor the 60 votes they need for cloture – at least for right now. However, we cannot assume victory at this point and have to maintain our full commitment to the effort to block this legislation. As you can see from the quote above, Senator Specter himself said, “Card check is going to come back. It’ll be reconsidered.”

Labor responded to Senator Specter’s announcement by declaring that they will now redouble their campaign for EFCA. We must do the same.

### **Senator Specter’s Announcement:**

Senator Specter (R-PA) was the only Republican to support cloture on EFCA in 2007. Were he to support cloture again this year, his would be the 59<sup>th</sup> vote, leaving the Democrats only one vote short of the 60 needed for success (and making the final outcome of the still-undecided Minnesota Senate race critically important).

His statement yesterday that he intends to vote against cloture was a major setback for organized labor. EFCA opponents very much appreciate his announcement, and have told him so. However, we are a long way from assured victory and Senator Specter’s political situation in Pennsylvania and his own words remind us of that uncertainty.

Senator Specter is one of the most liberal Republicans in the Senate, is up for re-election next year, and faces a challenge in the Republican primary from Pat Toomey, a former conservative Congressman who ran a very competitive race against Specter in the 2004 GOP primary. A poll released in the last week shows Toomey running about 14 points AHEAD of Specter in the primary. With Mr. Toomey a vocal critic of EFCA, his primary challenge to Senator Specter almost certainly was a factor in the Senator’s decision to announce his opposition to cloture at this time.

But in announcing that he would vote against cloture, Senator Specter made it very clear that he would support amendments to the National Labor Relations Act, that compromise

was still possible, and that he might well reconsider his opposition to EFCA when the economy improves.

And he made his willingness to reverse himself – and/or to support compromise legislation – very clear in his statement this morning to *Politico*: “I put a little caveat in my floor statement: Card check is going to come back. It’ll be reconsidered,” he said. “And we may be, America may be looking at a Senate which has 60 or more Democrats, and I think that behooves Republicans and the business community to try to resolve this.”

### **Potential Compromises:**

There are a number of potential compromise proposals being floated by those attempting to resurrect EFCA; the main argument of most of the proponents of compromise is that Federal labor law is unbalanced in favor of employers and that we need to “level the playing field.” The employer coalition fighting card check has not agreed to compromise negotiations and does not accept the premise that unions are disadvantaged under current law. Some of the potential compromises are as unacceptable as the provision of EFCA, specifically:

\*\*\*The so-called 70/50/30 proposal would allow automatic certification by card check if the union obtains the signatures of 70 percent of the workers; require a quickie election within 15 days if 50 percent sign cards, and allow union officials on company property to campaign for signatures if 30 percent sign. This proposal is flawed and unacceptable in every stage. Card check with a super majority still denies a private ballot election; unions can and do achieve 70 percent of worker signatures then lose secret ballot elections. Quickie elections and premise access are addressed in the next two points.

\*\*\*Today elections normally occur within 42 days of a successful organizing campaign; under the “quickie election” compromise elections would have to occur within a shorter time frame, possibly as short as two weeks. A quickie election would clearly advantage the unions since they would be campaigning for votes while the company was obligated to be setting up the election mechanics. Further, small businesses are particularly threatened by quickie elections since they are less likely to have labor counsel or other resources necessary to handle the elections.

\*\*\*Premise access proposals range from allowing union organizers access to employees in a “neutral setting” on off-hours, to proposals requiring employers to allow paid union organizers access to their company property to campaign for votes. It is noteworthy that under current law employees who are involved in organizing for the union do have access to their colleagues on property, paid union organizers have access to the workers off-property, and the employer may NOT contact employees about a union effort off-property or during non-work hours. The playing field is already level and any proposal giving paid union organizers access to employees on company property would clearly tip the field to the unions.

**Call to Action:**

The battle to defeat EFCA, or any unacceptable compromise, is clearly far from over. We very much appreciate what you have already done – the calls and letters to Congress are obviously having the intended effect. It is vital that we all continue to communicate with Members of Congress at every opportunity.

If you haven't written them, please do so.

Congress will be adjourning for two weeks for Easter, and most Members of Congress will be at home from April 4<sup>th</sup> through 16<sup>th</sup>. Calls to their state and/or district offices during these two weeks will have a particular impact. Also, a lot of Members have town hall meetings during these district work periods. Look for notices of these town hall meetings in your local paper or in the mail, and take advantage of the opportunity to ask them where they stand on this critical issue.

Thank you again for all you are doing and will yet do.