

## Arizona District Court Upholds State Secret Ballot Law For Union Elections

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In a [long-awaited opinion](#), the Arizona federal district court dismissed a lawsuit brought by the NLRB challenging an Arizona constitutional provision which requires that union elections be conducted by secret ballot. The opinion, dated yesterday, is a blow to the NLRB, which had [taken the position](#) that the state's secret ballot constitutional provision was facially invalid because it was preempted by federal labor law. The district court found that the constitutional provision did not on its face conflict with the NLRA, but left open the possibility that the law could be challenged "as-applied" to a specific case.

The secret ballot provision had been added to the Arizona constitution in response to the Employee Free Choice Act (EFCA) proposed in Congress in 2009, which would have required an employer to recognize a union if a majority of employees signed cards stating their desire for representation. This "card check" method of recognition is currently allowed by the NLRA, but employers have the option of demanding that election of the union be confirmed by a secret ballot. South Carolina, South Dakota, and Utah all passed similar constitutional amendments.

The NLRB took the position in January of 2011 that such provisions impermissibly conflicted with the NLRA and [threatened to file a lawsuit](#) to enjoin the states from enforcing the laws. The Board ultimately sued only Arizona in what many saw as a test case for challenges in other states. Yesterday's opinion would seem to put an end to those challenges, but the NLRB has already [issued a statement](#) emphasizing the district court opinion's language that "as applied" challenges may still be appropriate.

NLRB Chairman Mark Gaston Pearce responded to the decision: "Although we continue to believe that a preemption finding should have been made, we are very pleased that the court recognized that these choices are guaranteed to employees by federal law and cannot be taken away by the states."

This suggests that the NLRB may take another crack at the law in the future. An appeal of the court's opinion to the Ninth Circuit is also a possibility.

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