

SOS Ballot: An Interview with Ernest Istook

By F. Vincent Vernuccio

Summary: Ernest Istook, Chairman of Save Our Secret Ballot (SOS Ballot), was interviewed by former Labor Department official F. Vincent Vernuccio in May. Istook was a Republican member in the U.S. House of Representatives from Oklahoma (1993-2007) and currently he is a Distinguished Fellow at The Heritage Foundation, though the opinions expressed here are his own. Save Our Secret Ballot is a 501(c)(4) nonprofit dedicated to the protection of the secret ballot in union organizing elections through direct democracy.

Labor Watch (LW): What are the origins of Save Our Secret Ballot?

Hon. Ernest Istook: Save Our Secret Ballot originated with Tim Mooney and Chuck Warren. They are political consultants who understand how citizen ballot initiatives at the state level can achieve government reforms. This is a process elected officials too often ignore or neglect. Many of us are concerned that Congress and the Obama Administration are ignoring the fundamental principle of the secret ballot. We've seen that supporters of the mis-named Employee Free Choice Act (EFCA) want to put this bill on a fast-track through Congress. EFCA would allow unions to bypass secret ballot elections when labor bosses try to unionize companies. They just want workers to sign a card agreeing to unionization, which is why EFCA is also called "card-check." Recognizing the intensity of the unions to push this bill through Congress, Tim and Chuck knew that we needed an effort that didn't rely on Washington, DC.



Save Our Secret Ballot Chairman Ernest J. Istook

LW: How did you get involved?

Istook: I was one of the persons they contacted. It didn't take much persuasion, since I quickly saw the need and the value of this effort, which takes a fresh approach to the problem.

LW: What is your role as chairman?

Istook: My role is to get the word out to the

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public, the media, and potential donors and supporters. I just taped a video that we will release soon. I've also spoken at conferences with state activists in our efforts to mobilize citizens and expand our campaign into additional states.

LW: Could you explain how SOS Ballot is working at the state level to protect the secret ballot?

Istook: The approach is simple and principled, which is why Americans rally around it so readily. Most of the mechanisms for conducting elections, even federal elections for Congress and the President, are governed by state laws and regulations. Our goal is to place provisions in state constitutions that will guarantee that secret ballots are required for elections for public office, for deciding ballot issues, and when workers decide whether to unionize.

LW: How will states adopt the constitutional protections proposed by SOS Ballot?

Istook: Every state uses different protocols to add to or change its constitution. There are different requirements and procedures of varying degrees of complexity. Some can require multi-year processes. All these eventually require approval by the voters of a state constitutional amendment. We have launched our effort in states where it is possible to place the issue before the voters in 2010.

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Istook speaking at Capital Research Center's 2009 Summit on Labor Issues

LW: Which elections would be affected if you are successful? Do the proposals simply mandate the secret ballot in union organizing elections or is there a broader scope?

Istook: As our language explicitly states [see below], we are providing secret ballot protection for all elections to public office and on all state issue elections, not merely for union organization elections. Major unions require secret ballots in their own leadership elections; the same safeguard is needed to organize workplaces.

LW: What methods is SOS Ballot using to amend the state constitutions?

Istook: The method varies state-by-state. You can have the state legislature refer a proposal to the people for their decision. Legislative referrals are the simplest. We accomplished that in Utah and are trying to do it elsewhere. In other states we have started the process of circulating petitions to place a ballot initiative before the voters to guarantee the protection of the secret ballot.

LW: What is the wording of a typical state constitutional amendment proposed by SOS Ballot?

Istook: Our sample language is plain, simple

and direct. It reads: *"The right of individuals to vote by secret ballot is fundamental. Where state or federal law requires elections for public office or public votes on initiatives or referenda, or designations or authorizations of employee representation, the right of individuals to vote by secret ballot shall be guaranteed."*

LW: What states have been targeted?

Istook: So far, we are organized and active in Arizona, Arkansas, Colorado, Florida, Georgia, Kansas, Missouri, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, and Utah. We are already on the ballot in Utah, after two-thirds of each house of the legislature approved legislation referring it to voters.

LW: Can you give us a state-by-state breakdown on the status of your efforts to protect the secret ballot?

Istook: State specifics constantly change and we must continually revise and update our efforts. By Labor Day, we hope to finish collecting the necessary signatures in Arkansas, Colorado, Missouri, North Dakota, and South Dakota and to kick-off initiative petition drives in Florida, Massachusetts, Nevada, Oregon, and possibly in Massachusetts and Ohio. In Arizona we are waiting

for the legislature to clear away a backlog of legislation before proceeding. Senator Jon Kyl (R-AZ) has been of special help in that state and nationally. We are on the ballot in one state and have cleared at least one house of the legislature in three others, and are circulating initiative petitions in several.

ARIZONA: We persuaded Arizona Representatives Gabrielle Giffords [D-AZ], Ann Kirkpatrick [D-AZ], and Harry Mitchell [D-AZ] that it was not in their best interests to co-sponsor EFCA by circulating our initiative petitions in their districts and having their constituents send them postcards opposing EFCA. Save Our Secret Ballot's attention is now focused on getting the state legislature to refer our proposal to the people by putting an initiative on the ballot. This can't happen until the state's budget agreement is finalized, clearing the agenda for us. We continue to be assured by the Leadership that it will act to put this on the 2010 election ballot. Arizona has Republican majorities in both houses of the legislature.

ARKANSAS: State Senator Gilbert Baker has re-filed for the SOS Ballot initiative with the help of noted attorney Chris Stewart. We hope to kick-off signature gathering by mid-May and finish gathering of 110,000 signatures by Labor Day. As we do this we also will gather signatures on postcards that will be sent to Senators Blanche Lincoln and Mark Pryor, urging them to support the secret ballot and oppose EFCA in its entirety. We anticipate sending over 100,000 postcards from Arkansas voters to the two Senators' state offices.

CALIFORNIA: We are not active in California at this time, but we are monitoring the situation. The State Senate passed a state card check bill that would end secret ballot elections for farm workers, government employees, domestic workers and railroad workers – all of whom are not covered by the National Labor Relations Act. Similar bills have been vetoed twice before by Governor Schwarzenegger. This shows why we need a SOS Ballot effort in California. But just to circulate petitions for putting a constitutional amendment on the ballot in California would likely require 1,200,000 signatures and cost at least \$2-million.

COLORADO: We are before the Title Board and hope to be gathering signatures by June 1st. The completion date is scheduled for Labor Day. Attorney General John Suthers has joined our National Advisory Board and is likely to be the honorary "first signer" of the initiative petition. As we gather petitions, we will also be sending postcards from voters to Democratic Senator Michael Bennet, with the expectation that we will deliver over 100,000 postcards to his Colorado office by Labor Day.

FLORIDA: Majority Leader Adam Hasner was successful in having the Florida House of Representatives pass the SOS Ballot referral, and Senator Garrett Richter guided the bill through three committees of the state senate and he also secured the 24 Senate votes we need for final passage. However, Senate Rules Committee Chair Alex Villalobos refused to allow the bill to be heard in his committee. Villalobos is the same Senator who single-handedly killed Governor Jeb Bush's effort to put a school voucher amendment on the ballot in 2006. We are exploring the possibility of an initiative effort kick-off on Labor Day, as well as another attempt in the state legislature in the 2010 session.

MASSACHUSETTS: We are not yet active, but it would be great to take this campaign to the home turf of liberals and labor, especially with a gubernatorial election coming in 2010. Massachusetts has a state-based card check provision that a SOS Ballot amendment would overturn.

MISSOURI: The Missouri House gave preliminary approval of the SOS Ballot referral legislation. However, the clock may run out before the Senate acts, so we are circulating petitions and gathering signatures with the expectation that we will get the 230,000 signatures we need by Labor Day, with the help of a large business coalition that spans the state. This would put one potential Senate candidate on the spot: Secretary of State Robin Carnahan, a Democrat, must certify ballot initiatives like ours. As we gather signatures we also expect to generate 100,000 postcards that we will send to state office-holders.

NEVADA: The constitution of Nevada allows us to put an initiative on the ballot by circulating petitions; we will kick off the SOS Ballot initiative on Labor Day. Our goal will be to gather 110,000 signatures and send an equal number of postcards to Senator Harry Reid by the first Tuesday in November, exactly one year from the 2010 general election.

NORTH DAKOTA: We filed our initiative and signature gathering will begin June 1st, with a goal of getting 40,000 signatures by Labor Day to put the initiative on the 2010 ballot. We also will send 40,000 postcards to Democratic Senators Byron Dorgan and Kent Conrad by Labor Day telling them to heed the message being sent by their state's voters.

OHIO: We are currently exploring the possibility of becoming active in Ohio sometime in the near future.

OKLAHOMA: The state's legislative Leaders have assured SOS Ballot that early in the 2010 session the legislature will vote to refer our amendment to the ballot. If the amendment were referred in this session, Democratic Governor Brad Henry would have the option of scheduling a special election or putting the initiative on a primary ballot, where it would not do as well. By waiting until the next session, the initiative will have to be included on the general election ballot.

OREGON: SOS Ballot amendment language has been filed as an initiative by former Oregon House Representative Kevin Mannix and we are gathering 3,000 signatures so that the Attorney General will have to come up with a ballot title and summary of the initiative. Our goal is to have the ballot title and summary ready to launch a full signature-gathering effort by Labor Day.

SOUTH CAROLINA: The House has passed the SOS Ballot referendum with the help of 17 Democrats. Five Senate Democrats have indicated their support (one more than the minimum number we need) and all the Senate Republicans are supporting the measure. However, the

budget crisis in South Carolina needs to be solved before there is any Senate floor action. The Legislature is under a strict May 21st adjournment as there is no money to run the Legislature after that date. We may not win final passage this session, but the Leadership has promised early action next session if necessary.

SOUTH DAKOTA: Initiative language has been approved and circulation of signatures will commence within the next week. The goal is to gather 60,000 signatures and postcards by Labor Day. We will send the postcards to Rep. Stephanie Herseth-Sandlin and Senator Tim Johnson.

UTAH: The SOS Ballot referendum was passed by the legislature and has a place on the 2010 ballot. Our efforts in Utah are currently directed at Governor John Huntsman, Senator Orrin Hatch and Attorney General Mark Shurtleff in the national effort to defeat card check.

LW: How does Arlen Specter's announcement that he will not support EFCA this year affect your state ballot efforts?

Istook: Senator Specter has left himself an out. He says he will not support the act "at this time," but clearly he is leaving the door open to reverse course, or to declare that any changes in the legislation, however minor, are sufficient for him to support it. No victories in Washington are ever permanent, even if this year in Congress we win the fight against EFCA. Union bosses have made it crystal-clear that they will continue to try to pass EFCA and they will spend megamillions to elect backers of EFCA and defeat its opponents. This is why Save Our Secret Ballot exists. We don't want to kill a bad bill; we want to kill a bad idea. Creating constitutional protections for secret ballots will accomplish this.

LW: What does Senator Specter's change of political parties mean for the Employee Free Choice Act and for your own efforts to prevent EFCA's enactment?

Istook: His party switch has a mixed impact on EFCA's chances in Congress. He has pledged not to switch again and vote for

EFCA, and he also promises to vote against cloture. Then again, he pledged not to switch parties three days before he switched parties. So there remains a real possibility that EFCA supporters could get 60 votes to invoke cloture and let the bill pass. To date, no Senate Democrat except Specter (so far) has pledged to oppose cloture on EFCA. Senators Bennet, Dorgan, Johnson, Lincoln, Nelson, and Webb all say they have doubts about EFCA, but the key vote will be cloture, not final passage. Of the six Senators mentioned, SOS Ballot is active in four of their states – Arkansas, Colorado, North Dakota and South Dakota.

If the Democrats can find 60 votes for cloture, then the final bill can and most likely will pass with 50, 51 or 52 votes, with Vice President Biden providing the tie-breaker if necessary.

SOS Ballot's strategy continues to be to raise the visibility of the secret ballot issue, in order to put pressure on Democratic Senators and Senate candidates to commit to opposing card check if their state's voters have passed a secret ballot constitutional guarantee. This strategy is particularly critical in Arkansas, Colorado, Florida, Missouri, Nevada, Ohio, North Dakota, and South Dakota.

LW: What if Congress passes the "card check" provision in the Employee Free Choice Act and amends the National Labor Relations Act? Would that prevent states from guaranteeing the right to a secret ballot?

Istook: No. Voting is a fundamental right and states can protect it appropriately through state constitutions. Courts have made it clear that federal pre-emption of state laws does not apply regarding fundamental rights. Clint Bolick, who directs constitutional litigation for the Goldwater Institute, Arizona's state policy think-tank, crafted the language for our proposal to deal with this issue. He has pledged to defend our provisions against any legal challenge.

Three state Attorneys-General have joined our National Advisory Board—Alabama's Troy King, Colorado's John Suthers and Utah's Mark Shurtleff, as well as South

Dakota's former two-term Attorney General Mark Meierhenry. This strengthens our legal position that our effort will triumph over those who claim that we would be pre-empted by federal law. Attorney General Shurtleff is sending a letter to all other Republican Attorneys General inviting them to join our effort.

These are great additions to our legal team of Bolick, Meierhenry and Michael Lee, who is the former chief legal advisor to Governor Huntsman in Utah and a former clerk to Justice Antonin Scalia, as well as to our legal counsels in the states.

LW: There seems to be some dissent among opponents of EFCA about your strategy. What do you say to those who think the SOS Ballot campaign in the states could harm the national effort to defeat EFCA?

Istook: We are creating grassroots debates in the states over EFCA that will force Representatives and Senators in the U.S. Congress to declare whether they support or oppose our efforts. Only the most blatantly hypocritical politician could oppose a state constitutional provision protecting the secret ballot and still support EFCA, and vice versa. Our effort is a perfect complement to the national efforts to prevent EFCA from passing Congress.

Furthermore, local and state governments are themselves major targets of union organizing campaigns, and public sector unions representing state employees are governed by state law, not federal law. So we must have state constitutional protection of secret ballots in order to protect state employees. It's crystal-clear that this would not be subject to federal pre-emption.

LW: Why focus on passing secret ballot protections state-by-state? Shouldn't opponents focus their energies on defeating EFCA at a national level?

Istook: We've seen that the unions reject any compromises on EFCA that would help union organizing but preserve the secret ballot. Ending the secret ballot requirement is their core issue. They have invested years



Secret ballot opponent and Teamsters president James Hoffa Jr.

of effort on this and can't be expected to change. Even if they lose in this term of Congress, they will be back at it in the next term. It's not enough to stop them one time; that's only a temporary win. I repeat: it's not enough to defeat a bad bill; we must kill the bad idea. By creating a constitutionally-protected right to the secret ballot, we can both kill a bad idea and protect an essential ingredient of democracy.

LW: What about amending EFCA to allow states to retain the secret ballot by opting-out of "card-check"?

Istook: That will be up to the Congress, but we're confident that protecting the secret ballot through provisions in state constitutions is valid no matter what Congress does.

LW: Teamsters president Jimmy Hoffa issued a press release that asked, "Since when is the secret ballot a basic tenet of democracy?" What do you think of that?

Istook: He should read his own Teamsters constitution. It requires a secret ballot to elect Jim Hoffa as Teamsters president. Most of the constitutions of the big unions

require secret ballot elections. Union members know they have to be protected from abuses by those who want to become union bosses—and that's probably why polls show support for our proposal is even stronger among union members than from the general public.

Hoffa was not speaking off-the-cuff. That was a press release issued in March and it echoes the head of Utah's AFL-CIO, who wrote that a secret ballot guarantee is "unnecessary and anti-democratic." Both of them are trying to excuse the inexcusable.

The history of the secret ballot is well-known, even if not to Hoffa. Democracy began in ancient Greece, and its integrity depended on the ability to cast a vote in private, free of intimidation or retribution. The Greeks voted by writing a name on a shard of broken pottery and dropping it into a vase. In the 1850s Australia pioneered the use of pre-printed ballots. During Reconstruction in post-Civil War America, secret ballot guarantees protected newly-freed slaves from physical intimidation and even lynching if they "voted wrong." Secret ballots became the norm in America during the 1892 presidential election of Grover Cleveland

Back to Hoffa. His statement continued, "Town meetings in New England are as democratic as they come, and they don't use the secret ballot. Elections in the Soviet Union were by secret ballot, but those weren't democratic." But town hall meetings are typically discussions and not occasions for elections. And Soviet elections are the tribute that vice pays to virtue. It made a mockery of the secret ballot when only one name was printed and no write-ins were allowed. Saddam Hussein used the same trick in Iraq. Union leaders are making light of fundamental rights, but it's not funny to anyone else.

F. Vincent Vernuccio, an attorney, is a former Special Assistant to the Assistant Secretary for Administration and Management at the Department of Labor under President George W. Bush. He is editor of efcaupdate.org.

LW

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Many thanks,

**Terrence Scanlon
President**

LaborNotes

We may have spoken too soon. Then again, maybe not. Last issue, *Labor Watch* reported that Pennsylvania Senator **Arlen Specter's** announced opposition to the **Employee Free Choice Act**, also known as card check, likely doomed the legislation in the current Congress, because Specter represented the crucial sixtieth vote to force a vote on the bill. Then, Specter announced he was switching parties, from Republican to Democrat. Then, Senate Democrats voted against counting Specter's years in office as a Republican as part of the seniority system that is used to divvy up plum committee assignments. Now? Who knows what he may decide.

In April, President **Barack Obama** made a big show of telling his Cabinet departments that they had to come up with \$100 million in cuts in a \$3.4 trillion budget. The White House instead proposed \$17 million in cutbacks. Those cuts include a 9 percent cut in the Labor Department's **Office of Labor Management Standards**, the office responsible for policing the unions. These cuts were proposed on top of OLMs cuts that the Democrat-controlled Congress made in 2007.

Budget cuts aren't the only hit OLMS has taken recently. **F. Vincent Vernuccio** reported in the **American Spectator** on April 27 that Labor Secretary **Hilda Solis**, has decided to water down the requirements for reporting union expenditures on LM-2 forms. Vernuccio explained the importance of itemized expenditures: "This tool allowed [OLMS] to obtain \$91.5 million dollars in restitution of dues and resulted in over 900 convictions from 2001 to 2008."

In the auto bailouts shakeout, the **United Auto Workers** (UAW) union is looking like the big winner. It will own about 40 percent of General Motors and a majority stake in Chrysler. Many conservatives balked at this settlement. **Slate** blogger **Mickey Kaus** had a slightly different take. "The union's ownership does not seem a problem. It seems a virtue," Kaus argued. He explained, "Let the UAW, as new owner of GM, pay the price for the overgrown work rules of its locals. Let the UAW demand above-market raises from itself. Let the UAW try to raise money from new lenders after the previous round of lenders has been royally screwed (thanks, in part, to the UAW). And then let the UAW try to sell the cars that result."

Manny Ramirez, the controversial slugger and left fielder for the **Los Angeles Dodgers**, has been suspended for 50 games for failing a steroids-related drug test. **Ethan Skolnick** charged on the South Florida **Sun-Sentinel's** popular "Season Ticket" sports blog that the baseball "players' union created this mess, by protecting its stars and forcing other players to take something to compete. And [former commissioner] Bud Selig presided over the steroid-fueled rebirth of the game."

Brian Johnson, executive director of the **Alliance for Worker Freedom** wrote in the May 6 **Washington Examiner** that the **D.C. Metro** system is doing its best to keep Metro riders in shape by "us[ing] overpaid union labor to ensure inefficiency in all repair attempts." In fact, "Although the DC Metro is hoping to cut \$154 million out of their budget, they are increasing wages for unionized employees by \$44 million to keep customers stepping."