

Republican Sweep May Not Stem Obama's Pro-Labor Stance

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The mid-term elections are over, Democrats took a shellacking in Congress, and President Obama has admitted he has "much to do" to regain voter confidence. Despite the election results, however, the president's commitment to unionization of the American work force will more than likely remain undiminished.

It began before his election with confident rhetoric about quick enactment of the Employee Free Choice Act — a law that would have made it easier for unions to recruit new members and push heretofore union-free employers into hastily negotiated labor contracts. Not surprisingly, EFCA also would have dispensed with allowing employees to vote in secret ballot elections — replacing the ballot box with union cards collected through unregulated and conceivably questionable procedures by unions themselves. While EFCA may be DOA for now, the battle for unionization of Texas employers is just heating up. And Big Labor is counting on big help from our federal government to do just that. How will it happen? The answer may lie in a single word — rulemaking.

The list of important legal rights and obligations that might be changed through vigorous NLRB rulemaking is staggering. Suffice it to say that increased NLRB rulemaking would mark a profound departure from decades of administering the National Labor Relations Act, and indelibly change our country's labor relations calculus. Since policies established through rulemaking would likely be more resilient to change than those obtained through trial precedents, the political affiliation of post-Obama presidents who will appoint future NLRB members may become a matter of far less significance than in times past.

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