



DC

NATIONAL

LAWYERS

GUILD

NEWSLETTER

SEPTEMBER 2009

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1. Employee Choice Stalls in the Senate.

Over the past several weeks Washington’s “debate” over health care has driven discussion of almost all other legislation out of the news. However, advocates for working people are still trying to move one of the most important changes to U.S. labor law in a generation, the Employee Free Choice Act (H.R. 1409, S. 560) through Congress.

Unfortunately, EFCA’s progress in the Senate has been stalled in the face of opposition by all Republican and 12 Democratic Senators. Ton Harkin (D-Iowa), the bill’s primary sponsor, now says that a vote will not take place till after the August recess, and it “may be longer than that.”

EFCA would establish a procedure under which the National Labor Relations Board would certify a union as the bargaining representative if a majority of bargaining unit employees signed valid union authorization cards. Unions could continue to petition for an NLRB-supervised secret ballot election, if they choose, once 30 percent of the workers signed union authorization cards.

EFCA would also amend the National Labor Relations Act to give workers greater ability to negotiate contracts, and would increase penalties when businesses unlawfully discharge or discriminate against workers for involvement in union organizing activities. All of these changes will help struggling working people in the face of corporations that intimidate and retaliate against people who try to exercise their right to organize.

Business interests have opposed so-called "card check" legislation, claiming without justification, that union organizers would intimidate workers to sign authorization cards. Front groups with Orwellian names like the "Coalition for a Democratic Workplace" are also waging a vigorous campaign to defeat or dilute EFCA.

Locally, only Maryland Senators Mikulsky and Cardin have signed up to support EFCA. Virginia Senators Webb and Warner have yet to cosponsor the bill. Local house cosponsors include Representatives Norton (D-DC), Virginia Representatives Scott (D-3), Moran (D-8), Connolly (D-11), and Boucher (D-9), and all of the Maryland Representatives, with the exceptions of Wayne Gilcrest (R-6th) and Frank Kratovil (D-1st). Members can find contact information for their representatives at www.house.gov or www.senate.gov, or by calling the Capitol Switchboard at (202) 224-3121.

-Ed Elder

2. Supreme Court Demands Hearing for Troy Davis – a Report from Thomas Ruffin on the Present Circumstances of the Case

On August 17, 2009, the U.S. Supreme Court, in a three-vote plurality opinion, transferred Davis' *habeas corpus* petition to a federal district court for an evidentiary hearing. Justice Stevens wrote this plurality opinion. Justices Ginsburg and Breyer concurred with this decision. In contrast, Justices Scalia and Thomas dissented and called Troy Davis' case "a sure loser"! They insisted that, under **28 U.S.C., section 2254(d)(1)**, federal courts have no power to save Troy Davis from execution. In other words, Justices Scalia and Thomas argued that Georgia has the right to execute Troy Davis even if "he is 'actually' innocent".

While Justices Scalia and Thomas dissented, the newly appointed Justice Sotomayor "took no part" in considering or in deciding the case. On the other hand, while Justices Roberts, Alito, and Kennedy considered the case, they apparently took no formal part in voting on its decision. Hence, in a three-to-two plurality decision, the Supreme Court ordered the federal district court in Savannah, Georgia to "receive testimony and make findings of fact as to whether evidence that could not have been obtained at the time of trial clearly establishes" Troy Davis' "innocence". As implied by Justice Stevens' opinion, the Court's plurality decision opened up the question of whether sufficiently persuasive evidence of Troy Davis' innocence would satisfy, or would perhaps even constitutionally trump, the usually restrictive *habeas corpus* requirements at **28 U.S.C., section 2254(d)(1)**.

-Thomas Ruffin serves as a legal advisor to Troy Davis as well as his sister, Martina Correia about legal issues in his case. He has also prepared and filed amicus briefs for Troy and fights to get Troy's story to the public.

3. Longtime NLG Member Doris Walker Dies

The following is an excerpt from the obituary written for the Los Angeles Times by Elaine Woo and published in the Washington Post on Monday, August 24, 2009, “Organizer-Activist-Lawyer ‘Was Way Ahead of her Time’.”

Doris Brin Walker, 90, a radical lawyer who fought anti-communist hysteria in the 1950s and helped clear activist Angela Davis of murder and kidnapping charges in the 1970s, died of a stroke Aug. 13 at a San Francisco hospital, her daughter, Emily Roberson, said.

A lifelong Communist and the only woman in her University of California law school class in 1942, Ms. Walker was a tenacious advocate who took on many difficult cases without pay. Among these was the 1959 trial of John W. Powell, a writer accused of sedition for the publishing an article alleging that the United States used germ warfare during the Korean War.

Her most high-profile case was the sensational 1972 trial of Davis, an avowed Communist and recently fired UCLA professor who faced the death penalty because a gun registered in her name was linked to the 190 slayings of a Marin County judge and three abductors. The mix of race, politics and murder drew international attention to the case.

Ms. Walker, one of two women on the four-member defense team, prepared witnesses and helped the other attorneys plan novel strategies, which included using consultants to pick a jury and experts to debunk eyewitness testimony.

“She was way ahead of her time,” Harvard University law professor Charles J. Ogletree Jr. said of Ms. Walker, who in 1970 became the first woman to head the National Lawyers Guild. “She was a living example of the wonderful, critical and timely contribution of women to the legal profession.”

4. Annual Summer Picnic Report

The annual NLG Summer Picnic was a great success again this year. Many DC NLG members and their families enjoying swimming, hamburgers, hot dogs, and good conversation. Those in attendance included long-time board member Stephanie Joseph's newborn daughter Hannah and Ed Elder who is making a full recovery after a serious accident earlier this year. Be sure to join us for next year's picnic!

-Jamie Davis Smith

5. Events.

September 8 –DC NLG Board Meeting, open to all members, 6:30pm, 2000 P Street., NW, Ste. 415 (Law Office of Jim Drew)

DC Labor for Peace and Justice sponsors an event with Iraqi Trade Unionists at 400 I St., SW, 7-9pm

September 13 – David Swanson discusses his book “Daybreak: Undoing the Imperial Presidency and Forming a More Perfect Union” at Busboys and Poets, 6pm

September 16 –

Oral Argument September in DC Guild Mass Arrest Case

Oral argument in the U.S. Court of Appeals for the D.C. Circuit will be held September 16 in *Carr v. District of Columbia*, the D.C. Guild's class action lawsuit challenging the January 20, 2005, arrest of approximately 70 persons who were trapped in an Adams Morgan alley after police led by then-Commander, now-Chief Cathy Lanier blocked a street march protesting the second inauguration of George W. Bush. After a few persons in the area broke windows, police trapped and arrested many persons, including peaceful marchers. U.S. District Court Judge Ellen Huvelle held the mass arrest unlawful and granted the plaintiffs summary judgment. The District of Columbia appealed. D.C. Guild members Susan Dunham and Dan Schember, with ACLU co-counsel Art Spitzer and Fritz Mulhauser, will ask the court to affirm the plaintiffs' district court victory. The argument will be heard by Chief Judge Sentelle, Judge Griffith, and Senior Judge Silberman.

Sherry Wolf discusses her book, “Sexuality and Socialism: The Struggle for LGBT Liberation” at 6:30pm, Busboys and Poets, 2021 14th St., NW

September 26 – Student Disorientation to be hosted by the George Washington University NLG Student Chapter. More information to come