

RIGHT TO WORK PROTECTION ACT -- (Senate - May 03, 2011)

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Mr. ALEXANDER. Madam President, I rise today to talk about a piece of legislation which will be both a bill that Senator *Graham* and Senator *DeMint* and I will introduce tomorrow and an amendment that I have filed to the small business bill on behalf of the three of us.

We are calling it the Right to Work Protection Act, and it is our intent to preserve the right of each State to make a decision for itself about whether it will have a right-to-work law and have an ability to enforce it. This is in direct response to an action that the National Labor Relations Board has taken against the Boeing Company and the plant they are building in South Carolina.

The National Labor Relations Board has moved to stop Boeing from building airplanes at a nonunion plant in South Carolina, suggesting that a unionized American company cannot expand its operations into one of 22 States with right-to-work laws. These laws protect a worker's right to join or not to join a union. In fact, the New Hampshire Legislature has just approved its becoming the 23rd such State.

This reminds me, this action by the National Labor Relations Board reminds me of a White House dinner in February 1979 when I was Governor of Tennessee. The occupant of the chair has been to those dinners. The President has them every year. The only ones invited are the Governors themselves and spouses. For me, it was always one of the highlights of the year.

So my first such dinner was with President Carter in 1979. As a new Governor, I was paying close attention to what the President of the United States had to say. This is what he said:

Governors, go to Japan. Persuade them to make here what they sell here.

I walked 1,000 miles across Tennessee to be Governor the year before, and I don't remember one single Tennessean who said to me: Lamar, the first thing you do when you get in office is go to Japan. That was not on our minds. But it was tough economic times. Not many people were investing anywhere in the United States at that time. I thought, Well, if the President of the United States says, Governors, go to Japan and persuade them to make here what they sell here, I should do that.

"Make here what they sell here" was then the union battle cry. It was part of an effort to slow the tide of Japanese cars and trucks entering the U.S. market. At that time, Americans were very worried about Japan. There were books about Japan being No. 1, and the fear was that Japan would overwhelm us economically. Cars and trucks from Japan were fuel efficient, they were attractive, they were selling, and manufacturers and the United Auto Workers here were concerned that we would lose a lot of jobs. So the cry was to the Japanese: If you are going to sell it in the United States, you need to make it in the United States.

So off I went to Tokyo to meet with the Nissan executives who were then deciding where to put their first U.S. manufacturing plant. At that time, Japan had very few manufacturing plants in the United States. They made there what they sold here. I carried with me on that trip a photograph taken at night from a satellite showing the country with all of its lights on. Try to visualize that. Because what you see if you look at a photograph of the United States at night are a lot of lights east of the Mississippi River, but it is pretty dark almost until you get to California, and there are a lot of lights down around Texas. I was trying to make a point. The Japanese executives, who didn't know very much about Tennessee and I didn't know very much about Japan, would say to me, Where is Tennessee? I would point to our State and say, We are right in the middle of the lights.

My argument, of course, was that locating a plant in the population center of the United States would reduce the cost of transporting cars to customers. That population center 70 or 80 years ago was in the Midwest where the American automobile was literally invented, and it made a lot of sense to build almost all the plants there, because transportation costs were less when you send these heavy cars and trucks to the customers. So you locate your plant near the population center. Gradually, that population center migrated south from the Midwest, where most U.S. plants have been, to Kentucky and Tennessee.

Then the Japanese to whom I was talking examined a second consideration: Tennessee has a right-to-work law and Kentucky does not. That meant that in Kentucky, workers would have to join the United Auto Workers Union. Workers in Tennessee had a choice. In 1980, Nissan chose Tennessee, then a State with almost no auto jobs. Today, auto assembly plants and suppliers provide one-third of our State's manufacturing jobs. Tennessee

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is home for the production of the Leaf, Nissan's all-electric vehicle, and the batteries that power them. I am happy to report it works well. I have bought one, parked in the garage of the apartment where I live here. Recently Nissan announced that 85 percent of the cars and trucks it sells in the United States will be made in the United States, making it one of the largest so-called "American" auto companies and nearly fulfilling Mr. Carter's request of 30 years ago.

But now unions want to make it illegal for a company that has experienced repeated strikes to move production to a State with a right-to-work law. What would this mean for the future of American auto jobs? Jobs would flee overseas as manufacturers look for a competitive environment in which to make and sell cars around the world.

It has happened before. David Halberstam's 1986 book "The Reckoning"--about the decline of the domestic American auto industry--tells the story. Halberstam quotes American Motors president George Romney who criticized the "shared monopoly" consisting of the Big Three Detroit auto manufacturers and the United Auto Workers. Romney warned, "There is nothing more vulnerable than entrenched success." Detroit ignored upstarts such as Nissan which in the 1960s began selling funny little cars to American customers. We all know what happened to employment in the Big Three companies.

Even when Detroit sought greener pastures in a right-to-work State, its partnership with the United Auto Workers could not compete. In 1985 General Motors located its \$5 billion Saturn plant in Spring Hill, TN, 40 miles from the Nissan plant, hoping side-by-side competition would help the Americans beat the Japanese. After 25 years, nonunion Nissan operated the most efficient plant in North America. The Saturn/UAW partnership never made a profit. Last year, GM closed Saturn.

Nissan's success is one reason why Volkswagen recently located in Chattanooga and why Honda, Toyota, BMW, Kia, Mercedes-Benz, Hyundai, and thousands of suppliers have chosen southeastern right-to-work States for their plants. Under right-to-work laws, employees may join unions, but mostly they have declined. Three times workers at the Nissan plant in Smyrna, TN, rejected organizing themselves like Saturn employees a few miles away.

Our goal should be to make it easier and cheaper to create private-sector jobs in this country. Giving workers the right to join or not to join a union helps to create a competitive environment in which more manufacturers such as Nissan can make here 85 percent of what they sell here.

Madam President, I ask unanimous consent to have printed in the *Record* the amendment and bill that I and Senator *Graham* and Senator *DeMint* will be introducing tomorrow and which we filed as an amendment today.

There being no objection, the material was ordered to be printed in the **RECORD**, as follows:

At the appropriate place, insert the following:

SEC. __. PROTECTION OF RIGHT TO WORK.

(a) *Applicability of NLRA to State Right to Work Laws.*--Section 14 of the National Labor Relations Act (29 U.S.C. 164) is amended by striking subsection (b) and inserting the following:

“(b) Nothing in this Act shall be construed to limit the application of any State law that prohibits, or otherwise places restraints upon, agreements between labor organizations and employers that make membership in the labor organization, or that require the payment of dues or fees to such organization, a condition of employment either before or after hiring.”.

(b) *Applicability of Railway Labor Act to State Right to Work Laws.*--Title II of the Railway Labor Act (45 U.S.C. 181 et seq.) is amended by adding at the end the following:

“(b) **SEC. 209. EFFECT ON STATE RIGHT TO WORK LAWS.**

“(b) Nothing in this Act shall be construed to limit the application of any State law that prohibits, or otherwise places restraints upon, agreements between labor organizations and carriers that make membership in the labor organization, or that require the payment of dues or fees to such organization, a condition of employment either before or after hiring.”.

Mr. ALEXANDER. I thank the Chair. I wish to add that I saw today a representative of the Whirlpool Company which has 2,500 employees in Tennessee. He said Whirlpool makes 82 percent of what they sell in the United States here in the United States, but that they have a choice. They have plants in Mexico as well. It is one more example of why allowing States to have a right-to-work law keeps jobs in our country.

I see on the floor Senator *DeMint*, whose State is directly affected by this NLRB decision. He and I are working together on this legislation. I am sure he has comments on the legislation and on the decision of the NLRB.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. *DeMINT*. Thank you, Madam President. I wish to associate myself with the remarks of the Senator from Tennessee. I appreciate him bringing this up. It is important for us here in the Senate as well as everyone around the country to understand what this administration is doing to hurt jobs in America.

This has been a good week for America. We have worked together building on a lot of the common principles of our country of a strong defense and a robust intelligence system to track down an enemy of freedom and to render justice as we had promised. This was done over two administrations and many Congressmen and Senators. So this is a good day for America. I think we need to take this time to maybe think about how we can apply the principles that work in America to our challenges back home with our economy and our jobs and our culture, because it is a bigger issue we are dealing with in the context of this decision by the National Labor Relations Board. We need to use the principles that work, but it appears this administration and my colleagues on the other side are afraid to let these principles work. They seem to be afraid of freedom itself.

We see in their record over the last 2 years being afraid for Americans to make their own decisions about their children's education and about their health care. They are afraid of death of letting senior citizens manage their own retirement funds and health care plans. They are certainly afraid to let States manage their own energy resources or decide what roads and bridges to build and where to build them. They clearly don't want businesses to make their own decisions about hiring and firing. They won't let even community banks make their own decisions about who to lend money to, even though these small banks have nothing to do with the financial collapse. Clearly, from this decision, this administration and the Democratic Party is afraid to give employees--workers--the freedom not to join a union.

It is amazing what this National Labor Relations Board, which has been stacked with union folks by the administration, is doing to jobs in our States and all across the country. Twenty-two States have right-to-work laws. In the last few months, my State, along with several others, has passed a constitutional amendment that would protect the freedom of workers to have a secret ballot when union bosses are trying to organize their workplace. A secret ballot is so fundamental to American principles and the principles of freedom, but the AFL-CIO is suing our State and others to stop us from protecting that freedom of workers.

In the last few weeks, a truly extraordinary thing has happened, as this National Labor Relations Board has actually filed suit against Boeing, which has located a new facility in South Carolina, claiming it was retribution for a strike in Washington. People need to understand that Boeing has added 2,000 jobs in Washington since they decided to build this new production line in South Carolina. But this administration--and I am afraid the majority here in the Senate--is so afraid companies will have the freedom to locate new facilities, new businesses, in States where their workers are not required to join a union.

Let's put this in a different context. A few weeks ago, a delegation from California went to Texas to try to figure out why hundreds of businesses are moving from California, taking tax revenue and jobs with them to Texas and other States. They didn't need to make the trip. It was pretty obvious that the business environment that has been created in California by the unions and the politicians has made it very difficult for world-class companies

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to be competitive. What takes a few weeks in Texas could take 2 years as far as getting a permit to open a new business.

This is a small look at what is happening to our country, because we need to look at why so many companies are moving from our country to other countries to do business. It is because of decisions such as this and decisions by this administration over the last couple of years that have made America a place that is very difficult to do business in.

I appreciate what the Senator from Tennessee is doing, because this is not just about one employer or one State. Twenty-two States are right-to-work States. Twenty-two States have decided they are going to provide the freedom to their workers not to have to join a union. So much of this is political and retribution, not just against Boeing for putting a site in a right-to-work State, but it is political retribution. The administration, I believe, is acting like thugs that one might see in a Third World country, trying to bully and intimidate employers who are trying to get out from under this cloud of union control. It is a political deal of this administration trying to expand unionization and union benefits because the unions give the contributions to the Democratic Party and get out the vote for the Democrats.

This is crazy. In an environment where this administration and all of us here are saying we are trying to create jobs, there is no question what they are doing in South Carolina and around this country by trying to force unionization is hurting our business climate in America, it is hurting employment, it is diminishing our future as a country, and it is all for political purposes.

It is amazing to see that the unions have such a control over this administration, even in passing the stimulus bill. With it went requirements that a lot of the contractors who use this money had to follow union rules or be unionized. We saw in the health plan that the unions were the big proponent of it, but as soon as it passed, they are the ones asking for waivers so they don't have to live by it.

What this administration is doing to one company is a threat to every company, every employer, and every worker in this country. It goes back to their fear of freedom. The command-and-control paranoia we see in this administration is antithetical to everything we understand about freedom in our country--of individual responsibility and individual freedom--and free markets and free enterprise. They are attacking it on every front.

This decision by the National Labor Relations Board cannot stand. We must challenge it here in the Congress; employers need to challenge it; states are already challenging it, because it is clearly outside of the authority of this Federal Government to be threatening and bullying and trying to intimidate companies such as Boeing, which should have the freedom to locate their plants anywhere they want. This is intimidation. Many of Boeing's contracts are military contracts, and we know that is being held over their head.

This is not the way we should do business in America. This is not the way our government should operate. We need to get back to those first principles that made us great. Clearly, what this administration is doing in this case and many others is way outside the realm of what we should expect of a good and decent government, and we are not getting it here.

With that, Madam President, I see the other Senator from South Carolina is here, and I will yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. GRAHAM. Madam President, I thank my colleague from South Carolina, who has been terrific in trying to bring reason to this issue. Senator *DeMint* has been a very strong voice for free enterprise, and that is really what this is all about.

To Senator *Alexander* from Tennessee, thank you for listening to what is going on in South Carolina and understanding this is not just about our State, it is about the Nation as a whole.

The Right to Work Protection Act is a very solid piece of legislation that is going to serve the country as a whole. When a State chooses to be a right-to-work State, what does that mean? That means no one can be forced to join a union. The union can ask for your vote. If you say no, that is your decision to make, and if the group says yes, you do not have to join. In a lot of States, that is not true. If 51 percent of the workforce or 60 percent of the workforce says: We are going to go union, everybody else is drafted whether they want to be or not.

So the concept of right to work is really at stake here, and I do appreciate this legislation because it would preserve the ability of the State to go down that road without suffering at the Federal level. It would prohibit Federal Government contracts, Federal Government action from punishing a State that chose to adopt right-to-work laws. That is why Senator *Alexander's* legislation is so important. We are not making anyone become a right-to-work State. We are saying: If you choose to do that, your Federal Government in the NLRB and other organizations of the Federal Government cannot use that against you. We are protecting that status. I think that is the balanced approach to this dilemma we face.

Now, what is this dilemma?

Boeing is one of the great companies in the world. They have a history of producing terrific airplanes. They have been located in Washington for decades. As a South Carolinian who is very happy Boeing has come to South Carolina, I want to acknowledge the Washington workforce as one of the best in the world. We hope to build great airplanes in South Carolina, but the first thing I want to do is acknowledge that my complaint or concern is not with the people of Washington, not with the workforce in Washington, it is with the actions of the NLRB and this complaint filed by the machinists union. So I hope to be in partnership with my colleagues from the State of Washington in the Senate and on the House side to pursue good policies that not only will be good for Boeing but for the country as a whole.

South Carolina is going to enjoy the status of being a teammate with the people of Washington when it comes to trying to help Boeing and manufacturing in general. But what happened is that in October of 2009, Boeing decided to create a second assembly plant in South Carolina. This is a new assembly plant because the orders for the 787 were so large, it necessitated building a second line. Boeing, under the contract with the machinists union, reserved in that contract the right to locate new business wherever they thought it would be best for Boeing. They negotiated with the people in Seattle about producing the second line in Seattle, and they went all over the country looking for other locations to create a second line.

They came to South Carolina, and I can assure you, after a lot of negotiations, the reason they chose South Carolina was because it was the best business deal for Boeing. They negotiated in Washington. They negotiated everywhere in the country, really, where they thought they could do good business, and South Carolina won out. And there is criticism back home that the package we gave Boeing was too generous. So I can assure you this was a legitimate business deal, and the idea that moving to South Carolina somehow was retaliation that violated the National Labor Relations Act section 883 is legally absurd. Under that act, a company cannot retaliate against a group of employees or a location that decides to unionize.

You would have to prove in a retaliation complaint that the people suffered. Well, in this case, not one person in Puget Sound or in the State of Washington lost their job. Because of the additional business being generated in South Carolina, 2,000 people have been hired in the State of Washington. Not one benefit was cut from the workforce in Washington. Nobody's pay was cut. Nobody's benefits were reduced because they moved to South Carolina. So this complaint is just frivolous. It is motivated by all the wrong reasons.

Let's just for a moment assume that it is granted and this is the new business model. It would mean basically that if you decide to do work in a union plant, you are locked into that location forever; you could never move. That is crazy. That is not what the law is all about. The law prevents retaliation, and that is a specific concept in the law, and none of the factors that

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would lead to that conclusion exist in this case. There is new work. No one lost a job. This is a new line of business. And we are arguing about the right of a company to be able to make a business decision when it comes to new production. That is why this complaint, if it ever gets to Federal court, will fail. It is sad that Boeing may have to spend millions of dollars defending itself against what I think is a very frivolous complaint.

But let me tell my colleagues a little bit about this if they are wondering about it. Here is something I want to put on the table for you to consider. One of the members of the Boeing board at the time they chose to come to South Carolina--after a lot of negotiations in different places, including Washington and South Carolina--one of the board members who approved the second assembly line in South Carolina was Bill Daley, the Chief of Staff of the President of the United States. At the time, he was not Chief of Staff, he was a member of the Boeing board, and they voted unanimously to create a second assembly plant in the State of South Carolina. I would argue that Mr. Daley, when he cast that vote, understood it was best for Boeing to make this decision to locate new business, and he did not believe he was violating the law or retaliating against unions. One thing you can say about the Daley family, it is not in their DNA to retaliate against unions. This was in 2009.

In March 2010, the machinists union filed its complaint with the NLRB. Now, the general counsel, the person holding that title a few weeks ago, submitted the complaint to the board. But the story is even more interesting. In March of 2010, the complaint was filed by the machinists union. The vote to come to South Carolina was in October 2009. In January of 2011, Mr. Daley was chosen to be President Obama's Chief of Staff--a decision I supported and thought was a good decision for the administration and the country as a whole because Mr. Daley is a Democrat, but he is a very well respected member of the business community, someone who has a lot of skill and talent, and the President chose wisely. I would assume that in the vetting process they looked at Mr. Daley's record of involvement in business and other matters. I am assuming the vetting team knew the complaint had been filed by the machinists union in March of 2010 and that Mr. Daley voted along with the rest of the members of the board to come to South Carolina. And they must have concluded that this complaint was frivolous. I assume that because if they did not know about the complaint, that was

one of the worst vetting jobs in the history of the world. And if they thought he did engage in illegal activity, it made no sense to hire him.

So, to my colleagues, I want you to consider the fact that Mr. Daley, the current Chief of Staff, voted to come to South Carolina. After he voted--a year and a half later--he was chosen to be the Chief of Staff of the President of the United States. The Boeing CEO, Jim McNerney, was chosen by President Obama to lead his Export Council to create jobs for Americans by looking at export opportunities. I would argue that President Obama would not have chosen Mr. McNerney if he thought he led an effort to

retaliate against Washington unions.

All I can say is this complaint is frivolous. It is taking time and money away from creating jobs in South Carolina and Washington. And it has national implications. To Senator *Alexander*, you have found the right way for the Congress to address this issue. We are not forcing anybody to be a member of a union. We are just saying, if a State such as South Carolina or Tennessee chooses to be a right-to-work State, that cannot be held against them. This legislation would say to the country and the business community as a whole: When you look at where to locate, you can consider a right-to-work State without violating the law. That is an important concept.

I can assure you, Boeing came to South Carolina because it was the best business deal. They had a lot of choices. They chose South Carolina not to retaliate but to create a second line. And here is the logic of it: Would you put everything you own in one location in today's world? So the idea that they expanded into the second plant in a different State, in a different location, makes perfect sense. The fact that South Carolina is a low-cost right-to-work State I am sure they considered. But under the law, no one in Washington lost one benefit they had. No one in Washington lost a job they already had with Boeing. The goal of this decision by Boeing is to grow their company. If we do well in South Carolina, Boeing does well in Washington.

This complaint is dangerous. This complaint is a dangerous road to go down. This complaint is politics at its worst. The law is designed to protect us, and it is being abused, in my view. Politics is about 50 plus 1. The law is something that should protect us all.

This complaint filed by the general counsel at the NLRB sets a dangerous precedent, and the Congress should speak. The administration should speak out and say this is frivolous; they are an independent agency; nobody can tell them what to do. But we have an independent duty to speak out in a constructive way.

Senator *Alexander's* legislation is the appropriate way to address this issue, and I wish to thank him on behalf of the people of South Carolina and the country as a whole, and I look forward to working with him to have this passed.

To my colleagues on the other side, what is going on in this complaint is dangerous for us all and not just South Carolina.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

The Senator from Ohio.

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