

# CLOSEOUT FILES



Resolved: That the Employee Free  
Choice Act serves the best interests of  
the American people.

# Introduction

We're back again for another month debating the stimulating topic of labor unions. I saw quite a bit of backlash regarding this topic because people are not especially interested in labor unions. I will admit I was not looking forward to researching this topic. After extensively reading, I can assure you that, while the topic still might be boring, it is rather equally weighted on both sides. This is a nice change from some of the topics we've been getting this year and should lead to quality debate.

Good luck to all debaters at national qualifiers and congratulations for everyone accepted into TOC. TOC should be an interesting tournament this year considering they have made an effort to make bids more plentiful. In prior years, TOC has had a tough time filling the maximum entrance capacity which, to me, is fine as long as the caliber of teams remain high. Despite TOC's attempt to try to make bids more available, teams are now collecting half a dozen bids, which might not be what TOC wanted. Nevertheless, congratulations to those teams who qualify. The tournament really should be held a different weekend considering many teams choose not to attend because of AP and IB testing. It only makes sense that the best debaters are often those students who will be taking these tests, so just a suggestion for the future (if anyone in a position of power is reading this) change the date for the tournament if you really want it to be a "tournament of champions."

Interestingly enough, the Employee Free Choice Act has had a lot of media coverage because there are very wealthy organizations on both sides of this issue who love throwing money into propaganda. Who said labor unions had to be boring? Here are my two favorite commercials:

[http://www.youtube.com/watch?v=Tu4oj\\_2E1jE&feature=channel\\_page](http://www.youtube.com/watch?v=Tu4oj_2E1jE&feature=channel_page)

[http://www.youtube.com/watch?v=2B0kFEYQNYE&feature=channel\\_page](http://www.youtube.com/watch?v=2B0kFEYQNYE&feature=channel_page)

Because of these differing viewpoints, remember that there are many pieces of evidence that will be brought into rounds that come from thoroughly biased sources. That doesn't necessarily make the information wrong but you have to question a researcher who is being paid by a particular side to prove something.

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# Background

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## **AN EMPIRICAL ASSESSMENT OF THE EMPLOYEE FREE CHOICE ACT: THE ECONOMIC IMPLICATIONS**

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March 3, 2009

1. **THE CARD CHECK.** Under EFCA, a union must be certified as a representative of a bargaining unit by the federal National Labor Relations Board (NLRB) and recognized by an employer if a majority of employees sign valid authorization cards. This proposal would eliminate the right employers have under current law to refrain from recognizing a union unless it demonstrates the existence of majority employee support in an election by secret ballot. EFCA does not establish any guidelines or procedures for collecting the authorization cards from workers or for verifying their validity, but specifies that the Board shall develop such rules.
2. **MANDATORY INTEREST ARBITRATION.** Under EFCA, after any union is newly certified, the parties must commence bargaining within ten days after the employer receives a written bargaining request from any newly-certified union. Thereafter, if the union and employer fail to reach an initial agreement within 90 days after bargaining commences, an additional 30-day period is added for mediation after either party requests mediation by notifying the Federal Mediation and Conciliation Service (FMCS). If an agreement is not reached during this 30-day period, EFCA requires arbitration, resulting in a decision made by the arbiter(s) that would be binding for two years. Each of these periods is subject to extension by mutual agreement. EFCA provides no opportunity for employee ratification of the arbitrator-imposed terms and conditions, in contrast to the normal employee review and ratification process that typically takes place when conventional labor contracts are tentatively agreed upon by labor and management. Nor does EFCA articulate any time limit by which the arbitral panel must issue its decree, the standards governing the scope of any arbitrator-imposed terms and conditions, the subjects that may or may not be incorporated into any arbitration decision, the standards governing any appeal from arbitration, or how the “arbitration board” shall be selected. (The FMCS is charged with developing regulations governing the referral of disputes to arbitration.)
3. **INCREASED PENALTIES.** Finally, EFCA would result in the award of triple back pay, plus civil penalties up to \$20,000 per violation, for certain employer unfair labor practices committed during a union organizing effort or during negotiations on an initial contract. In addition, the NLRB would be required to seek an injunction against certain alleged unfair labor practices involving union organizing or initial contract disputes. EFCA contains no corresponding provisions pertaining to unions’ unfair labor practices during union organizing or initial contract disputes.

# Public Forum Article

As a judge, I can tell you that the majority of rounds have a clear winner after the summary speeches. It is unlikely that you will encounter many teams of your same caliber; hopefully, you are better than most teams and thus will face equally matched opponents in break rounds. Since these rounds are obviously the most important, you shouldn't underestimate the importance of grand-cross. I happened to be one that thought grand-cross was the most enjoyable part of public forum and, if done correctly, the most effective way to win close rounds. Anyone can give a good speech, but good teams are separated by their abilities in crossfire.

Sometimes it is enough to win a round by showing judges that you are a more competent debate team than your opponents are. I have encountered many judges who have explained that on some of the topics there is a clear bias towards one side which makes it very difficult for the team who doesn't have that side to win solely on arguments. Because of this, judges might pick up a team who is better at argumentation or speaking even if their points might not be as powerful as their opponent's points. Now I know what you are thinking, debate should be about content not presentation, but the truth of the matter is judges often vote for the team not the argument. Granted, the opposite occurs as well which only further supports the idea that you should be a well-rounded debater. With this in mind, there are a few things that you should be aware of that judges take away from grand-cross.

Comprehension of the topic is exposed in grand-cross when people must respond to difficult questions in an instant. Initial cross-fires can to some extent be prepared; for the most part, you know what questions need to be answered and asked. Grand-cross on the other hand should be the accumulation of the most contented points throughout the round. It is common to ask questions off the beaten path and many teams resort to tactics in which the sole purpose of the questions is to undermine opponent's credibility. To excel in grand-cross, there are many things that are very important to convey to the judge as to show why you should win the round. First off, you should have a deep understanding of the background of the resolution. This knowledge is not something that you will necessarily cut to bring to the round but rather the filler information that you read while researching. While this information is not glorified because you will use it much less often than your prepared evidence, it is a factor that separates the best teams in the country. In many ways, top teams can be considered experts on the subject because they have taken the time to enrich their comprehension of the resolution. Much of the time, this is as simple as reading wikipedia pages regarding different parts of the debate that are likely to be discussed in rounds. In any legislation resolution, you must be familiar with all components of the bill and for some topics the most recent version. There is nothing more embarrassing than essentially debating the wrong resolution. For this topic, look into the history of labor laws in the U.S. and the role of unions in society.

While evidence organization is crucial throughout the round, it is most high-stakes during grand-cross because then is most likely that a team will ask for evidence. Whichever method you choose for organizing your evidence, make sure that you will be able to pull evidence quickly because you do not want to waste the little amount of time you have in grand-cross looking for a piece of paper. As a standard, I suggest you keep evidence on your desk for the rest of the round once you have used it in a speech. In addition, make sure that you understand your arguments and the responses you have to your opponents arguments; you shouldn't have to look at the flow or pull a card to respond to what your opponents say in cross.

# Pro Analysis

The pro has somewhat of a difficult time this month because proving legislation to be effective is no easy task, especially considering that every piece of legislation goes through extensive debate in congress. From the start, the con team might state that you have to prove that every part of the bill must be the best possible method to solve intended problems but in the real world that is impossible. There is no such thing as a perfect piece of legislation and definitely not given the heated disputes over different labor policies. With that in mind, you should present EFCA as an act that would overall benefit the interests of the American people.

There is a problem within the current U.S. economic system that will not be solved by natural market changes. The status quo should not be defended because corporations are not serving in the best interest of workers. There is a clear benefit for workers in unions that can help ease the current strain on the average American citizen. LECG Consulting states, "The most immediate benefit workers can expect from joining a union is higher wages. Blanchflower, in a survey of US studies on wage differentials, concludes that union members earn on average about 15% more than their nonunion counterparts." The exact percentage of higher wages will surely be contested by your opponents, but the underlying idea is that union workers get paid more than their non-union counterparts. Higher wages put more money in the hands of consumers in addition to leading to higher tax revenue for the government. Lawrence Mishel, president of the Economic Policy Institute noted that "unionized workers are 28.2% more likely to be covered by employer-provided health insurance." Health care benefits can be extended to less external costs for households, decreased stress, and a more productive workforce. So far we have seen the benefits of unions helping to alleviate two major issues in the economy.

Since there are distinct benefits for being a part of a union, there is a large population of American workers who desire to join unions. According to Common Dreams, "the most inconvenient fact for opponents of the Employee Free Choice Act is studies demonstrate that there are now 60 million Americans who would like to join a union." The con team may try to counter that number of 60 million by providing their own statistics saying people do not want their job unionized but we need to look at why they might say that. In the status quo, workers are afraid to declare that they are pro-union because of the many wrongdoings committed each year by employers. People might also take into consideration these abuses as being inevitable even if there is a majority support for a union and this sentiment might have some legitimacy to it in the current system. We must understand that EFCA changes the way companies go about dealing with unionized workers so in a EFCA passed economy there will be a decreased threat of employer abuse. Because of this, people may be more inclined to reap the numerous benefits that come with being a part of a union. Currently, there are methods available that would allow people to create unions at companies so why do we need this legislation? The fact of the matter is that businesses do not want unions to form because corporations benefit from taking advantage of their workers. Companies go to great lengths to squash any pro-union sentiment by engaging in many morally reprehensible actions. Common Dreams goes on to say that current workers, "are unable to [join unions] under the current system of sham workplace elections that allows

employer intimidation to flourish.” The problem exists in the status quo because the current methods to form unions allow for companies to victimize their workers. According to the NLRB annual report, “over 31,000 employees were fired or discriminated against in 2005 simply for supporting a union. The powerful groups that oppose the Employee Free Choice Act never mention this appalling state of affairs.” The Wall Street Journal reports, “Among its findings: In 51% of union organizing drives, management made some sort of threat to close its operation down if the union won the election. Ninety-two percent of companies facing union elections made employees attend "captive audience meetings"; 67% had employees attend weekly "supervisor one-on-one" meetings; 70% sent out "anti-union letters"; 55% showed "anti-union videos"; 34% gave "bribes or special favors" to anti-union employees; and 25% simply fired pro-union employees.” Corporations have great power over their employees because they control workers income and they use this as a threat when workers want to organize. It is illegal for companies to discharge employees who support union, but according to The American Prospect, “Penalties for these violations are so minimal that most employers treat them as a minor cost of doing business.” Clearly we can see that a change needs to occur to help workers escape from the persecution of big business. The Employee Free Choice Act takes many steps to help counter these problems.

To counter the abuses by employers, EFCA would impose greater penalties on employers who fire workers for support a union. This will deter businesses from just taking the small cost of unrightfully discharging a worker. While this is only a small portion of the bill, it can be used as a very strong pro point because there are not many good con responses. Essentially, increased penalties serves to give current law some teeth so that companies will actually choose to obey the law. Companies also take advantage of workers by significantly delaying bargaining talks as to deter unions. EFCA has a couple of parts to help deal with difficult employers; first being the bill also ensures that employees who form a union would at least gain a first contract. According to Common Dreams, “over one third of new unions are unable to win a first contract. The Employee Free Choice Act would change that sorry situation.” This would get bargaining talks off to a quick and productive discourse. EFCA also implements binding government arbitration if no agreement is made after 90 days from when bargaining commences. Binding arbitration ensures that unions and companies come to an acceptable agreement that satisfies both parties. The final portion of EFCA will be the most contested in this months debate, therefore, you must be prepared to wholeheartedly defend card-checks. Under EFCA, unions would need to get a majority of workers to sign union authorization cards for a union to be formed opposed to the current system in which a secret vote is held. The evidence will show why card-checks are a better system and will actually lead to more fair results. Card-check campaigns also have a much higher success rates than ballots so it would be acceptable to discuss how workers benefit more in unions; therefore, the methods by which unions are formed is not as critical to debate.

Contrary to what the con will inevitably say, unions actually benefit businesses. Dr. Paula B. Voos of Rutgers University says, “Unions increase productivity through a variety of channels. They reduce turnover and, hence, firm-specific skills are retained. One benefit is that turnover costs are lowered for employers. Moreover, the lower turnover makes it economically rational for employers to provide more training to union-represented employees, increasing employee skills and productivity further.” Increased productivity helps U.S. companies increase

their international competitiveness which not only benefits workers and companies but the United States as a whole. Con teams will bring up that increased wages for workers will surely lead to an increase in unemployment, but these claims are unsubstantiated with historical legitimacy and pro evidence provides counter-statistics. Harley Shaiken of the University of California, Berkeley states that, “Competitiveness, however, is linked to productivity, quality, and innovation as well as labor costs. And, when it comes to labor costs, low unit costs are critical, not simply low wages. In fact, higher wages can serve to enhance productivity, quality, and innovation, as well as reducing turnover. The result is a high road path to competitive success that benefits workers and communities as well as shareholders.” Looking to some real world example of higher wages for union workers, a recent study by the nonprofit Economic Roundtable found that union workers in Los Angeles County earn 27 percent more than nonunion workers in the same job. The increased wages for the 800,000 union workers -- 17 percent of the labor force -- adds \$7.2 billion a year in pay. As these workers spend their wages on food, clothing, child care, car and home repairs, and other items, their additional buying power creates 64,800 jobs and \$11 billion in economic output. It is easy to see that unions not only help employees by increasing wages and providing health care, but also serves to make companies more productive while also increasing economic output. The benefits of unions help to stabilize the U.S. economy by shifting back to the ideals of American business, increasing competitiveness, and injecting capital that will stimulate the economy.

EFCA also instills democratic values into a system that has become corrupted by big business and lobbying power. I have always been a supporter of running arguments that do not necessarily have numbers to support the points. They typically catch opponents off guard because they too do not have statistics relating to the argument and, therefore, must rely on more than just prepared materials. You can use this argument to outweigh other points in the round that typically become contested without a clear winner. Promoting democratic values can easily be a powerful fall-back argument in the round and can make for a very effective final focus. In the evidence, we have included a very long excerpt as to provide a thorough explanation of the point. Published in *The Journal of Labor and Society*, Gordon Lafer of the University of Oregon says, “In conclusion, the evidence discussed earlier points to the dramatically undemocratic nature of NLRB elections and to the modest but significant ways in which majority sign-up will make this a more free and fair system. Furthermore, it should now be clear that the analogy between union formation and electoral politics does not ultimately hold up and that when we understand the type of democratic act that unionization is, we also understand the logic of forming unions through public statements of support. Finally, it has often been argued that if majority sign-up makes unionization easier, this fact should be irrelevant to debates over democratic procedure. A close examination of the Wagner Act shows that making unionization easier is in itself an act of democracy promotion within the workplace and is exactly the embodiment of the political vision that drove Wagner and his colleagues. While it is understandable that the self-interest of employer associations may lead them to defend the current system and resist majority sign-up, this stance cannot be grounded in democratic principle. For all the reasons discussed, if one’s goal is simply the advancement of American democratic practice into the work world, it is clear that majority sign-up is a significant step forward from the failed regime of the NLRB.”

## Con Analysis

Debates about legislation can become very challenging considering you are dealing with a bill that hasn't yet been implemented. On whole whole, I tend to feel as though con teams have a distinct advantage in this month's debates because the con does not need to do very much to negate the resolution. The beauty of a piece of legislation that has not been passed is that there is still the potential to alter the bill. Ideally, legislation is supposed to be nearly perfect before it is passed; unfortunately, this doesn't hold true in the real world due to differing viewpoints, lobbying, earmarks, and other inter-workings of government. In the realm of public forum debate, we do not need to worry about these counter-productive processes and can focus on what is actually best for the country. Specific to the resolution, the pro team cannot argue that the Employee Free Choice Act is good; this is not an "on balance" topic in which one must automatically use a cost-benefit analysis. The burden is on the pro to prove that EFCA is the most effective legislation possible in regards to achieving their intentions; it cannot just have a benefit on balance but must be the best possible. While I wouldn't come out and say up front that the pro must prove that every part of the bill is effective, I would definitely hold them to that throughout the round. With this in mind, if you can trap your opponents into admitting that a particular part of the bill is not beneficial or you efficiently prove that then EFCA does not serve in the best interest of the American people. If your opponents try to contend this, then just ask them if they think the that interest of the American people is to pass the most advantageous legislation not just something that would (arguably) work. Debating through this framework gives the con a little leeway so they can win rounds through many different ways. Legitimate con wins consist of proving that each individual part of EFCA doesn't work or is not in the best interests of the American people and that one part of the bill is either detrimental or not the most beneficial. While I will never suggest conceding a point, if it comes down to it and you are losing a point, it will not be that bad to admit it. Even if said point is beneficial, the pro team must show benefits of all portions of the bill and they haven't when looking to con argument x.

Even though I seem to say this every month, it is still especially important this April; only include advancing arguments in your con case. There is plenty of time in your rebuttal speech to counter pro arguments. You can actually prepare some of your rebuttal speech beforehand as long as it doesn't interfere with your needed in-round rebuttals. You know at some point in the round you are going to need to respond to at least the majority if not all of the parts in EFCA so be prepared the counter them. With this in mind, use arguments in your case that will force your opponents to spend time during their rebuttal addressing your points rather than just letting the strengthen their own arguments.

The primary purpose of the EFCA is that it makes it easier for unions to form. While the pro will contend that is all and good the fact of the matter is that people do not want to join unions anymore. The pro will talk about the millions of people who want to be in unions, but there is powerful counter evidence regarding their specific sources that is available in the files. If people really wanted to join unions, then why has union density been on the decline for many

decades? The American people have changed their demand for many reasons. According to the Heritage Foundation, supporters of EFCA, “contend that the low level of unionization in the United States proves that elections do not reflect workers' free choice. But polls of workers show that the vast majority of non-union workers want to stay that way. By more than a 6-to-1 margin—82 to 13 percent—nonunion workers say that they do not want their job to be unionized.” The reason for this shift in worker sentiment has changed along with the economy; jobs have steadily been shifting away from manufacturing and into service industry jobs. A shift from private ballots to card-check only serves as an easier method to recruit workers into something that they do not want to be a part of. The Heritage Foundation says, “Unions know that private ballots best reveal workers' desires and that card-check organizing would not address, and could exacerbate, the alleged shortcomings of private elections. Yet they still favor card checks over private ballots. This is because their real aim is to reverse the labor movement's long-term decline. Unions are harder to sell to workers today than they were in the manufacturing economy of two generations ago.” People have also become much more aware that their needs are not fully addressed by unions especially considering the cost of joining a union. The Heritage Foundation goes on to say, “Most workers in the modern economy do not feel that union membership provides benefits worth the 1 percent to 2 percent of their salary that they would have to pay in dues.” In the current economy, citizens can use all of the money they can get and spending a significant amount of their salary to a group that does not serve in the peoples best interests is purely wasteful. Supporters argue that employers have unfairly driven away unions by not allowing them to form, firing unions supporters, and providing one-sided information persuading people not to join. Anne Layne-Farrar of LECG Consulting states, “workers may see less value in joining a union now than in prior decades, without regard to what their employers may say.” The evidence shows that company influence is not the reason behind the decreasing union participation. Now why would there be such a push to get unions formed if people didn't really want to join them? Greed. Someone has to benefit and if it is not workers or companies then it must be union bosses. The Heritage Foundation states, “Union organizers understandably boast about the benefits unions bring members, but they do not bring up the six-figure salaries that union bosses pay themselves from members' dues.” In actuality, the fabricated demand for unions is due to unions bosses self-interest and their extensive lobbying efforts; that's not quite representative of the workers now is it?

Your rebuttal speech should be filled with all of the problems of the different parts of EFCA so you can expand your argumentation to include the detriments of unions as a whole. Unions tend not be as filled with sunshine and rainbows as supporters of EFCA make unions out to be. In actuality, many of the complaints unions have towards employers are true of unions as well, particularly if EFCA is passed. Unions enjoy citing the abuses by employers to keep people out of unions, an argument that can be easily countered with evidence, but they fail to report their own maltreatments. The Center for Union Facts reports, “Most people don't know just how many crimes are committed every year through which union officials hurt their own members. According to the Office of Labor-Management Standards (OLMS), those crimes include ‘embezzlement, filing false reports, keeping false records, destruction of records, extortionate picketing and deprivation of rights by violence.’” That doesn't really sound like the after-work club you want join, in fact it is most like the gang your mother warned you not to

hang with. These abuses only get worse when a card-check campaign is introduced in which unions go to drastic measures to get people to sign the cards signifying their support for a union. It is common to dislike big business, but big labor is capable of manipulating many factors that negatively impact workers as a whole. According to the Center for Union Facts, "The Department of Labor's Office of Inspector General oversees, among other things, cases of labor racketeering -- and it stays busy. Union officials have continued to earn their reputation for greed, corruption, and mismanagement of union dues. Many of these cases involve union officials failing to protect their members from unethical pension scams, but the OIG also reports that it saw a three-fold increase in the number of convictions in internal union racketeering cases between 1998 and 2004." Labor racketeering directly undermines the interests of the American people and only serves to further deepen the economic crisis. To make it worse, unions are notoriously guilty of discrimination and while not quite as extreme as the bosses in "On the Waterfront," it still doesn't create a positive or productive work environment. The Center for Union Facts says, "Since 2000, labor unions faced 13,815 complaints of discrimination filed with the government's Equal Employment Opportunity Commission." That is approximately 4 complaints a day.

Guaranteed, the pro will say that unions raise wages and this is true...for the people who are still employed. High wages are exactly the problem because companies cannot sustain the costs thus they can only employ fewer workers. Understanding this is basic economics but there are available studies that allow you to quantify the effect of EFCA on employment. Anne Layne-Farrar of LECG Consulting finds, "that passing EFCA would lead to a 1 percentage point increase in the unemployment rate for every 3 percentage points gained in union membership brought about by a system of card checks and mandatory arbitration." That in itself doesn't sound good but let's look at its effect when we use the expected union density growth by the Federation of Labor Organizations. LECG Consulting cites, "Sheldon Friedman, research coordinator for the AFL-CIO, stated that EFCA 'could spur an increase in U.S. union density of nearly 5 percentage points and perhaps much more.' In particular, if card checks and a mandatory contract arbitration system were to increase union density by 5 percentage points, to 17.1 percent (the Friedman prediction), the US unemployment rate is predicted to increase in the following year by 1.49 to 1.77 percentage points over current levels -- an increase of 2.28 million to 2.71 million unemployed workers." Unemployment at this magnitude cripples the economy and is counter-productive to many of the steps the government has taken. We are in a time in which job creation is essential to the prosperity of our nation; implementing EFCA threatens to destroy our economy and, at the very least, drastically extend the downturn.

# Pro Blocks

## **People Don't Want Card Check**

Not true. 60 million U.S. workers wish they could exercise their right and be represented by a union when they currently aren't. The Employee Free Choice Act would help address this gap and give workers what they want in a fair democratic atmosphere unlike today in the current system. In addition, according to the Huffington Post, "Americans of all backgrounds are tired of watching their paychecks shrink, the cost of gas and health care skyrocket, and domestic jobs sent overseas. They are also suspicious of the CEOs and corporate interest groups who got us into this mess and jumped ship with taxpayer-funded golden parachutes. They are hungry for measures that strengthen the middle class and ease the economic crunch on America's workers. In fact, a recent poll conducted by Peter D. Hart Research Associates found that 60 percent of voters think the Employee Free Choice Act should be enacted, and nearly one-third (31 percent) strongly believe it should be a priority for Congress." As we can see, the American people do want the EFCA to be enacted, especially with the economy on the decline.

## **People Don't Want to Join Unions**

That's fine. The legislation in no way requires people to unionize. All the Employee Free Choice Act does is give workers another method to start a union if they so desire. In addition, it does this by eliminating some of the gross injustices currently prevalent in the system by making the process more democratic and strengthening laws currently in place that aren't enforced appropriately. In addition, perhaps in the future these people that don't want to join unions will feel differently after the EFCA enables them to hear both sides, as opposed to just the employer side. It is hard to call the current system democratic when only one side is effectively given a voice. More information is always better (especially when it is balanced), and that is exactly what the EFCA provides.

## **Card Check Doesn't Represent Employees Desires**

The old methods will still be in place, and employees will still have access to a private election if they so choose if 30% of the authorization cards are signed. The Employee Free Choice Act simply gives employees the choice of another option to utilize if they want to unionize. In addition, the legislation adds teeth to laws already in place against employer intimidation and unfair labor practices. No employee should be afraid to voice his or her opinion for fear of being fired. It is a first amendment right that needs to be restored and that is what the Employee Free Choice Act does.

### **Employer Abuse Low**

False. In addition, any abuse is too much abuse. “According to Cornell University’s Kate Bronfenbrenner, one-quarter of all employers illegally fire at least one employee during union-organizing campaigns. In 2005, over 31,000 workers were illegally disciplined or fired for union activity. The lucky workers get reinstated years later after exhaustive court battles. Penalties for these violations are so minimal that most employers treat them as a minor cost of doing business. Employees who initially signed union cards are often long gone or too afraid to vote by the time the NLRB conducts an election...Big business spends hundreds of millions a year to hire anti-union consultants to intimidate workers from participating in or showing support for union campaigns. Employers can require workers to attend meetings on work time during which company managers give anti-union speeches, show anti-union films, and distribute anti-union literature. Unions have no equivalent rights of access to employees. To reach them, organizers must visit their homes or hold secret meetings. This is hardly workplace democracy.” The Employee Free Choice Act effectively combats this abuse and makes the system more democratic as a whole.

### **Abuse by Unions Common**

According to Business Week, this is a myth. “Documented intimidation by unions during organizing campaigns is scant. Unlike employers, a union organizer can't fire you, cut your pay, or deny you a promotion. So it's not surprising that, in a study of a more than 60-year period, an employer group could only list 113 cases that they claim involved union deception or coercion in obtaining authorization-card signatures. Contrast that to a recent analysis that found that, if you're an employee actively trying to organize your co-workers, you have a 1-in-5 chance of getting fired by your employer for a legal activity. The freedom of association is a fundamental human right and a key ingredient to a strong middle class. Current law does not adequately protect workers' freedom of association. The Employee Free Choice Act will change that, and give workers a chance to balance the scales a little bit their way, for a change.”

### **Unions Raise Unemployment**

The topic isn't really about whether unions are good or bad. Considering people have the right to form unions, it is more about what the method of unionization should be. Should there be card check? That being said, there is evidence on how unions actually increase employment and benefit the economy as a whole. “Contrary to business propaganda, unions are good for the economy. A recent study by the nonprofit Economic Roundtable found that union workers in Los Angeles County earn 27 percent more than nonunion workers in the same job. The increased wages for the 800,000 union workers -- 17 percent of the labor force -- adds \$7.2 billion a year in pay. As these workers spend their wages on food, clothing, child care, car and home repairs, and other items, their additional buying power creates 64,800 jobs and \$11 billion in economic output. Many economists argue that any strategy Obama and Congress use to revitalize the economy should make higher wages -- and stronger unions -- a centerpiece.”

**Unions Less Productive**

See above. In addition, unions actually increase productivity. “Freeman and Medoff (1984) examined why unionized firms are more productive in *What Do Unions Do?* They found that about one-fifth of the union productivity effect came from reduced turnover. Unions improve communication channels giving workers the ability to improve their conditions short of “exiting.” Lower turnover means lower training costs, and the experience of more seasoned workers translates into higher productivity and quality. Moreover, higher compensation focuses the managerial mind: employers need to plan more effectively and focus on better methods.”

**Binding Arbitration is Bad**

Don't be deceived. This said arbitration would only occur in extreme conditions when it was absolutely necessary to establish a first contract after the necessary votes had been gathered. In addition, there would be mediation before arbitration. Overall, the EFCA guarantees faster and more satisfactory first contracts with the clauses about mediation and arbitration. Under the current system, employers can stop the union (even after it has enough support) by stalling and never signing a first contract.

**Workers Only Hear One Side During Card Checks**

Not true. As it is now, the workers only hear one side, the side of the employer, which is hardly democratic. Workers are denied access to the other side while they can be forced to attend meetings on work time where “managers give anti-union speeches, show anti-union films, and distribute anti-union literature. Unions have no equivalent rights of access to employees.” The EFCA would help remedy this problem and would crack down on many of the illegal tactics currently used to intimidate workers from forming a union.

# Con Blocks

## **EFCA Makes System More Democratic**

No. Nearly 80% (78%) of the public believe Congress should keep the existing secret ballot process for union membership. The secret ballot is the cornerstone of democracy, and the Employee Free Choice Act effectively eliminates this cornerstone. The secret ballot is absolutely necessary in order to ensure that workers are not intimidated into voting for something they might not otherwise choose. This country was founded on the secret ballot and the intimidation is just going to get worse and more invasive if the process is made public through card check. Proponents of the EFCA believe the lead up to the election is one sided and the laws don't have harsh enough penalties to prevent against illegal labor practices by the employer. Even if this is the case, the EFCA isn't the answer. The problem can be fixed through other means while maintaining a secret ballot. Penalties can be increased against unfair labor practices, the unions can be granted more access prior to the elections, the elections can be taken off company grounds, etc. Just not card check and not the EFCA. As I always say, you can always get rid of the symptoms by killing the patient, but shouldn't we try a few cures first? It isn't time to abandon the secret ballot.

## **Moral Argument – Every American Has Right to Join Union**

While this may be true, they should exercise this right with a secret ballot not a public card check. A secret ballot election is by far the fairest method in any democracy, where people can make their decision in private free from scrutiny. Nothing is perfect. Even if there are small problems with the current implementation of the secret ballot, which we're not saying there are, they should be fixed (see above), but the secret ballot should not be abandoned for any reason. Overall, it is immoral to deny these workers some privacy.

## **Helps the Economy/Improved Social Welfare**

Look at the evidence. Overall, unions increase unemployment and decrease productivity. Anne Layne-Farrar's "analysis predicts that passing EFCA would lead to a 1 percentage point increase in the unemployment rate for every 3 percentage points gained in union membership brought about by a system of card checks and mandatory arbitration." She goes on to say, "EFCA is unlikely to achieve its main goal of improving social welfare, which should take into account possible consequences not only for union members but for all other individuals, because the proposed rules would likely have detrimental effects on the unemployment rate and job creation. These are two adverse effects that America can ill afford at any time, but especially at this time of recession." Finally, it is hard to put a price on our workers' privacy which is destroyed by the EFCA.

**Employer Abuse/Intimidation**

Ask for the source and who conducted the study; then attack that study's credibility specifically if possible (look in the evidence). In reality according to the Heritage Foundation, "Employer abuses are the rare exception, not the norm, in organizing elections." In addition according to Anne Layne-Farrar, Director at LECG Consulting, "The findings in a 1985 study by Cooke call those claims in question. Cooke conducted an empirical analysis of campaign-related employer ULPs (defined generally as violations of section 8(a)(1) of the National Labor Relations Act, among other provisions).<sup>12</sup> He found that, from the time unions produced a card showing of employee support (used to support an NLRB election petition) to the end of the union organizing campaign, the estimated effect of improper employer opposition was "insignificant and seem[ed] to have little impact on reducing the likelihood of a union victory". This finding is corroborated by a more recent study by Ferguson (2008), who concludes that during the union campaign "the effect of ULP charges were not statistically significant."<sup>13</sup> This research casts doubt on the EFCA premise that unlawful employer conduct during post-petition conventional union organizing has been responsible for preventing unions from winning NLRB-sponsored secret ballot representation elections." Even if there was a significant problem with the status quo, which there isn't, the EFCA isn't the answer. The EFCA will simply promote intimidation from the unions on the other side which isn't desirable. The problem can be fixed through other means but putting targets on specific workers' backs by making the process less private is definitely not the answer.

## Crossfire

This topic is ripe with conflicting statistics (more so than usual in my opinion) so know your stuff and have it easily accessible. When you are disorganized, as a judge, I begin to question your competence/credibility. Also, I recently judged a round where the one kid asked where something was from and the other responded without looking at anything “oh it’s from Reuters” and then went on to his next point (suspect to say the least, and I began to question the credibility of some of the other things he was saying as a result).

C: Who was it that you cited in your study about employer intimidation?

P: \_\_\_\_\_

C: (Assuming you have dirt on them, I would probably wait to dish it out until the next speech when they won’t be able to respond, but you could attack them in cross as well)

P: So before we invaded Iraq, they conducted secret ballot elections; however, wouldn’t you agree that Iraq led by Saddam Hussein was not a real democracy? So it’s not enough to have a secret ballot to qualify as a democracy.

C: Aspects of Iraq were not demonstrative of a model democracy. It is also a little ridiculous to compare an election put on by the National Labor Relations Board with an election put on by Saddam Hussein and his cronies. The secret ballot is still among other things the cornerstone of democracy.

P: But a system can still be democratic without a secret ballot. Congressmen don’t submit their votes in private. They don’t have this secret ballot, but I would hope we could both agree that Congress is democratic.

C: Aren’t most the things you’re complaining about workers doing during the election campaign illegal?

P: Some of it is indeed illegal but not punished enforced properly to the point where it is almost laughable. In addition, the current law even if it were obeyed, which it often isn’t, gives disproportionate power to the employer side of the debate.

C: Couldn’t the law be strengthened to prevent against this abuse without adopting the EFCA and switching away from a secret ballot?

C: How can the United States afford this right now and expect to compete on a global scale?

P: The fact of the matter is that unions are actually more productive which helps out competitiveness. In addition, increased wages helps to stimulate the economy and isn’t that what we need right now?

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# Pro Evidence

## Wages Higher for Workers in Unions

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### **AN EMPIRICAL ASSESSMENT OF THE EMPLOYEE FREE CHOICE ACT: THE ECONOMIC IMPLICATIONS**

Anne Layne-Farrar is Director at LECG Consulting.

March 3, 2009

The most immediate benefit workers can expect from joining a union is higher wages. Blanchflower, in a survey of US studies on wage differentials, concludes that union members earn on average about 15% more than their nonunion counterparts.<sup>15</sup> Bookending this figure, Filer et al. place the union-nonunion differential at 8%-12% while Bratsberg and Ragan find that it reached 22% in the mid 1970s.<sup>16</sup> While these studies present average differentials, it is important to understand that the union wage markup is not the same among all sectors of the economy or even among all unionized workers.

## **Impact on Health Care and Pension Benefits**

[http://www.seiuhealthcarefl.org/Admin/Assets/AssetContent/6450b9a5-03bb-404c-a51f-8c2f84ac348c/546bfa9e-94e2-495f-9d30-54cc81f55e47/8547d1ca-e695-4494-910c-e766d043dab5/1/EFCA%20Impact%20\\_FL.pdf](http://www.seiuhealthcarefl.org/Admin/Assets/AssetContent/6450b9a5-03bb-404c-a51f-8c2f84ac348c/546bfa9e-94e2-495f-9d30-54cc81f55e47/8547d1ca-e695-4494-910c-e766d043dab5/1/EFCA%20Impact%20_FL.pdf)

Institute for America's Future

Alex Carter and Eric Lotke

Apr-2007

Access to health insurance is a grave problem in the United States and in Florida. More than 46 million people in America lack health insurance. In Florida, 3,479,000 people lack health insurance.

For better or worse, health insurance in America is primarily provided through employers. Health care is negotiated as an employment benefit, and workers who band together have demonstrated greater ability to secure health care benefits. Lawrence Mishel, president of the Economic Policy Institute noted that "unionized workers are 28.2% more likely to be covered by employer-provided health insurance." In addition, "unionized employers also provide better health insurance, paying an 11.1% higher share of single-worker coverage and a 15.6% higher share of family coverage."

Pension benefits are crucial for the lifetime of workers. The decision to save and plan for retirement is the longest term financial decision any worker can make. Pension benefits allow senior citizens, years after they retire, to maintain a decent standard of living.

Unionizing and collective bargaining is also associated with superior pension benefits. Mishel notes, "Unionized workers earn higher wages than comparable nonunion workers and also are...22.5% more likely to have pension coverage." The American Management Association observes, "Benefits under union contracts are generally superior to benefit packages for nonunion workers."

## Employer Tactics

[http://www.prospect.org/cs/articles?article=why\\_we\\_need\\_efca](http://www.prospect.org/cs/articles?article=why_we_need_efca)

The American Prospect

Peter Dreier and Kelly Candaele

December 2, 2008

According to Cornell University's Kate Bronfenbrenner, one-quarter of all employers illegally fire at least one employee during union-organizing campaigns. In 2005, over 31,000 workers were illegally disciplined or fired for union activity. The lucky workers get reinstated years later after exhaustive court battles. Penalties for these violations are so minimal that most employers treat them as a minor cost of doing business. Employees who initially signed union cards are often long gone or too afraid to vote by the time the NLRB conducts an election.

Big business spends hundreds of millions a year to hire anti-union consultants to intimidate workers from participating in or showing support for union campaigns. Employers can require workers to attend meetings on work time during which company managers give anti-union speeches, show anti-union films, and distribute anti-union literature. Unions have no equivalent rights of access to employees. To reach them, organizers must visit their homes or hold secret meetings. This is hardly workplace democracy.

## **Levels Playing Field Between Employer and Employees**

<http://www.dcjwj.org/node/365>

DC Jobs with Justice

Feb-10-2009

As we all know, our country is in an economic crisis. People are losing their jobs, their homes, their ability to provide their children with quality education, and their ability to retire with dignity and peace of mind. The cost of the most basic necessities such as health care, utilities, and fuel continue to skyrocket. In this current economic crisis, the worst since the Great Depression of the 1930's, workers and their communities need more opportunities to get ahead.

The obscene amount of power that employers wield over workers has contributed to this economic crisis by stagnating wages to the point where workers have been forced to rely on credit to make the most basic ends meet. Corporations have ruptured the critical relationship between wages and productivity.

We need stronger laws that level the playing field for workers and their families. The Employee Free Choice Act will give workers a fair and direct path to form unions through majority sign-up, help employees secure a contract with their employer in a reasonable period of time, and toughen penalties against employers who violate their workers' rights. See below for a summary of the Bill. With a free choice to join unions, working people can bargain for better pay, health care and pensions and build a better life themselves and their families.

## Harsher Penalties for Unfair Labor Practices

<http://www.commondreams.org/views07/0301-24.htm>

Common Dreams

John Logan

Mar-01-2007

According to the NLRB annual report, over 31,000 employees were fired or discriminated against in 2005 simply for supporting a union. The powerful groups that oppose the Employee Free Choice Act never mention this appalling state of affairs. The Employee Free Choice Act would impose greater penalties on employers who fire workers for choosing a union. The bill also ensures that employees who form a union would at least gain a first contract. Union avoidance law firms advise employers to keep fighting after employees form a union, telling them, 'You haven't lost until you sign a contract.' As a result, over one third of new unions are unable to win a first contract. The Employee Free Choice Act would change that sorry situation.

Finally, the most inconvenient fact for opponents of the Employee Free Choice Act: studies demonstrate that there are now 60 million Americans who would like to join a union but who are unable to do so under the current system of sham workplace elections that allows employer intimidation to flourish. The Employee Free Choice Act would protect the rights of those 60 million Americans against the powerful organizations that are mobilizing against it. And that's why passing the Employee Free Choice Act is the number one priority for those who believe that workers deserve the right to form a union free from coercion and harassment.

## **Addresses Widespread Violation of Worker's Rights**

<http://www.hrw.org/en/news/2007/02/26/us-support-employee-free-choice-act>

Human Rights Watch

Feb-26-2007

We urge you to support the Employee Free Choice Act. This legislation would be a critical first step towards addressing the widespread violation of workers' rights to organize and bargain collectively in the United States.

In 2000, Human Rights Watch published a report documenting the systematic abuse of workers' right to freedom of association in workplaces across the country. The report, *Unfair Advantage*, highlighted the many shortcomings in US labor law and in its enforcement that prevent workers from freely exercising this fundamental human right. Our 2004 report, *Blood, Sweat, and Fear*, focused on violations of workers' rights in US meat and poultry plants and found that little had changed since 2000. The Employee Free Choice Act would help to fix key shortcomings in US law that perpetuates the abuses.

## **A Shield against Corporate Bullying**

<http://www.washingtonpost.com/wp-dyn/content/article/2007/02/26/AR2007022601245.html>

The Washington Post

Lance Compa

Feb-27-2007

A proposal to let American workers decide in peace and quiet about whether to join a union has provoked a torrent of crocodile tears from corporate executives. The Employee Free Choice Act, which the House is due to vote on this week, would permit an employee to choose union representation by signing a membership card. If a majority of workers in a defined "bargaining unit" opted for it, employers would have to bargain in good faith with the workers' union.

Business spokesmen shout that the act deprives workers of their right to an election held by the National Labor Relations Board (NLRB). But what companies really prize is management's power to exploit the election procedure to mount aggressive, one-sided attacks on workers' freedom of association.

## Meaningful Remedies against Employer Coercion

<http://www.aflcio.org/joinaunion/voicetowork/upload/remedies.pdf>

The American Federation of Labor and Congress of Industrial Organizations  
Apr-2005

The Employee Free Choice Act (S. 842, H.R. 1696) helps ensure employees' free choice to form unions by providing effective remedies—including injunctive relief and monetary penalties—against employer coercion.

The Employee Free Choice Act was introduced as bipartisan legislation in the 109th Congress on April 19.

**The number of employer unfair practices has soared since the 1950s and 1960s.** Studies document increases of 600 percent to 800 percent. In 1998, roughly 24,000 employees won compensation for being fired or punished illegally for union activity, up from less than 1,000 in the 1950s and about 6,000 in 1969. During worker campaigns to form a union, 25 percent of all employers illegally fire at least one employee for union activity, according to another study.

**Current National Labor Relations Act (NLRA) remedies are not sufficient to deter such abuses or to erase their impact on employee free choice**

I The NLRA's penalties against illegal firing of union supporters are so minimal that employers treat them as a minor cost of doing business. Unlike other federal statutes prohibiting unfair treatment of workers by their employers, the NLRA does not provide compensatory or punitive damages or damages for pain and suffering for violations of NLRA rights. Employers who illegally fire workers for union activity are only required to pay back wages—minus what the worker earned in the meantime. In 2002, the average back pay award for an employee fired for union activity was a mere \$2,750.

## **Removes Unfair Barriers for 60 Million that Want Unions**

<http://www.commercialappeal.com/news/2008/oct/28/free-choice-act-gives-power-to/>

The Commercial Appeal

Deborah Godwin

Oct-28-2008

Some 60 million U.S. workers who are not represented by a union say they want one in their workplace. Yet only 15.7 million, or 12.1 percent of all workers, belong to a union.

Why the huge disparity? It's because employees say they are afraid that they will be fired if they try to organize a union in their workplace, and rightfully so. There is a one in five chance that an active union supporter will be illegally fired for union activity during an organizing campaign, according to the Center for Economic and Policy Research.

The Employee Free Choice Act will remove unfair barriers to union representation and collective bargaining so that workers can get their fair share and improve jobs and benefits.

Contrary to the rhetoric being used by those vociferously opposed to this legislation, including a recent guest columnist in The Commercial Appeal, this act would not do away with secret-ballot elections. Rather, it would put the choice on how to form a union -- whether through an election or by signing authorization cards -- in workers' hands, where it belongs.

## 60 Percent of Voters Want EFCA

[http://www.huffingtonpost.com/mary-beth-maxwell/playing-offense-for-the-e\\_b\\_144370.html](http://www.huffingtonpost.com/mary-beth-maxwell/playing-offense-for-the-e_b_144370.html)

The Huffington Post

Marry Beth Maxwell

Nov-17-2008

American Rights at Work launched a substantial nationwide television ad campaign. It emphasizes the fact that far too often, CEOs won't willingly pay their employees a decent salary and provide health care - and through the Employee Free Choice Act, workers will more easily form unions and bargain for better pay and benefits.

In the wake of an unprecedented attempt by anti-union corporate special interests to mislead the American public on unions, and particularly on the Employee Free Choice Act, it's time to set the record straight. The ad is part of a broad, coordinated effort to champion the legislation and facilitate its passage in Congress.

Why? Americans of all backgrounds are tired of watching their paychecks shrink, the cost of gas and health care skyrocket, and domestic jobs sent overseas. They are also suspicious of the CEOs and corporate interest groups who got us into this mess and jumped ship with taxpayer-funded golden parachutes. They are hungry for measures that strengthen the middle class and ease the economic crunch on America's workers. In fact, a recent poll conducted by Peter D. Hart Research Associates found that 60 percent of voters think the Employee Free Choice Act should be enacted, and nearly one-third (31 percent) strongly believe it should be a priority for Congress.

## Unions do not Increase Unemployment

[http://tpmcafe.talkingpointsmemo.com/2009/03/13/unions\\_and\\_unemployment\\_the\\_battle\\_over\\_the\\_employ/?ref=n](http://tpmcafe.talkingpointsmemo.com/2009/03/13/unions_and_unemployment_the_battle_over_the_employ/?ref=n)

Talking Points Memo

Dean Baker - March 13, 2009, 11:01AM

Recently, they have sought to promote the argument that unions lead to higher unemployment. To help push this case they have been circulating a study that examines differences in unionization rates and unemployment among Canadian provinces. [Chris Kromm has more on the funding of the study.] This study purports to find that a 3 percentage point increase in unionization rates leads to a 1 percentage point increase in unemployment. Based on this study, the opponents of the Employee Free Choice Act argue that any resulting increase in unionization will cost millions of jobs.

Of course the immediate response might be to ask, if this study's findings are accurate, why Canada's unemployment rate isn't 7 percentage points higher than the U.S. rate? Canada's unionization rate is about 20 percentage points higher than in the U.S., yet its unemployment rate is somewhat lower.

More substantively, there is a large body of research on this topic. While some of the research does find a correlation between unemployment and unionization rates, much of more recent research finds no link between unemployment and unionization rates.

In 2006, the Organization of Economic Cooperation and Development (OECD) did an exhaustive analysis of the research on this topic and concluded that there was no link between unionization rates and unemployment. It is easy to find examples of countries with very high unionization rates and low levels of unemployment. For example Norway and Denmark have unionization rates near 80 percent. Before the current crisis their unemployment rate was under 3.0 percent.

Of course we don't have to go overseas to prove the case that unions don't lead to unemployment. If we go back 40 years, the unionization rate was over 30 percent. Presently, it is just over 12 percent. In the 60s, the unemployment rate fell as low as 3.0 percent and was below 5.0 percent for most of the decade.

It is possible for economists to produce studies that tie unions to unemployment just as industry funded studies have tied the minimum wage to unemployment, even though a large body of academic research shows the opposite. For this reason, the OECD has performed an extremely valuable service with its careful analysis of the data. Until someone can show cause to question this OECD analysis, there is no reason to accept the employer claims that the Employee Free Choice Act will cost jobs.

## **Unions do not Increase Unemployment (Cont'd)**

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### **AN EMPIRICAL ASSESSMENT OF THE EMPLOYEE FREE CHOICE ACT: THE ECONOMIC IMPLICATIONS**

Anne Layne-Farrar is Director at LECG Consulting.

March 3, 2009

While the results on innovation and general capital investment are clear, the literature offers conflicting results with respect to the impact of union density on inflation, employment and unemployment. Freeman finds that union density has no statistically significant effect on either employment or unemployment.

## **Increases Competitiveness**

[http://help.senate.gov/Hearings/2009\\_03\\_10/Voos.pdf](http://help.senate.gov/Hearings/2009_03_10/Voos.pdf)

Dr. Paula B. Voos  
Rutgers University  
March 10, 2009

A crucial question is whether in an increasingly global economy, U.S. economic competitiveness would be hurt by an increase in union representation. Contrary to the conventional wisdom, there is little reason to fear in this regard.

First, most parts of the world, including all of the high-end economies with which we compete, have much higher levels of unionization than we do. Those high-end economies also pay higher benefits to their blue-collar workers. Of the 20 richest countries tracked by the U.S. Bureau of Labor Statistics, the United States ranks *17th* in hourly pay for production workers in manufacturing. This group of trading partners accounts for almost half of total U.S. trade flows (Bivens, 2009). The key difference in competitiveness is not unionization; it is that we burden our businesses, especially our largest corporations, with the high cost of health insurance, whose cost is spread across society in other high-end economies, and the disadvantage of an overvalued currency. In fact, high rates of unionization are associated with smaller trade deficits, a good measure of international competitiveness (Bivens, 2009).

Second, low labor costs are never going to be a reliable basis for U.S. competitiveness in a global economy – rather, the U.S. needs to compete on the basis of innovation, high value added, high quality, and high productivity. Unionization tends to promote the shift to these latter bases of competition by foreclosing the low-wage alternative.

Unions increase productivity through a variety of channels. They reduce turnover and, hence, firm-specific skills are retained. One benefit is that turnover costs are lowered for employers. Moreover, the lower turnover makes it economically rational for employers to provide more training to union-represented employees, increasing employee skills and productivity further. In addition, since unions increase compensation, firms are incentivized to invest in new technology (which tends to be labor -saving), increasing productivity. Unionized employers also tend to shift to higher value-added goods and services in their product mix. And in sectors in which there are union-supported apprenticeship programs, employers can take advantage of this source of highly-skilled labor.

## Helps Small Business

[http://help.senate.gov/Hearings/2009\\_03\\_10/Voos.pdf](http://help.senate.gov/Hearings/2009_03_10/Voos.pdf)

Dr. Paula B. Voos  
Rutgers University  
March 10, 2009

Another issue is whether small business would be particularly disadvantaged if employees who wanted union representation had an easier way of organizing than the current NLRB process. There are several reasons to doubt that would be the case.

For one reason, small employers often have a different employment atmosphere than that which exists in large bureaucratic organizations; it may well be that employees in small firms have little demand for union representation. Interestingly, rates of union representation in small employers are currently lower than those in larger organizations in the United States, even though unions are in fact more likely to win representation elections in small than in large units. This means many small business owners should not be overly concerned about possible changes in the law governing union organizing.

At the same time, individuals who work in small business should have the same rights to freedom of association and union representation as anyone else. So if the employees of a small employer do form a union, what then?

Actually, there can be substantial benefits to small business from union representation. When an industry is characterized by many small employers, each firm can benefit from areawide unionization that standardizes compensation across competing firms, stabilizing the industry. The union provides a pool of well-trained labor that becomes attached to the industry. Moreover, the union often serves important functions in training and benefit provision for the entire set of employer signatories to a union contract. Furthermore, unions recognize the need to preserve and enhance the competitiveness of unionized employers. Unions organizing small businesses in the service sector often defer negotiated wage increases until the majority of competing employers are also unionized, and give newly unionized firms several years to catch up to union contract levels. Contrary to popular opinion, unions, like businesses, also act in an economic rationally manner.

In short, while I doubt that a new process of union formation would cause an explosion of union representation in small firms, if some small business sectors were to be organized because their employees are frustrated with current conditions and seek change, that could provide positive benefits for small businesses and their employees.

## Unions Good for Economy

[http://www.prospect.org/cs/articles?article=why\\_we\\_need\\_efca](http://www.prospect.org/cs/articles?article=why_we_need_efca)

The American Prospect

Peter Dreier and Kelly Candaele

December 2, 2008

Contrary to business propaganda, unions are good for the economy. A recent study by the nonprofit Economic Roundtable found that union workers in Los Angeles County earn 27 percent more than nonunion workers in the same job. The increased wages for the 800,000 union workers -- 17 percent of the labor force -- adds \$7.2 billion a year in pay. As these workers spend their wages on food, clothing, child care, car and home repairs, and other items, their additional buying power creates 64,800 jobs and \$11 billion in economic output. Many economists argue that any strategy Obama and Congress use to revitalize the economy should make higher wages -- and stronger unions -- a centerpiece.

If unions are good for workers and good for the economy, why are so few employees union members? Business leaders argue that employees' anti-union attitudes account for the decline in membership, which peaked at 35 percent in the 1950s. In fact, a recent poll found that 58 percent of non-managerial workers would join a union if they could. But they won't vote for a union, much less participate openly in a union-organizing drive, if they fear losing their jobs for doing so.

## Unions Increase Productivity

[http://www.aflcio.org/joinaunion/voicetowork/efca/upload/EFCA\\_Shaiken\\_20070208.pdf](http://www.aflcio.org/joinaunion/voicetowork/efca/upload/EFCA_Shaiken_20070208.pdf)

Harley Shaiken, Graduate School of Education and Department of Geography

University of California, Berkeley

February 8, 2007

Few dispute that the union advantage results in organized workers earning more than their nonunion counterparts. Some, however, argue that we can no longer afford this premium in a fiercely competitive domestic and global economy. Competitiveness, however, is linked to productivity, quality, and innovation as well as labor costs. And, when it comes to labor costs, low unit costs are critical, not simply low wages. For example, a worker producing 10 widgets an hour who earns \$20 has a unit labor cost of \$2 a widget; a worker producing 1 widget an hour who earns \$5 has a unit labor cost of \$5 a widget. In this case, higher wages lower labor costs. In fact, higher wages can serve to enhance productivity, quality, and innovation, as well as reducing turnover. The result is a high road path to competitive success that benefits workers and communities as well as shareholders.

Consider the role of productivity. When Henry Ford introduced the assembly line in 1913 in his Highland Park plant near Detroit, productivity shot up. So did costly turnover. In response Ford doubled the prevailing wage in the auto industry in January 1914 to what became the legendary five-dollar day. Many observers, including his competitors, predicted Ford's ruin. Instead, he was able to cut the price of the Model T, pay his workers substantially more, and increase his profits significantly. "A low wage business is always insecure," Ford commented. The five-dollar day "was one of the finest cost cutting moves we ever made" (Raff and Summers, 1986: 3). Ford pioneered the high road to competitive success, but many factors caused American industry to seek exit ramps. It took the rapid rise of unions later in the century to link rising productivity to worker wages more permanently. The result was competitive firms and a growing middle class.

## Unions Increase Productivity (Cont'd)

[http://www.aflcio.org/joinaunion/voicetowork/efca/upload/EFCA\\_Shaiken\\_20070208.pdf](http://www.aflcio.org/joinaunion/voicetowork/efca/upload/EFCA_Shaiken_20070208.pdf)

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February 8, 2007

The economics literature indicates that unionization and high productivity often go hand-in-hand. Fairness on the job and wages that reflect marketplace success contribute to more motivated workers. Belman points out that unions “provide opportunities for firms to better their performance by eliciting greater commitment and information sharing effort from their employees” (Belman, 2003: 3). Without unions, day-to-day competitive pressures leave workers with quitting as the only option to address serious problems, a costly solution for all concerned. Given the pressures of globalization and competitiveness today, unions have been responsive to increasing productivity and embracing new methods. “If we don’t make a profit, we don’t have a plant,” according to James Kaster, president of UAW Local 1714, representing the famed General Motor’s plant in Lordstown, Ohio (Terlip, 2007).

Freeman and Medoff (1984) examined why unionized firms are more productive in *What Do Unions Do?* They found that about one-fifth of the union productivity effect came from reduced turnover. Unions improve communication channels giving workers the ability to improve their conditions short of “exiting.” Lower turnover means lower training costs, and the experience of more seasoned workers translates into higher productivity and quality. Moreover, higher compensation focuses the managerial mind: employers need to plan more effectively and focus on better methods.

## **EFCA Gives Workers a Voice**

<http://www.afscme.org/press/16030.cfm>

American Federation of State, County and Municipal Employees

Jun-26-2007

60 million workers say they would join a union if they could. But the system that is designed to protect employees who want a voice at work is broken and needs to be fixed. The Employee Free Choice Act will give more American workers a chance to share in the prosperity produced by the nation's economy. Today, the Senate has sent a powerful message that momentum is on the side of workers who want to bargain for better wages and benefits.

The struggle to enact the Employee Free Choice Act is not over. A majority of senators are now on record supporting an America where the middle class thrives, seniors can afford their prescriptions, parents can afford to send their children to college, and workers can afford to retire with security. Yet too many Republican senators are opposed to giving more Americans the choice to join a union and to bargain for a better life.

## Union Advantages and Current Employer Harassment

<http://www.rockymountainnews.com/news/2008/dec/23/dunlap-employee-free-choice-act-best-bet-workers/>

Rocky Mountains News

Anne Dunlap

Dec-23-2008

For months, the collapse of the stock market and the size of the government bailout have dominated the national debate. While we are spending \$800 billion or more to keep our financial institutions afloat, what are we doing to help the recovery of average American families? We are repairing the budgets of executives flying to Congressional hearings in their corporate jets, but how do we repair the budgets of working families who can't pay the house payment, the utilities, or the medical bills?

A report released on Dec. 2 by the Center for Economic and Policy Research (CEPR) provides important insight into one way that government can improve the lives of millions of American families. The report, Unions and Upward Mobility for Women Workers, demonstrates that belonging to a union raises women's wages to about \$2 more per hour compared to similar women in similar jobs that are non-union. In Colorado, the impact of union membership raises women's wages by 5.8 percent.

And that's not all. The data show that women in unions are significantly more likely to have employer-provided health insurance and an employer-provided pension. Both of these benefits are crucial for families and individuals to maintain financial security, the backbone of a healthy economy.

Women play an increasingly important role in U.S. family economics. About 40 percent of American families are headed by women. In many more families, women earners contribute essential shares of the family income. Allowing Americans the freedom to join a union is a crucial element in strengthening the economy where it matters most: in our homes.

Most Americans understand the union advantage. Sixty million workers say they'd form a union tomorrow, but too few will ever get the chance under current law. Employers routinely harass, intimidate and even fire people who try to form unions, and labor law is helpless to stop them. Under current labor law, the National Labor Relations Board does not have the authority to impose fines, revoke licenses, or impose prison time on those who violate the National Labor Relations Act. While the FCC can fine CBS \$550,000 for Janet Jackson's wardrobe malfunction at the Super Bowl, the National Labor Relations Board cannot fine an employer for willfully bribing, threatening, assaulting, or firing pro-union employees.

## **Union Advantages and Current Employer Harassment (Cont'd)**

<http://www.rockymountainnews.com/news/2008/dec/23/dunlap-employee-free-choice-act-best-bet-workers/>

Rocky Mountains News

Anne Dunlap

Dec-23-2008

Here in Denver, I and several other religious leaders have met with low-wage janitors who report that during their recent efforts to unionize, supervisors threatened them with termination and attempted to entice them with illegal offers of additional work hours if they would oppose the union. One worker said that she was forced to quit her job rather than face continued harassment from management.

The Employee Free Choice Act (EFCA) will restore working people's single best ticket to the middle class - the freedom to form a union and bargain for a better life. The right to form a union and collectively bargain is a basic right, recognized by U.S. federal law since 1935 and universally recognized and protected around the world. The Employee Free Choice Act would give workers a fair and direct path to form unions through majority sign-up, help employees secure a contract with their employer in a reasonable period of time, and toughen penalties against employers who violate their workers' rights.

Long before Wall Street's investment firms started going belly up, working families were struggling to make ends meet. Things have gotten much worse in recent months. So far, the federal government has spent a lot of money we don't have to shore up companies that still may fail. Passing the Employee Free Choice Act won't cost the government anything. There could even be a slight increase in revenue because workers who make more will pay higher income taxes. Most importantly, the Employee Free Choice Act will bolster our economy in the best way, by putting money, health care and pensions into the pockets of American families.

## **Nurses are Proof ‘Employee Free Choice Act’ is Needed**

<http://www.afscme.org/publications/14715.cfm>

American Federation of State, County and Municipal Employees

Nearly 800 Kaiser Permanente nurses working at some 200 locations throughout Southern California used a process known as “majority sign-up” to join AFSCME affiliate United Nurses Associations of California (UNAC)/UHCP/NUHHCE. Their success offers more proof for why passage of the Employee Free Choice Act — legislation that would protect workers’ rights to form unions without employer intimidation — is critical.

The employees — including certified nurse midwives, case managers, discharge planners and nurse educators — joined 10,000 other Kaiser Permanente nurses who have become UNAC members since the 1970s.

Kaiser’s management agreed to remain neutral during the nurses’ campaign to organize through majority sign-up. Also known as “card check,” the procedure allowed the nurses to gain recognition of their union once a majority had signed cards indicating they wanted one. It was the same system employed during Kaiser organizing drives since 1997, and comes on the heels of passage of the Employee Free Choice Act in the U.S. House of Representatives. The bill, now pending in the Senate, would level the playing field between private-sector workers and their employers during efforts to build a union.

“I’m overjoyed,” says Frank Schubert, RN, who works in centralized outpatient utilization management. “The union will help us have a voice to be more effective patient advocates.”

“Now that 800 more nurses at Kaiser Permanente have joined UNAC/UHCP, the voices of health care professionals are even stronger and we can have an even bigger role in helping Kaiser Permanente be the best place to get care and to work,” adds Kathy J. Sackman, RN, UNAC/UHCP president and an AFSCME International vice president.

## **Gives Employees Power to Help Economy**

<http://www.post-trib.com/business/1452086.gally.article>

Post-Tribune Staff Report

Feb-27-2009

Organizers cited a report by the Center for American Progress as evidence that Free Choice would help the state's economy. In Indiana, union workers' average wages are 12 percent higher than their not-union counterparts, an average difference of \$2.63 per hour. Statewide, if unionization grew by 5 percent annually, workers would earn \$547 million more, according to the report.

Service Employees spokes-person Julie Popper said the act has gained several sponsors but it hasn't yet been introduced in Congress. U.S. Sen. Evan Bayh and U.S. Rep. Pete Visclosky, both Democrats, support the legislation.

"Today's report shows what many in this room already know from first-hand experience," said Chris Brinkman, director of Change That Works for Indiana. "To give working families the buying power we need to help our economy, we need the right to freely and fairly form a union and bargain for better wages."

Workers shared their stories of how forming a union can result in threats and harassment from management and sometimes even getting fired. A former employee at Georgia-Pacific's Wheatfield plant, Brian McIntosh, shared his story of the difficulty of forming a union under the system.

"Under the Employee Free Choice Act, we would have had a contract by now at Georgia Pacific and I would not have been fired," said McIntosh. "We need this law to force companies like GP to have meaningful talks with unions to get a fair deal for the employees."

## **Corporations Exploit Workers Through Weak Laws**

<http://www.hrw.org/en/reports/2007/04/30/discounting-rights>

Human Rights Watch

April 30, 2007

In this 210-page report, Human Rights Watch found that while many American companies use weak US laws to stop workers from organizing, the retail giant stands out for the sheer magnitude and aggressiveness of its anti-union apparatus. Many of its anti-union tactics are lawful in the United States, though they combine to undermine workers' rights. Others run afoul of soft US laws. Human Rights Watch's investigation revealed that, in most cases, Wal-Mart begins to indoctrinate workers and managers to oppose unions from the moment they are hired. Managers receive explicit instructions on keeping out unions, many of which are found in the company's "Manager's Toolbox," a self-described guide to managers on "how to remain union free in the event union organizers choose your facility as their next target."

## **Union Intimidation is a Myth**

[http://www.peri.umass.edu/fileadmin/pdf/other\\_publication\\_types/efca\\_files/George\\_Miller\\_Business\\_Week\\_9.22.08.doc](http://www.peri.umass.edu/fileadmin/pdf/other_publication_types/efca_files/George_Miller_Business_Week_9.22.08.doc)

Business Week

September 22, 2008

Another myth is that the Employee Free Choice Act would encourage intimidation. Documented intimidation by unions during organizing campaigns is scant. Unlike employers, a union organizer can't fire you, cut your pay, or deny you a promotion. So it's not surprising that, in a study of a more than 60-year period, an employer group could only list 113 cases that they claim involved union deception or coercion in obtaining authorization-card signatures. Contrast that to a recent analysis that found that, if you're an employee actively trying to organize your co-workers, you have a 1-in-5 chance of getting fired by your employer for a legal activity.

The freedom of association is a fundamental human right and a key ingredient to a strong middle class. Current law does not adequately protect workers' freedom of association. The Employee Free Choice Act will change that, and give workers a chance to balance the scales a little bit their way, for a change.

## **Importance of Middle Class**

[http://www.peri.umass.edu/fileadmin/pdf/other\\_publication\\_types/efca\\_files/George\\_Miller\\_Business\\_Week\\_9.22.08.doc](http://www.peri.umass.edu/fileadmin/pdf/other_publication_types/efca_files/George_Miller_Business_Week_9.22.08.doc)

Business Week

September 22, 2008

When it comes to our economic priorities, there is nothing more important than ensuring a strong middle class. The middle class is the backbone of our economy and our democracy.

Unfortunately, in recent years, the middle-class life has become increasingly difficult to maintain. Workers' wages have stagnated as the cost of everything from milk to college tuition has skyrocketed. The staples of a middle-class life—a fair wage, access to health care, a sound retirement—are getting squeezed. The percentage of national income going to workers' wages is at its lowest level since 1929, while the percentage of our nation's wealth going to corporate profits is at its highest since the 1940s.

There is one way to turn these trends around: By giving workers the right to freely choose to join or form a union.

## Currently Not Democratic

[http://www.peri.umass.edu/fileadmin/pdf/other\\_publication\\_types/efca\\_files/WSJ\\_Thomas\\_Frank\\_9.3.08.doc](http://www.peri.umass.edu/fileadmin/pdf/other_publication_types/efca_files/WSJ_Thomas_Frank_9.3.08.doc)

Wall Street Journal

Thomas Frank

September 3, 2008

The answer, of course, is that most workplaces aren't democracies at all. They are dictatorships, of varying degrees of benevolence.

Nor do most big employers really have anything against intimidation and coercion during elections. These are the everyday tools of what is politely called "union avoidance," and companies routinely use them when their employees try to organize: Threats to move the operation abroad if the union wins the election; compulsory meetings to listen to anti-union propaganda; termination for select pro-union employees.

These practices are so well known that they have been the subject of reports by Human Rights Watch. They have been scrutinized by academics and quantified with scientific precision, most notably in a 2000 study written by Kate Bronfenbrenner of Cornell University and submitted to the U.S. Trade Deficit Review Commission.

Among its findings: In 51% of union organizing drives, management made some sort of threat to close its operation down if the union won the election. Ninety-two percent of companies facing union elections made employees attend "captive audience meetings"; 67% had employees attend weekly "supervisor one-on-one" meetings; 70% sent out "anti-union letters"; 55% showed "anti-union videos"; 34% gave "bribes or special favors" to anti-union employees; and 25% simply fired pro-union employees. If American business was its own country, it would probably come in for sanctions from the State Department.

"There has been no such thing as a secret ballot for the 20 years I've been studying elections," Ms. Bronfenbrenner told me a few days ago. "Employers know exactly which way an employee is going to vote."

## **Restores System of Checks and Balances**

[http://www.aflcio.org/joinaunion/voicetowork/efca/upload/EFCA\\_Shaiken\\_20070208.pdf](http://www.aflcio.org/joinaunion/voicetowork/efca/upload/EFCA_Shaiken_20070208.pdf)

Harley Shaiken, Graduate School of Education and Department of Geography

University of California, Berkeley

February 8, 2007

The EFCA restores needed balance to a process that has become increasingly dysfunctional. As we have seen, denying workers the right to form a union has important consequences for the economy and the political process. Workers' freedom to form unions is, and should be considered, a fundamental human right. All Americans lose—in fact, democracy itself is weakened—if the right to unionize is formally recognized but undermined in practice. Strengthening free choice in the workplace lays the basis for insuring a more prosperous economy and a healthier society. As Studs Terkel put it, “Respect on the job and a voice at the workplace shouldn't be something Americans have to work overtime to achieve” (2006).

## **Mirrors Successful Strategies Already in Use**

<http://dc.david.jacobs.googlepages.com/businessscholars.html>

“Business Scholars Support the Employee Free Choice Act”

~50 Professors from across the nation

Top signatory, Paul Adler, USC

December 2, 2008

Employers who have chosen the path of union recognition and cooperation have often found benefits in lower turnover, higher productivity, and enhanced capacity for innovation. Respect for workers is more conducive to employee commitment and contribution than unilateral management control. The garment unions' transformation of sweatshops into humane and collaborative enterprises early in the twentieth century, the innovative design of UAW-Saturn cars in the 1990s, and US-based quality motorcycle production by Harley-Davidson today all demonstrate the potential of union-management partnership.

The provisions of the Employee Free Choice Act mirror successful strategies already in use by well-known employers such as telecom giant AT&T, healthcare leader Kaiser Permanente, and others. These companies practice voluntary recognition of unions through majority sign-up and have negotiated generous contracts with their unions.

## Gives Current Law Teeth

[http://help.senate.gov/Hearings/2007\\_03\\_27\\_a/Estlund.pdf](http://help.senate.gov/Hearings/2007_03_27_a/Estlund.pdf)

Cynthia L. Eslund and Catherine A. Rein, Profs of Law at NYU

March 27, 2007

EFCA's enhanced enforcement provisions are designed to give some teeth to a law whose toothlessness has become an international embarrassment. The trebling of backpay for an employee who suffers anti-union discrimination during the representation and initial bargaining phase operates as a rough proxy for the more generous damages remedies that exist under most antidiscrimination statutes. Given the modest amount of backpay that is typically awarded in an individual discharge case, this is the least that can be expected to deter anti-union discrimination that may be calculated to head off the prospects of unionization collective bargaining that many employers so vehemently resist. For employers who persist, and who engage in egregious or repetitive acts of discrimination and coercion, the bill would authorize the assessment of civil penalties.

EFCA also provides for expedited investigations and injunctive relief in appropriate cases. The statute already recognizes that certain violations of the Act threaten to accomplish their unlawful aims long before the law's ordinary remedial proceedings have a chance to run their course; if those wrongs are to be effectively remedied, it must be done expeditiously and by injunction. As the law stands, however, it is only certain union conduct – illegal secondary pressures and recognitional picketing – that trigger that extra measure of urgency.<sup>9</sup> Once again, the implicit premise of existing law seems to be that employer interference with the basic right to form a union is just not that serious. EFCA would introduce some symmetry to the law's remedial scheme.

The discharge of a union activist during an organizing drive is the quintessential case of a violation that must be remedied quickly if it is to be effectively remedied at all. Too often, the real objective of such a discharge is not just to rid the workplace of one employee but to intimidate his or her co-workers and stall the organizing drive itself. Prompt injunctive relief, subject to all the usual requirements and safeguards of injunctive proceedings, is the only effective answer to such direct and forceful interference with the right to organize.

## **Protects Right to Bargain Collectively and Fills “Representation Gap”**

[http://help.senate.gov/Hearings/2007\\_03\\_27\\_a/Estlund.pdf](http://help.senate.gov/Hearings/2007_03_27_a/Estlund.pdf)

Cynthia L. Eslund and Catherine A. Rein, Profs of Law at NYU

March 27, 2007

The law is supposed to protect employees’ right to form a union and bargain collectively; that right is every bit as important as the right to refrain from those activities. In a world in which employers, who own and control the workplace and on whom employees are inescapably dependent, vehemently oppose unionization, the law must stand solidly behind employees who seek to exercise that right. The law’s failure to do so has contributed in some measure to the drastic decline in union membership in the private sector, and to the well-documented “representation gap” – the wide gap between what employees have and what they say they want in terms of collective representation.<sup>16</sup> EFCA would take a modest step toward enabling employees to narrow that gap by forming a union.

## **Income Inequality**

[http://www.prospect.org/cs/articles?article=why\\_we\\_need\\_efca](http://www.prospect.org/cs/articles?article=why_we_need_efca)

The American Prospect

Peter Dreier and Kelly Candaele

December 2, 2008

The relative weakness of the American labor movement accounts for many of the most troublesome aspects of our society. The current business cycle has been the weakest on record for working families. Between 2000 and 2007 -- before the current mortgage meltdown and recession -- the median income of working-age households fell by more than \$2,000, even though workers' productivity increased. Why didn't American workers reap the benefits? Income inequality is greater today than at any other time since the 1920s. Families' declining purchasing power -- for example, their inability to keep up with mortgage, car, and other payments -- accounts for a major share of the nation's economic woes.

In fact, the U.S. has the most inequality and poverty of any industrialized country. And it's no coincidence that the U.S. has, by far, the fewest workers covered by a union contract among all major affluent nations.

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## **(Long but Thorough) Explanation Why EFCA is More Democratic**

[http://www.peri.umass.edu/fileadmin/pdf/other\\_publication\\_types/efca\\_files/Lafer\\_on\\_card\\_check\\_WUSA\\_March\\_2008.pdf](http://www.peri.umass.edu/fileadmin/pdf/other_publication_types/efca_files/Lafer_on_card_check_WUSA_March_2008.pdf)

The Journal of Labor and Society  
Gordon Lafer, University of Oregon  
2008

(Abstract and Conclusion)

The election procedures of the National Labor Relations Board (NLRB) fall dramatically short of American standards defining “free and fair” elections, and indeed embody practices that our government would reject in any other country. This article examines the ways in which the Employee Free Choice Act, mandating union recognition based on signed statements from a majority of employees, redresses some of the most undemocratic aspects of current NLRB practice. Finally, the article argue that the analogy between unionization and elections to public office is fundamentally misplaced. When the act of union formation is correctly understood, the logic of creating a union through signed statements is even clearer. Ultimately it is unionization itself—not the process through which employees choose to form a union—that creates lasting democratic practices within the workplace.

### **Conclusion**

In conclusion, the evidence discussed earlier points to the dramatically undemocratic nature of NLRB elections and to the modest but significant ways in which majority sign-up will make this a more free and fair system. Furthermore, it should now be clear that the analogy between union formation and electoral politics does not ultimately hold up and that when we understand the type of democratic act that unionization is, we also understand the logic of forming unions through public statements of support. Finally, it has often been argued that if majority sign-up makes unionization easier, this fact should be irrelevant to debates over democratic procedure. A close examination of the Wagner Act shows that making unionization easier is in itself an act of democracy promotion within the workplace and is exactly the embodiment of the political vision that drove Wagner and his colleagues.

While it is understandable that the self-interest of employer associations may lead them to defend the current system and resist majority sign-up, this stance cannot be grounded in democratic principle. For all the reasons discussed, if one’s goal is simply the advancement of American democratic practice into the work world, it is clear that majority sign-up is a significant step forward from the failed regime of the NLRB.

(Key Findings)

*What Makes Elections Democratic?*

The assertion that the NLRB system embodies the core values of democratic process rests on one fact: that board elections end in a secret ballot. Many defenders of the current NLRB system implicitly suggest that as long as an election ends in a secret ballot, whatever comes before must be fair. Indeed, this is the argument of the current Labor Board, which has argued that even if an antiunion employer has “a one-sided advantage to exert pressure on its employees throughout each workday of an election campaign,” this is mitigated by the fact that “an employee’s expression of choice is exercised by casting a ballot in private.”<sup>4</sup>

From the Founders to the present, the American democratic tradition fundamentally rejects this view. While secret ballots are required in voting for elected representatives, there are an equally critical series of standards that must be met in the lead-up to the election for a vote to be deemed democratic. Indeed, the U.S. government regularly condemns elections in other countries as undemocratic even when there is no doubt that they ended in a secret-ballot election because they violated these other norms. Among these are the right to free speech for both candidates and voters, equal access to voters for all competing parties, equal access to the media, voters’ freedom from economic coercion, and timely enactment of the voters’ will. Without these guarantees, secret-ballot elections become sham elections, exercises in simulating the superficial form of democracy while eviscerating its substance. All three members of the “Axis of Evil,” for instance, have been able to maintain dictatorial rule despite the use of secret ballots. Even Saddam Hussein had secret ballots. The ease with which undemocratic rulers have been able to manipulate elections despite the use of secret ballots—through tactics such as one-party domination of the media or threats to the livelihoods of political opponents—highlights the importance of democratic standards governing the course of the election campaign as well as the moment of balloting.

Unfortunately, when measured against these standards, the NLRB election system fails to meet every single one of the principles used by the U.S. to define “free and fair” elections, with the partial exception of the secret ballot. I have written elsewhere concerning the details of these standards and the failure of the NLRB to live up to them. I will not repeat that analysis here, except to note that the NLRB system fails to guarantee such fundamental standards as the right to free speech, equal access to the media, and protection of voters from economic coercion.

In what follows, I will briefly outline some of the most undemocratic aspects of NLRB elections and will then discuss the ways in which these may be remedied by mandating union recognition through majority sign-up. In the second section of the essay, I will examine the limitations of the analogy between union formation and elections to public office, and will suggest new ways of understanding the act of unionization and the logic of creating a union through public statements rather than secret ballots. Finally, I will address the ways in which majority sign-up furthers the goal of workplace democracy envisioned by the original authors of the Wagner Act. I believe that all three parts of this analysis point to the superiority of majority sign-up as a tool for advancing the principles of American democracy into the world of work.

## **What Makes NLRB Elections Undemocratic, and How Will Majority Sign-Up Remedy the NLRB System?**

Among the most common practices that render NLRB elections undemocratic, the first is unequal access to voter lists. In elections to public office, competing candidates must be given equal access to the voter rolls for their districts. In NLRB elections, by contrast, employers possess the full contact information of every worker from the day he or she is hired. But pro-union employees cannot get a copy of such lists until after an election has been scheduled and all legal maneuvers exhausted. As a result, the most recent federal commission to examine this issue concluded that on average, unions and pronion employees did not get a list of eligible voters until ten to twenty days before the vote.<sup>5</sup> If we imagine elections to Congress run on this basis—with one candidate given access to the list of eligible voters two years before the election, while the other received it only twenty days before the vote—no one would call this a “free and fair” election. And the fact that it might end in a secret ballot would in no way alter this judgment.

Beyond the unequal access to voter lists, federal labor law grants employers a series of extremely powerful one-sided privileges during the course of an election campaign. Antiunion managers are free to campaign against unionization all day long, any place in the workplace, while pro-union employees are banned from talking about the advantages of unionization except on break time.

Management can cover the walls, rafters, and bulletin boards with antiunion messages while banning pro-union employees from doing likewise. Supervisors can distribute antiunion leaflets to every worker, at any time or any place, including while they are on the job; while pro-union employees can only distribute their handouts when both the giver and the recipient are on break time and in a break area. Management can force employees to attend antiunion propaganda meetings in individual, small-group or mass settings as often as they like. Pro-union employees can be ordered to attend on the condition that they keep their mouths shut, and if they speak up anyway, they can be fired on the spot. Employers typically have supervisors take each of their subordinates aside for intensive one-on-one conversations in which the person with the most immediate control over one’s livelihood stresses how destructive unionization would be.

In these individual meetings as well as in larger groups, management is free to tell workers that they may lose their jobs as a result of unionization, to characterize union supporters as “troublemakers” or “the enemy within,” and to warn employees that “an employee’s family is dependent on his paycheck.”<sup>6</sup>

Each of these activities is prohibited in the course of elections to Congress or the presidency, but it is standard operating procedure under the NLRB.

*Majority Sign-Up as a Remedy for the NLRB’s Shortcomings*

Upon learning of the NLRB's profoundly undemocratic election process, most observers' reaction is not to call for majority sign-up. It is, instead, to insist that NLRB procedures be brought into line with the norms of electoral democracy by requiring equal access to bulletin boards, equal ability to distribute leaflets, free speech rights for pro-union employees, and management neutrality in debates over unionization. There are significant legal challenges to such a vision—limiting the speech of supervisors would entail overturning a Supreme Court decision and requiring that union organizers have access to the workplace would challenge the private property rights of company owners—but the logic of such proposals is clear and compelling. By comparison, mandating recognition on the basis of majority sign-up is a much more modest proposal, which will leave unchanged many of the most egregious practices of the current NLRB system. Management will still be free to monopolize workplace media while maintaining tight restrictions on the distribution of pro-union information.

Antiunion supervisors will still be able to force workers to attend mass one-sided propaganda meetings and to press the antiunion message in intimidating one-on-one meetings with their subordinates.

But mandating recognition by majority sign-up will eliminate several of the key undemocratic practices that now characterize NLRB elections. The best way to gauge the impact of majority sign-up may be by considering the reasons for which it is so vehemently opposed by management representatives. First, majority sign-up will go a long way toward solving the problem of unequal access to the list of eligible voters. It will still be the case that management has complete contact information that is denied to pro-union employees, who will still be forced to develop their own contact list through the cumbersome process of covertly speaking with fellow employees. It may still take months for the employees' list to be assembled. But the consequences of this delay will be far less damning than under the current system. In NLRB elections, pro-union employees typically get the list of eligible voters less than twenty days before the vote and face an unwinnable scramble to contact coworkers within this compressed framework. With majority sign-up, workers are not up against a board imposed deadline. They can take their time, making sure to speak with each employee as it becomes possible to contact them. Employees may still be bombarded with antiunion messages at the workplace. But by allowing workers to proceed at their own pace, majority sign-up means that a greater share of workers will be able to hear *both* sides of the issue before making a decision.

Thus, majority sign-up provides at least a partial remedy to the inequality of access to voters established by the NLRB and thus allows for a more informed electorate and a more balanced discussion of the issues.

*Timing Is Everything: Delay and Depression as Management Campaign Strategies*

Second, majority sign-up allows employees rather than management to control the pace of their debate and decision making on the question of unionization.

In elections for public office, every candidate seeks what George H. W. Bush called “The Big Mo” and carefully plots campaign events in order to have his or her support peak in the days leading up to the vote.<sup>7</sup> In NLRB elections, pro- and antiunion campaigners likewise seek to time their efforts in order to build to a peak of support just before the election. NLRB election dates, however, are subject to repeated delays, often the result of disingenuous legal maneuvers. While both sides have the right to file procedural objections, it is generally in the union’s interest to have speedy elections and in management’s interest to delay. Thus, it is a commonplace observation that while the union determines when an election campaign begins (by filing a petition), management determines when it ends.

Employer antiunion strategies largely depend on wearing workers down through a prolonged campaign of fear, intimidation, and tension that serve both to scare workers away from union support and to convince them that management is omnipotent and unionization therefore futile.<sup>8</sup> In an article entitled “Time Is On Your Side,” the Jackson Lewis firm’s newsletter advises employers that preelection legal maneuvers should be considered “an opportunity for the heat of the union’s message to chill prior to the election.”<sup>9</sup>

Common management strategy is simply to refuse to agree on anything related to the election process. Marty Levitt worked with one of the pioneering management attorneys of the 1970s, whose “specialty was delay tactics, for he understood that management would always win a war of attrition.”<sup>10</sup> Levitt explains that

[this attorney’s] centerpiece technique, now a common strategy among management lawyers, was to challenge everything. He tried to take every challenge to a full hearing, then prolonged each hearing as much as he could. Finally he appealed every unfavorable decision. . . . Almost invariably [he] refused to work out agreements with the union on such issues . . . out-of-court agreements on matters of fact are meant to save court time and speed the legal process. But such legal congeniality would short-circuit [his] strategy. He knew that if he could make the union fight drag on long enough, workers would lose faith, lose interest, lose hope.<sup>11</sup>

The Labor Board provides employers with multiple opportunities to engineer delays. “The company may dispute the jurisdiction of the NLRB, that the union is a labor organization, or that the proposed bargaining unit is appropriate,” suggests one consultant.<sup>12</sup> Under federal law, the board is required to hold a hearing whenever any challenge is raised to any aspect of the election—no matter how trivial or ill founded. To argue that a given union is not a “labor organization,” for instance—when the same union has already been recognized in scores of other elections—may appear to be patently disingenuous. Nevertheless, the board is powerless to ignore it. In 2002, for instance, EcoLab argued that the International Association of Machinists (IAM) was not a “labor organization” despite the union’s having been recognized in employer contracts going back more than one hundred years. The board actually held a hearing on this question, ultimately concluding that the IAM is, in fact, a labor organization, but delaying the election by one month in order to settle this issue.<sup>13</sup>

The last federal commission to study this issue concluded that “many board hearings are held despite the absence of significant legal issues, simply because one of the parties seeks a tactical advantage” and called for “an end to frivolous election challenges.”<sup>14</sup>

While manipulation of the election date would be troubling in any electoral system, it has even more profound ramifications in the workplace. The very act of contemplating unionization is an act of workers’ pinning their hopes on the ability to come together in order to change management’s behavior. A quick election makes change seem possible, whereas a long-delayed vote serves as an object lesson in the implacability of management and the weakness of collective action. As union buster Mart Levitt explains,

[t]he beauty of such legal tactics is that they are effective in damaging the union effort no matter which side prevails. . . . That kind of delay steals momentum from a union-organizing drive, which is greatly dependent on the emotional energy of its leaders and the sense of urgency among workers. By dragging a union through the plodding legal system, we showed workers that the labor organization was sluggish and inefficient, certainly not the quick fix they might have hoped it would be.<sup>15</sup>

Because the decision to form a union is so deeply shaped by employees’ sense of their own collective power, the very fact of delay may impact the way people vote. Finally, even when a vote is ultimately scheduled, its timing is often the result of political manipulation. When the Labor Board first convenes a hearing to set the election groundrules, one of the issues that the two sides negotiate is the date of the election. Generally, management has the superior leverage in these discussions; because the union is anxious for a quick election, union representatives often give in on other aspects of the process. Management consultants urge their clients to schedule the vote for payday whenever possible, so that workers will be grateful toward their employer and so the employer can have the last word of the campaign by distributing “Vote No” flyers with employee paychecks. Likewise, management typically seeks to hold the vote early in the morning, so that employers can host an antiunion dinner the night before, and union supporters will have no opportunity to rebut that message.<sup>16</sup>

And always, Fridays are better than Mondays if one wants happy rather than disgruntled voters. Thus, the schedule of the election itself may be a product of management strategy—a partisan advantage that is, of course, never permitted in elections for public office.

Majority sign-up removes the incentive for frivolous legal delays as well as management’s undue influence over the schedule of voting. By letting workers rather than management control the timing of the campaign, workers’ debate, discussion, and decision making takes place on their own schedule, with momentum building or falling according to the natural pace of conversations and card signing rather than the artificial manipulation of delay tactics. One often discussed proposal for reforming the NLRB is to require that elections be held on schedule, with legal objections heard after the voting is completed. Under this system, employers would still have the right to mount as many legal challenges as they like, and these would still have the potential to invalidate the election. But they would not serve to delay the vote date. Thus, issues of timing

and momentum would not be manipulable by legal delaying tactics. This proposal has never been enacted. But a switch to recognition by majority sign-up would accomplish exactly this goal. Management might still file multiple legal objections to a bargaining unit definition, status of a labor organization, or any other aspect of the proposed union. However, the process of workers making their decisions and casting their ballots (in the form of signed cards) would all take place without delay. As a result, there would also be far less incentive to file frivolous motions.

### *Election Day on Management's Premises*

One might think that even if the whole campaign leading up to an NLRB election is slanted toward management, at least election day itself must run the same as a normal election. After all, the act of voting itself seems straightforward—one enters a private booth, marks a ballot, and an impartial authority counts the votes. How much room for manipulation could there be?

Unfortunately, the answer turns out to be much more than one might expect. Physical control over the workplace affords management control over the campaign environment while voting is ongoing—which is why one party's headquarters can never serve as the voting site in elections to public office. In NLRB elections, the actual room in which workers cast their ballots is off-limits to campaigning. However, voters walk to the polls through rooms and hallways, past posters and bulletin boards that are all dominated by one-sided antiunion campaign propaganda. On election day, like all other days, antiunion supervisors may walk around the company, having mandatory one-on-one conversations with every voter; neither union representatives nor pro-union employees have the right to do likewise. Indeed, the Jackson Lewis attorneys urge employers to take care even regarding the union observers who, by law, must be allowed to monitor the balloting; they recommend that employers plan out a route for them, from the front door to the voting room, that will minimize exposure to employees, and make sure that they are escorted by a management representative in order to prevent them from engaging in the same type of conversations supervisors will be having all day.<sup>17</sup>

Furthermore, controlling the polling site allows management to stage events that influence the environment in which voters cast ballots. In one case, for instance, an employer who had previously never had use of security guards, but who had campaigned on the notion that unionization would lead to violence, hired an armed guard (complete with guard dog) to patrol its property during election day—thus dramatizing the level of conflict and retribution that might result from a “yes” vote.<sup>18</sup>

Management consultants generally hold that a large turnout favors the antiunion side, and use control over the balloting site to guarantee partisan turnout. It is believed that union supporters are, by nature, more motivated to vote. If, as Cohen and Hurd's survey suggests, there is a large body of fencesitters who, above all, want to avoid conflict, it is likely that many of these employees would naturally avoid voting at all if given the chance. If they do vote, however, many are likely to vote “no” simply because they have been convinced that management is implacable, that the union cannot win real improvements, and therefore that a “yes” vote is a

vote for continued conflict. Under these assumptions, management works hard to turn out the vote.<sup>19</sup> The fact that management can target slackers with repeated reminders to vote—under conditions where refusing to vote will be understood as an act of displeasing one’s supervisor—is recognized by consultants as a crucial advantage.<sup>20</sup> Indeed, Jackson Lewis go so far as to advise employers that “a check of absentees should be made on the morning of the election, and transportation offered them.”<sup>21</sup>

The Jackson Lewis advice points to the unique power of controlling the polling site. The ability to get an immediate list of employees who have not come in to work and arrange to ferry them in to vote is a power that only management has; pro-union employees have no equal right of access to election day attendance sheets. The ability to monitor and follow up on voters with such exactitude is, again, a power that management has but union supporters do not.

And, again, it is a power that no party would be permitted in a regular election. No polling place would ever be situated in Democratic or Republican headquarters; no party would ever be allowed unilateral access to the list of who had shown up to the voting place, nor unilateral ability to send partisan representatives to personally escort those who had not yet voted; nor, finally, could the turnout push come from a party that had both a highly partisan position and control over voters’ financial future.

For all these reasons, it is unsurprising that management typically resists any suggestion that even a standard NLRB ballot should take place in a school, church or other neutral location off the company’s premises. Likewise, management advocates have vigorously resisted proposals that the NLRB adopt a “mail ballot” (in reality, voting by internet or touch-tone telephone) system such as is currently used by the National Mediation Board (NMB), the federal agency overseeing elections for the railway and airline industries. The process is efficient, secure, and significantly cheaper than on-site voting.<sup>22</sup> With the NLRB facing continuing budget restrictions, the cost savings alone are a strong reason to adopt the NMB system. But employers have repeatedly lobbied against such a change.

“Sophisticated employers know well that mail ballots are ‘bad news’ for employers,” notes one national law firm, explaining that “in mail ballot elections, employers have a much more difficult time controlling the timing of campaign strategy.”<sup>23</sup> New York attorney Al DeMaria’s *Management Report* explains not only that it is harder to turn out antiunion voters when the election is off-site, but also that mail balloting diminishes management control over the emotional atmosphere on election day. When the NLRB holds elections at the employer’s premises, employers are allowed to hold forced-attendance antiunion meetings up until twenty-four hours before the vote; typical campaign strategy calls for a mass event in the final hour permitted, commonly dubbed the “25-hour presentation.” Under the NMB, “mail ballots” generally enforce a more extended voting period—sometimes up to thirty days—and employers are prohibited from forcing workers to attend mass meetings throughout this period.

The newsletter explains that

[t]he whole idea of the 25-hour presentation is to bring the campaign to an emotional pitch, so that employees walk out of the final employer presentation revved up to vote for the company based upon the “last word.” Mail balloting destroys this dynamic, because employees can vote several weeks later after the impact of the employer’s final presentation has worn off.<sup>24</sup>

Recognition by majority sign-up completely eliminates this partisan control of the voting environment, enabling workers to make their decision about supporting unionization wherever and whenever they want, away from the watchful eye of those who control their economic lives. If either Democrats or Republicans insisted that voting take place in their headquarters and that all voters be forced to attend a partisan rally twenty-five hours before casting their ballots, with no equal opportunity for response for their opponents, none of us would be fooled into thinking this a “democratic” election. By eliminating these practices, majority sign-up provides a significant step toward providing employees a more balanced choice.

#### *Freedom of Association and the Arguments against Card Signing*

The debate about union formation should boil down to a simple question: if a majority of employees sign statements saying they are forming a union and want to commence good-faith negotiations, why should that not be enough?

The right to form voluntary associations is enshrined in the Constitution and celebrated in the history of American democracy. We do not require a vote to form a chapter of the Rotary Club, to charter a country club, or to start a baseball team. A group of people get together, decide they want to undertake a joint venture, and it is done; there has never been a case of the IRS insisting that it would not legally recognize a nonprofit sports league until all the members had cast secret ballots affirming their desire to participate. Moreover, the sufficiency of voluntary sign-up extends even to organizations that levy dues on their members. Neighborhood associations, downtown business districts, and chapters of the American Bar Association are all examples of dues-assessing organizations that are formed without need for a secret-ballot vote. Organizations that negotiate financial arrangements on behalf of their members are likewise chartered by mutual agreement without need for an election. Physicians practices and other professional partnerships, sports leagues, church groups, and charter schools are among the myriad of organizations that engage in negotiations with suppliers, employees, and business partners on behalf of their members. No such negotiations have ever been declared illegal because the organization was not constituted through a secret ballot. Indeed, the very employers’ associations that often sit across the table from unions in negotiating industry-wide agreements are empowered to make legally binding agreements even though they were constituted without an election.

Why, then, should labor unions be treated differently than any of these other voluntary associations? At first glance, it might appear that the answer lies in the fact that unions are not truly voluntary associations. Once a majority of employees support a union, all employees in the

company become subject to the terms of the union's contract as well as to its dues requirements. 25 Given this arrangement, it may be particularly important to insist on voting by secret ballot. In fact, this aspect of unions is not unique among civic organizations. A practicing lawyer, for example, is required to join the Bar Association, pay its dues, and abide by its rules, even if he or she believes there should be no Bar Association.

The problems with this argument, however, run even deeper. The argument against sign-up conflates two issues: the fact that unions become the exclusive bargaining representative for all employees in a firm and the notion that the process of card signing is more open to coercion or misinformation than a secret ballot, and therefore provides an unreliable measure of employees' will. If we disentangle these two strands of argument and examine each on its own terms, it becomes clear that neither has merit.

The first objection to majority sign-up is that signatures may be coerced by union supporters. However, this danger appears to be more imagined than real, with little supporting evidence. While it is an oft-repeated assertion of business lobbies, these groups have yet to produce convincing data—despite presumably trying their hardest.<sup>26</sup> The Labor Board already provides processes for the veracity of signed cards to be verified by independent authorities. If something more were needed, it would be simple, on the day the cards were counted, for individual workers to be spoken to privately by a Labor Board agent or by another independent authority in order to verify that they signed of their own free will. Coercion by union organizers or fellow employees is a problem easily solved; therefore, the vehemence with which it is protested—and the assertion that it can only be remedied by retaining the NLRB election system—point to ulterior motives.

If the argument about coercion were convincing, it would have to be applied to many other settings, including NMB elections, many of the voluntary organizations listed earlier (how do we know an individual physician is really on board with a decision to affiliate with a hospital if they cannot cast their ballot in secret?) and much current electoral practice. In Oregon, for instance, elections are run entirely and exclusively by mail ballot, and there is nothing that prevents a partisan advocate from standing next to someone else while they fill out their ballot. But repeated studies have found that these elections are at least as clean as those conducted in secret-ballot voting booths.<sup>27</sup>

Most fundamentally, the coercion argument makes no sense given the reality of workplace power. Neither unions nor pro-union workers have any coercive power over employees. It is certainly possible that workers could be threatened with physical violence—but there is absolutely no evidence to suggest that this happens with any regularity, nor any reason to believe it would be more likely to come from pro-union than antiunion sources. Most importantly, it is management that retains virtually all of the coercive power in the workplace. When workers are asked to sign a statement supporting unionization, they are overwhelmingly afraid not of the pro-union fellow employees whom they have seen harassed and ostracized over the past months, but of the wrath of antiunion managers. Management, not workers, is the source of coercive power in

the workplace. This is why federal electoral law prohibits managers from urging their subordinates to support one candidate over another but puts no limit on employees urging the same of their coworkers. Management has control over all aspects of working conditions; neither workers nor (in an unorganized plant) unions have any whatsoever. This point was brought home most forcefully by a former union organizer turned “union avoidance” consultant, who claimed in Congressional testimony that organizers would “coerce” their way into workers’ homes, but under repeated questioning by members of Congress was unable to provide a single example of coercion or intimidation that she had witnessed.<sup>28</sup>

Thus, the notion that majority sign-up must be rejected as a system inherently given to coercion is unsupportable on its merits. Adding in the issue of exclusive bargaining rights changes nothing in this conclusion. If exclusivity is a problem, it is no less a problem with secret ballots. If it is acceptable in secret ballot elections, there is no demonstrable reason why the standard should be any different for sign-up. Indeed, there is a long history of minority unions that represent and bargain on behalf of only those workers who choose to affiliate as members. Recently, a very compelling case has been made that the NLR still requires businesses to recognize unions with minority membership.<sup>29</sup>

If we imagine a minority union, the opposition to sign-up becomes all the more strained: if a group of employees walk into the boss’ office and declare they all want to negotiate together, just for themselves, why should this not be sufficient basis to recognize their organization? It is hard to imagine what the objection might be in this case. But if minority unions can be constituted by majority sign-up, why not majority/exclusive unions? The standard for the veracity of signatures should logically be the same whether the union represents a minority or all of the employees. Yet if even minority unions require elections because it is impossible to trust in the veracity of signed statements, why would the same standard not apply to any voluntary organization with the capacity to levy dues or negotiate agreements? The fact that none of the business lobbyists leading the opposition to sign-up have ever voiced this conviction suggests again that their arguments are driven by something other than their prima facie claims. Thus, the more the logic of opponents’ arguments is teased apart, the clearer it becomes that these objections are simply further strategies to prevent workers from organizing and the harder it becomes to think of any reason why it should not be sufficient for workers to form a union by signing verifiable statements attesting to their desire.

# Con Evidence

## People Against EFCA

[http://myprivateballot.com/fs/resource.id/x1wr5np68dwc8g/xq4zyrssrp99gm?  
\\_c=xs3xwoi63ehbt3](http://myprivateballot.com/fs/resource.id/x1wr5np68dwc8g/xq4zyrssrp99gm?_c=xs3xwoi63ehbt3)

McLaughlin & Associates

Three out of four voters (74%) oppose the "The Employee Free Choice Act". It is interesting to note, union households also strongly oppose the Employee Free Choice Act, 74% oppose to only 20% support.

When given a more detailed description of the Employee Free Choice Act, nearly 9 out of 10 voters, 86%, feel the process should remain private and only 8% feel it should be public information. Again, even union workers feel strongly that the process should be kept private, as 88% said private and only 8% said public.

Four out of five voters, or 82%, favor having a federally supervised election as a means to "protect the individual rights of workers". The voters clearly see this as a basic right, especially given that only 11% of voters felt the card check would be the best way to protect the individual rights of workers.

Methodology: This poll of 1,000 likely general election voters in the United States was conducted from January 7th – 11th, 2009. An oversample of 193 union households was conducted, which brings the combined total of union households to 400. All interviews were conducted via telephone by professional interviewers. Interview selection was random within predetermined election units – in this case, the fifty states. These units were structured to correlate with actual voter turnout in a general election. This poll of 1,000 likely general election voters has an accuracy of +/- 3.1% at a 95% confidence interval. The 400 sample of union households has an accuracy of +/- 4.9% at a 95% confidence interval.

## **Both Sides Have an Opportunity to Make Case**

<http://www.uschamber.org/issues/letters/2007/070620efca.htm>

US Chamber of Commerce

R. Bruce Josten

Jun-20-2007

The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, urges you to oppose cloture on the motion to proceed to consideration of either H.R. 800 or S. 1041, the "Employee Free Choice Act (EFCA)," which is expected to be voted on this week.

The National Labor Relations Act (NLRA), enacted more than 70 years ago, established a system of industrial democracy that is similar in many respects to the nation's system of political democracy. This system allows employees to determine whether they wish to be represented by a particular union through a federally supervised secret ballot election overseen by the National Labor Relations Board (NLRB). It protects the interests of unions and employers, but most importantly, employees, by ensuring that both sides have an opportunity to make their case, and those employees are able to express their decision in private—free from coercion and intimidation.

## **Threat to Small Businesses**

<http://www.aahoa.com/Content/NavigationMenu/Advocacy/MemberAdvisories/OpposingtheEmployeeFreeChoiceAct/default.htm>

Asian American Hotel Owners Association

Although the Democrats failed to attain a filibuster-proof Senate in the election on November 8, 2008, they nevertheless made decisive progress. Combined with the victory of President-elect Obama, this means that the EFCA remains a real threat to small businesses in the months and years ahead.

## **Business groups voice opposition to Employee Free Choice Act**

[http://www.publicopiniononline.com/localnews/ci\\_11796663](http://www.publicopiniononline.com/localnews/ci_11796663)

Public Opinion Online

Marcus Rauhut

The Pennsylvania Chamber of Business and Industry is taking aim at the Employee Free Choice Act.

The bill currently sitting in Congress was designed to make organizing a union easier, but the U.S. Chamber of Commerce, the Pennsylvania chamber and local chambers of commerce have been vocal in their opposition to the bill.

"This is the biggest rewrite of labor laws in 60 years. I've never seen anything raise this much concern. I have not heard a single business says, 'This is a good idea,'" said Gene Barr, vice president of government affairs for the Pennsylvania Chamber of Business and Industry. He spoke to the Chambersburg Rotary Club Thursday.

President Barack Obama has said he would support the Employee Free Choice Act, and unions have backed the bill because they say it will allow more workers to bargain for better wages and benefits.

Opponents of the Employee Free Choice Act said one of the biggest concerns are workers would be able to organize a union without a secret ballot process. Barr said workers may be subject to intimidation if they do not cast their vote in private.

Barr said another concern is that the act imposes binding government arbitration after a 120-day impasse.

David Sciamanna, president of the Greater Chambersburg Chamber of Commerce, and Bill Gour, executive director of the Greencastle-Antrim Chamber of Commerce, said they both strongly oppose the proposed changes.

"For us, this would be devastating," Sciamanna said.

Sciamanna said not as many workers in this area are members of unions, but that's not because it is difficult to organize one.

"The reason is because there is an environment that is conducive to good labor relations," he said.

## People Don't Want Card Check

<http://www.mackinac.org/archives/2004/s2004-05.pdf>

Mackinac Center for Public Policy

September 1, 2004

Majorities (ranging from 53 percent to 84 percent) prefer a secret-ballot process as the way for workers to decide whether to organize a union in their workplace.

*I'm going to describe two ways that workers might be asked to decide if they want to become part of a union and ask you which of the two ways is most fair. In the first way, a union organizer would ask workers to sign their name on a card if they wanted to be part of a union. The worker would sign his or her name on the card if he or she wanted a union, or the worker would tell the union organizer he or she would not sign the card if he or she did not want a union. In the second way, the government would hold an election in the workplace where every worker would get to vote by secret ballot whether he or she wanted a union. Which way is more fair?*

Table 3. Choosing the Fairest Way to Decide on a Union

	%
<i>The <u>first</u> way, which has union organizers ask workers to sign their name on a card if they want a union, or refuse to sign the card if they don't want a union</i>	41
<i>The <u>second</u> way, which has the government hold a secret-ballot election and keep the workers' decisions private</i>	53
Neither/Not sure	5

*14. Currently, the government is responsible for holding secret-ballot elections for workers who are deciding whether to form a union, and for making sure workers can cast their votes in a fair and impartial manner. Do you agree or disagree that the current secret-ballot process is fair?*

Agree  
71%  
Disagree  
13  
Not sure  
16

## People Don't Want Card Check (Cont'd)

<http://www.mackinac.org/archives/2004/s2004-05.pdf>

Mackinac Center for Public Policy

September 1, 2004

*17. Should Congress keep the existing secret-ballot election process for union membership, or should Congress replace it with another process that is less private?*

Keep the existing process

78%

Replace it with one less private

11

Not sure

11

*19. Some companies and union organizers want to make a special agreement to unionize the workers if at least half of the workers sign their names on cards saying they want a union, rather than letting all the workers vote in a secret-ballot election overseen by the government. Do you agree or disagree that it should be legal for a company and union organizers to make this special agreement to bypass the normal secret-ballot process to determine whether to unionize the workers?*

Agree

26%

Disagree

66

Not sure

8

## Card Check Doesn't Have Enough Support To Represent All

<http://www.mackinac.org/archives/2004/s2004-05.pdf>

Mackinac Center for Public Policy

September 1, 2004

a strong majority of workers (62 percent) believe that a union should have the support of at least two-thirds of workers before all the workers are represented by a union;

*18. Which of the following percentages of workers do you feel should have to vote for a union before that union represents all the workers?*

At least one-third of the workers

9%

At least half the workers

27

At least two-thirds of the workers

51

All of the workers

11

Not sure

2

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## Most Non-Union Workers Do Not Want To Join

<http://www.heritage.org/Research/Labor/wm1363.cfm>

The Heritage Foundation

February 16, 2007

### **Workers Reject Card Checks, Favor Private Ballots in Union Organizing**

by [James Sherk](#)

*WebMemo #1363*

Labor activists also frequently argue that tens of millions of American workers would join a union if not for employer intimidation.<sup>[6]</sup> They contend that the low level of unionization in the United States proves that elections do not reflect workers' free choice. But polls of workers show that the vast majority of non-union workers want to stay that way. By more than a 6-to-1 margin—82 to 13 percent—nonunion workers say that they do not want their job to be unionized.<sup>[7]</sup> Because a union must win the support of a majority of workers in a company to win recognition, the fact that relatively few workers belong to a union is thus unsurprising.

[Download file »](#)

### **AN EMPIRICAL ASSESSMENT OF THE EMPLOYEE FREE CHOICE ACT: THE ECONOMIC IMPLICATIONS**

Anne Layne-Farrar is Director at LECG Consulting.

March 3, 2009

Successful union organizing requires an underlying desire by employees to belong to a union, and there is ample evidence that modern employees have an array of likes and dislikes that differ significantly from past generations such that workers have found it less attractive to join unions than they have in previous years. Farber and Krueger, in a 1992 paper, reported that “demand-side factors can account for virtually all of the decline in the union membership rate since 1977.”<sup>6</sup> Likewise, in a paper from 2000, Farber and Western conclude that “the decline in the private-sector union membership rate was due primarily to changes in the economic environment that made union representation of less value to workers and/or more costly to employers.”<sup>7</sup> Wachter, in his paper discussing how legal and political systems shape attitudes towards unions, comes to a similar conclusion: workers may see less value in joining a union now than in prior decades, without regard to what their employers may say.<sup>8</sup> Even Bronfenbrenner and Hickey – who analyze the factors that influence union election outcomes in a 2004 paper<sup>9</sup> – conclude that “American unions themselves must shoulder a good portion of the responsibilities for their organization failures.”<sup>10</sup>

## **Most Non-Union Workers Do Not Want To Join (Cont'd)**

<http://www.heritage.org/Research/Labor/bg2027.cfm>

The Heritage Foundation

April 23, 2007

### **How the Employee Free Choice Act Takes Away Workers' Rights**

by [James Sherk](#) and [Paul Kersey](#)

*Backgrounder #2027*

Union activists contend that the low level of unionization in the United States proves that elections do not reflect workers' free choice. They argue that most American workers actually want to join a union. They back this up with polling numbers showing that 53 percent of non-union workers, or 57 million workers, would like to belong to a union.[\[55\]](#)

However those numbers are highly suspect. The AFL-CIO commissioned the poll. Peter Hart, a Democratic pollster, conducted it. The poll itself remains unpublished, and the AFL-CIO has not revealed the questions or polling methodologies used.

Publicly published polls conducted by nonpartisan pollsters show the opposite: Relatively few non-union workers want general representation. Opinion Research Corp. polling shows that by a margin of more than 6 to 1--82 to 13 percent-- non-union workers do not their workplace to be organized.[\[56\]](#) Because a union must win the support of a majority of a company's workers to win recognition, the fact that relatively few workers belong to a union is not surprising.

## **Workers and Union Members Oppose Card Check**

<http://www.heritage.org/Research/Labor/wm1363.cfm>

The Heritage Foundation

February 16, 2007

**Workers Reject Card Checks, Favor Private Ballots in Union Organizing**

by [James Sherk](#)

*WebMemo #1363*

Since workers believe that the current private balloting system is fair and value their privacy, it is not surprising that a large majority of workers also opposes any effort to replace organizing elections with publicly signed cards. A recent McLaughlin poll indicates that 74 percent of Americans oppose card check legislation that would end private-ballot elections.<sup>[9]</sup> Union members agree just as strongly: 74 percent also oppose card-check legislation.<sup>[10]</sup> The very employees that union activists claim to speak for oppose replacing private-ballot elections with card check.

## Card Check Doesn't Represent Employees

<http://www.unionfacts.com/articles/democracyElections.cfm>

Neutrality/Card Check Agreements Aren't Workers' Choice

- "In my experience, neutrality/card check agreements are almost always the product of external leverage by unions, rather than an internal groundswell from unrepresented employees."

— Peter Hurtgen, former member of the National Labor Relations Board

<http://www.heritage.org/Research/Labor/bg2027.cfm>

The Heritage Foundation

April 23, 2007

**How the Employee Free Choice Act Takes Away Workers' Rights**

by [James Sherk](#) and [Paul Kersey](#)

*Backgrounder #2027*

Despite their public arguments in favor of the EFCA and card checks, union organizers candidly admit in private that card checks do not reflect workers' true beliefs. Union organizing manuals have long cautioned organizers that a worker's signature on a union card does not mean that he or she wants to join a union or will vote for the union in the election. The AFL-CIO's 1961 *Guidebook for Union Organizers* states:

NLRB pledge cards are at best a signifying of interest at a given moment. Sometimes they are signed to "get the union off my back"... Whatever the reason, there is no guarantee of anything in a signed NLRB pledge card except that it will count towards an NLRB election.[\[24\]](#)

## Courts Prefer Secret Ballots

<http://www.unionfacts.com/articles/democracyElections.cfm>

Center For Union Facts

### What do the courts say about card check campaigns versus secret ballots?

- "It is beyond dispute that a secret election is a more accurate reflection of the employees' true desires than a check of authorization cards collected at the behest of a union organizer." (NLRB v. Flomatic Corp., Second Circuit Court of Appeals, 1965)
- "It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a 'card check,' unless it were an employer's request for an open show of hands." (NLRB v. S.S. Logan Packing Co., Fourth Circuit Court of Appeals, 1967)
- "We would be closing our eyes to obvious difficulties, of course, if we did not recognize that there have been abuses, primarily arising out of misrepresentations by union organizers as to whether the effect of signing a card was to designate the union to represent the employee for collective bargaining purposes or merely to authorize it to seek an election to determine that issue." (NLRB v. Gissel Packing Co., Supreme Court of the United States, 1969)
- "Workers sometimes sign union authorization cards not because they intend to vote for the union in the election but to avoid offending the person who asks them to sign, often a fellow worker, or simply to get the person off their back, since signing commits the worker to nothing (except that if enough workers sign, the employer may decide to recognize the union without an election.)" (NLRB v. Village IX, Seventh Circuit, 1983)
- "Freedom of choice is a matter at the very center of our national labor relations policy, and a secret election is the preferred method of gauging choice." (Avecor v. NLRB, D.C. Circuit, 1991)

<http://www.heritage.org/Research/Labor/bg2027.cfm>

The Heritage Foundation

April 23, 2007

### How the Employee Free Choice Act Takes Away Workers' Rights

by James Sherk and Paul Kersey

*Backgrounder #2027*

Unions find it much easier to sign up workers when workers' choices are made in public. However, as the Supreme Court affirmed in *NLRB v. Gissel Packing Co.* (1969), publicly signed cards are "inherently unreliable," and a company may always request a private vote to confirm that its employees actually want to unionize. Companies usually insist on giving their workers the privacy of the voting booth and refuse to recognize unions without an election.

## Workers Value Their Privacy

<http://www.heritage.org/Research/Labor/wm1363.cfm>

The Heritage Foundation

February 16, 2007

**Workers Reject Card Checks, Favor Private Ballots in Union Organizing**

by James Sherk

*WebMemo #1363*

Not only do workers disagree with claims of employer abuses, but they believe that they should have the right to keep their decision to join or not join a union private. While some workers gladly express their opinion on unionization, others want to avoid pressure from co-workers, union organizers, and supervisors and do not want to reveal their choice. The vast majority of Americans also believe that workers should have the choice to keep their opinions on unionizations private. Fully 86 percent of Americans believe that a worker's ultimate choice should be kept private and not made public information.<sup>[8]</sup>

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## Card-Check Has Higher Success Rate than Secret Ballots

<http://www.mackinac.org/archives/2004/s2004-05.pdf>

Mackinac Center for Public Policy

September 1, 2004

Partly in response to their declining membership, union officials have embarked on a new organizing tactic that is now the subject of a legal challenge. The new tactic, called “card check” and “neutrality agreement,” involves union and company officials agreeing to bypass the normal government-supervised secret-ballot election that allows workers to determine whether a union will represent the employees. The tactic is favored by unions because it is a less costly and more successful means of organizing workplaces.

<http://www.unionfacts.com/articles/democracyElections.cfm>

Union Facts

Legal recognition of a union has traditionally been achieved through secret ballot elections, in which each worker decides whether or not to support a union in the privacy of the voting booth -- just like a person votes for the president or a senator. But unions frequently lose secret ballot elections. So they often bring intense pressure on companies to agree to a "card check" system instead of a secret election.

With card checks, paid union organizers try to persuade workers to sign cards saying that they favor union representation. This persuasion frequently takes the form of harassing visits to workers' homes, deception, and coercion. As soon as more than 50 percent of the workers in a bargaining unit sign a card, the union can be recognized as the representative of 100 percent of the workers.

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AN EMPIRICAL ASSESSMENT OF THE EMPLOYEE FREE CHOICE ACT: THE ECONOMIC IMPLICATIONS

Anne Layne-Farrar is Director at LECG Consulting.

March 3, 2009

For instance, Riddell found that the success of union recognition efforts decreased by almost 19% when British Columbia switched from card checks to mandatory voting and then increased by the same amount when the province switched back to card checks.<sup>49</sup> Similarly, Slinn showed that Ontario's switch from card checks to mandatory voting in 1995 produced a significant drop in the success of union certification.<sup>50</sup>

On the basis of these results, I conclude that a card check system which increases union membership would also lead to a considerably higher unemployment rate.

## Unfair Labor Practices Have Little Impact on Elections

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### **AN EMPIRICAL ASSESSMENT OF THE EMPLOYEE FREE CHOICE ACT: THE ECONOMIC IMPLICATIONS**

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March 3, 2009

- (ii) **Alleged Employer Unfair Labor Practices.** EFCA proponents also argue that automatic union certification – whenever an employee majority signs authorization cards – means there will be no conventional union organizing campaign and employers therefore will have no time to engage in unfair labor practices (“ULPs”). Unions claim these employer ULPs have improperly dampened union support among employees.<sup>11</sup> The findings in a 1985 study by Cooke call those claims in question. Cooke conducted an empirical analysis of campaign-related employer ULPs (defined generally as violations of section 8(a)(1) of the National Labor Relations Act, among other provisions).<sup>12</sup> He found that, from the time unions produced a card showing of employee support (used to support an NLRB election petition) to the end of the union organizing campaign, the estimated effect of improper employer opposition was “insignificant and seem[ed] to have little impact on reducing the likelihood of a union victory”. This finding is corroborated by a more recent study by Ferguson (2008), who concludes that during the union campaign “the effect of ULP charges were not statistically significant.”<sup>13</sup> This research casts doubt on the EFCA premise that unlawful employer conduct during post-petition conventional union organizing has been responsible for preventing unions from winning NLRB-sponsored secret ballot representation elections.

## Minimal Unlawful Termination

<http://server1.laborpains.org/wp-content/uploads/2009/03/nlrbcuf-analysis-of-nlr-b-data.pdf>

February 26, 2009

J. Justin Wilson

Center for Union Facts

**Based on this data, a maximum of 3.75 percent of union organization campaigns included an unlawful termination.**

Between 1999 and 2003, unions filed just 914 meritorious ULPs in conjunction with more than 22,000 organizing campaigns, and only a fraction of those of those ULP Charges contained allegations of unlawful termination.

More than 96 percent of union organizing campaigns occur without an unlawfully terminated employee.

## **Employers Abuse Minimal**

<http://www.heritage.org/Research/Labor/wm1363.cfm>

The Heritage Foundation

February 16, 2007

**Workers Reject Card Checks, Favor Private Ballots in Union Organizing**

by [James Sherk](#)

*WebMemo #1363*

Union members simply disagree with activists' claims of widespread employer abuse during organizing drives. They are supported by the results of government investigations into these allegations. The NLRB found that employers illegally fired workers for supporting a union in 2.7 percent of organizing election campaigns.<sup>[5]</sup> Employer abuses are the rare exception, not the norm, in organizing elections. The facts and the knowledge of union members themselves demonstrate the fairness of private balloting.

[http://www.unionfacts.com/downloads/Union\\_Math\\_Union\\_Myths.pdf](http://www.unionfacts.com/downloads/Union_Math_Union_Myths.pdf)

Center for Union Facts

2008

By logically linking organizing campaigns with Unfair Labor Practices, we determined that only 2.7 percent of union organizing campaigns feature an employee illegally fired (and offered reinstatement, typically with back pay). Furthermore, we demonstrate that other research on the subject relies on assumptions that are further compromised by old data that do not represent current NLRB information on the issue.

## Employers Abuses False

[http://www.unionfacts.com/downloads/Union\\_Math\\_Union\\_Myths.pdf](http://www.unionfacts.com/downloads/Union_Math_Union_Myths.pdf)

Center for Union Facts

2008

The most frequently cited data have been produced by Cornell University professor Kate Bronfenbrenner. She published a study alleging that employers fire employees in about one-quarter of all organizing campaigns and that about half of the companies threaten employees with the partial or full shutdown of operations if the sites unionize. This supposedly “landmark” study is based on an incredibly biased sample: A survey of union organizers. It asked questions of union organizers in 407 National Labor Relations Board (NLRB) certification elections held between 1998 and 1999. Given the ideologically homogenized survey participants and occupations, it would only have been surprising to find less agreement.

Not just the sample should be considered biased. Bronfenbrenner herself is a former union organizer. Her university’s Institute for Labor Research received over \$500,000 from unions in 2005, according to Department of Labor financial disclosure files.

Bronfenbrenner’s work was rehashed in December 2005, when University of Illinois at Chicago professors released an unpublished study commissioned by the union funded American Rights at Work organization (ARAW). Their principal findings were that in NLRB elections, 30 percent of employers allegedly fired workers when they engaged in union activities, 49 percent threatened to close or relocate all or part of the business if workers elected to form a union, and 82 percent used consultants to design and coordinate their anti-union campaigns.

Again, these statistics were based on interviews with union staff and paid for with union money. The study was based on surveys of labor organizers in 62 Chicago land elections in 2002, as well as case studies consisting of interviews with 25 lead organizers and 11 anonymous employees.

A 2007 study by the labor-affiliated Center for Economic and Policy Research (CEPR) claimed 23 percent of all unionization campaigns since 2000 involved an illegal firing.<sup>2</sup> But the authors openly admit that the crux of the study relies on “a crude ‘probability’ that a pro-union worker will be fired,” originally derived from data collected in the early 1980s. The authors also write that the “NLRB does not report the number of workers fired illegally in connection with union election campaigns.” But the NLRB does in fact track that statistic in its Case Activity Tracking System (CATS) database. Finally, the CEPR study only tabulates the number of actual elections held, rather than the number of election petitions submitted to the NLRB—a better indicator of the number of organization campaigns—to arrive at its misleading conclusion.

## **Employers Abuses False (Cont'd)**

[http://www.unionfacts.com/downloads/Union\\_Math\\_Union\\_Myths.pdf](http://www.unionfacts.com/downloads/Union_Math_Union_Myths.pdf)

Center for Union Facts

2008

In 1983, Harvard Law School Professor John Weiler reported that 1 in 20 pro-union employees was fired during union organizing campaigns in a study published in the Harvard Law Review.<sup>12</sup> But researchers from the University of Chicago critiqued Weiler's estimate in 1991 in the University of Chicago Law Review, writing that it "rested on three erroneous and interrelated assumptions." The authors, Robert LaLonde and Bernard Meltzer, re-examined Weiler's data and determined that 1 in 63 pro-union employees was illegally fired during an organizing campaign in 1980.<sup>13</sup> To arrive at that conclusion, they determined that 51 percent of the NLRB's reinstatement orders were issued as part of an organizing campaign.

Relying on LaLonde and Meltzer's research, John Schmitt and Ben Zipperer of the Center for Economic and Policy Research suggested that 1 in 5 union organizers was fired during an organizing campaign. The study also suggests that 1.4 percent of pro-union employees were illegally fired during the organizing process, after adjusting for the rise of non-NLRB organizing methods like "card check."<sup>14</sup>

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## Abuse by Unions is Common

<http://www.unionfacts.com/articles/crimeFraud.cfm>

Union Facts

### **Embezzlement, False Reports, Violence, And More**

Most people don't know just how many crimes are committed every year through which union officials hurt their own members. The number of reputed and verified crimes is staggering. Nothing illustrates this more clearly than the hundreds of indictments of union officials for violations of the Labor Management and Reporting Disclosure Act. According to the Office of Labor-Management Standards (OLMS), those crimes include "embezzlement, filing false reports, keeping false records, destruction of records, extortionate picketing and deprivation of rights by violence." The OLMS notes:

In fiscal year 2005, OLMS completed 325 criminal cases. Indictments increased to 114, a 16 percent increase from FY 2001. The number of convictions dropped to 97. In addition, in FY 2005 court-ordered restitution amounted to \$23,244,979.

That's \$23 *million* in restitution ordered for victimizing union members and others.

<http://www.unionfacts.com/articles/crimeViolence.cfm>

Center For Union Facts

Many union officials have ordered or approved of violent, coercive, and harassing conduct aimed at making an example of employees who don't toe the union line. The National Institute for Labor Relations Research has compiled a list of incidents of [union violence](#) that average nearly 300 per year for the last 30 years. The following cases are just a few examples.

### **West Virginia miner shot dead for working during a strike**

On the orders of the United Mine Workers (UMW), 16,000 miners went on strike in 1993. One subcontractor, Eddie York (who was not a UMW member), decided it was important to support his wife and three children and crossed picket lines to get to his job. He was shot in the head as he left the job site to go home. UMW President Richard Trumka (now Secretary-Treasurer at the AFL-CIO) told *The Washington Times* that "if you strike a match and put your finger in, common sense tells you you're going to burn your finger." UMW strike captain Jerry Dale Lowe was found guilty of weapons charges and conspiracy in York's death, and York's widow Wanda sued the union for her husband's wrongful death. The UMW fought the lawsuit for four years, but settled with Wanda York only two days after federal prosecutors announced that they would share evidence from the criminal trial with York's attorneys.

## Why Union Membership Has Decreased

[http://www.unionfacts.com/downloads/Union\\_Math\\_Union\\_Myths.pdf](http://www.unionfacts.com/downloads/Union_Math_Union_Myths.pdf)

Center for Union Facts

2008

Since its peak in the 1950s, union membership in the private sector has steadily dropped. To explain the decline, labor leaders have scapegoated businesses for intimidating employees during organizing campaigns. To justify the claim, they cite statistics from union-affiliated researchers which suggest that a significant number of employees are fired in the organizing process. But data from the National Labor Relations Board (NLRB) do not—in any way—substantiate the notion that tens of thousands of employees are wrongly fired for organizing annually. In the last three decades, labor union leaders have presided over a precipitous drop in union membership. And while the decline is uncontested, the cause (or causes) is highly contentious. While employers and others point to a changing job market, poor union leadership, and other potential causes, unions singularly scapegoat businesses for intimidating employees during organizing campaigns. These allegations notwithstanding, unionization elections are at the highest win rate in 10 years.<sup>1</sup>

[Download file »](#)

### **AN EMPIRICAL ASSESSMENT OF THE EMPLOYEE FREE CHOICE ACT: THE ECONOMIC IMPLICATIONS**

Anne Layne-Farrar is Director at LECG Consulting.

March 3, 2009

EFCA supporters contend that the unions' steady decline in the US is the result of employer misconduct that has been improperly permitted under US labor law. Yet, the levels of unionized workers have declined *everywhere* in developed economies, regardless of the labor law regime in effect. For example, Visser analyzed data from 14 developed countries and concludes that private sector unionization across all countries has been strongly declining since the 1970s.<sup>4</sup> A key factor in this trend has been the declining employment in heavily unionized industries – e.g., the US auto industry – which obviously has contributed to enormous decreases in union membership.<sup>5</sup>

## **Secret Ballot Win's For Unions are Highest in Decades**

<http://server1.laborpains.org/wp-content/uploads/2009/03/nlrbcuf-analysis-of-nlr-b-data.pdf>

February 26, 2009

J. Justin Wilson

Center for Union Facts

These allegations notwithstanding, the National Labor Relations Board (NLRB) reports that union election win-rates are the highest in decades. In the first half of 2008, labor unions won 66% of elections they asked to be conducted.<sup>1</sup> Despite this, unions argue that the current system of organizing unions is broken, and that Congress must pass the Employee Free Choice Act to increase the number of victories.

## Unions Engage in Racketeering

<http://www.unionfacts.com/articles/crimeFraud.cfm>

Center For Union Facts

The Department of Labor's Office of Inspector General oversees, among other things, cases of labor racketeering -- and it stays busy. Union officials have continued to earn their reputation for greed, corruption, and mismanagement of union dues.

In 2005, criminal charges and fines resulting from racketeering investigations hit five-year highs. During that time, more than 1,100 indictments have been issued, and more than \$400 million in fines and restitution has been awarded. Many of these cases involve union officials failing to protect their members from unethical pension scams, but the OIG also reports that it saw a three-fold increase in the number of convictions in internal union racketeering cases between 1998 and 2004.

<http://www.oig.dol.gov/laborracprogram.htm>

The United States Department of Justice

Labor racketeering is the infiltration, domination, and/or use of a union or employee benefit plan for personal benefit by illegal, violent, or fraudulent means. Organized crime is defined as activities carried out by groups with a formalized structure whose primary objective is to obtain money through illegal activities. Traditionally, organized crime has been carried out by La Cosa Nostra (LCN) groups, also known as the "mob" or the "Mafia". However, new groups are emerging and organizing. For example, organized crime groups now include Asian, Russian, Eastern European, Nigerian, and West African groups.

Labor racketeering activities carried out by organized crime groups affect the general public in many ways. Because organized crime's exercise of market power is usually concealed from public view, millions of consumers unknowingly pay what amounts to a tax or surcharge on a wide range of goods and services. In addition, by controlling a key union local, organized crime can control the pricing in an entire industry. Moreover, the public also suffers when organized crime orchestrates illicit strikes and work slowdowns or resorts to violence to maintain its operation of labor rackets.

## Unions Engage in Discrimination

<http://www.unionfacts.com/articles/crimeComplaints.cfm>

The Center for Union Facts has obtained documents through the Freedom of Information Act demonstrating distressing abuse of equal-opportunity rights by labor leaders.

Since 2000, labor unions faced 13,815 complaints of discrimination filed with the government's Equal Employment Opportunity Commission. These include:

- **4,248** complaints of race discrimination
- **3,386** complaints of age discrimination
- **1,820** complaints of sex discrimination
- **1,642** complaints of disability discrimination
- **297** complaints of religious discrimination

“ The exclusivity effect of Davis-Bacon requirements encourages the construction trades to continue its activity of discrimination against African-American labor. Locally, regionally and nationally construction trades under-represent the African-American population. Go to any city or look at any major project and you will find a great disparity against African-American labor.

## Unions Commit Wrongdoings More Often Than Employers

<http://www.unionfacts.com/articles/laborPractices.cfm>

Center For Union Facts

The National Labor Relations Board's annual report for fiscal year 2005 included the number of Unfair Labor Practices alleged against employers and unions. Once again, union officials faced a disproportionately high number of allegations of wrongdoing, when compared to employers. The worst part: The vast majority of allegations said that members were the ones hurt by the union officials that are supposed to protect them.

- The NLRB reported in 2005 that:
- Unions faced a total of 6,381 allegations
- 82% of charges against unions alleged illegal restraint and coercion of employees (by comparison, the leading allegation against employers — at 53% — was for refusal to bargain)

- 594 charges were for illegal union discrimination against employees

- The NLRB reported in 2004 that:
- Unions faced a total of 6,917 allegations of wrongdoing
- 80% of those charges were filed by individuals
- Unions filed more than 100 charges against other unions
- 81% of charges alleged illegal restraint and coercion of employees

More than 600 charges alleged illegal discrimination against employees, an increase of about 6 percent from 2003.

## Unions Bully During Card Check Campaigns

<http://www.unionfacts.com/articles/democracyCardCheck.cfm>

Center For Union Facts

One man was forced to seek an arrest warrant for a union organizer who showed up at his house eight times. Another reported being videotaped by union representatives. A third described threats of deportation. Welcome to the new world of union organizing, where union officials, desperate to stave off declining membership numbers, are increasingly turning to undemocratic "card check campaigns" to organize and collect dues from employees. The following are just a few examples of card check horror stories.

<http://www.heritage.org/Research/Labor/bg2027.cfm>

The Heritage Foundation

April 23, 2007

### **How the Employee Free Choice Act Takes Away Workers' Rights**

by [James Sherk](#) and [Paul Kersey](#)

*Backgrounder #2027*

In one card-check campaign investigated by the NLRB, a pro-union employee threatened a co-worker by saying that if she refused to sign the union card, "the union would come and get her children and that it would also slash her tires."[\[15\]](#)

In another case, Thomas Built Buses agreed to recognize a United Auto Workers (UAW) card-check drive in exchange for significant advance wage concessions from the union. Employee Jeff Ward successfully challenged the sweetheart deal before the NLRB and forced the company to allow its workers to vote.[\[16\]](#)

In response, the UAW posted flyers around the plant with Mr. Ward's home address, home phone number, and a map to his house. The flyers stated, "Jeff Ward lives here. Go tell him how you really feel about the union."[\[17\]](#)

## **EFCA Affects Small Businesses**

<http://www.heritage.org/Research/Labor/wm2341.cfm>

The Heritage Foundation

March 12, 2009

**EFCA Authorizes Government Control of 4 Million Small Businesses**

by [James Sherk](#)

*WebMemo #2341*

The misnamed Employee Free Choice Act affects both large and small businesses. The National Labor Relations Act (NLRA) has a small business exception. However, this exemption has not been updated for inflation since 1959.<sup>[1]</sup> It covers all non-retail businesses with gross revenues of \$50,000 a year and retail businesses with gross revenues over \$500,000 a year.<sup>[2]</sup>

To put those figures into perspective, the average private-sector worker costs his or her employer \$56,000 a year in wages and benefits--before the cost of any capital needed to do the job.<sup>[3]</sup> A business with one worker earning average pay would not qualify. Consequently, the law has no meaningful small businesses exemption.

The Heritage Foundation used Census Bureau data to calculate how many small businesses EFCA would affect: The act covers 4,180,000 businesses employing 38,934,000 workers.<sup>[4]</sup>

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## People Sign Cards due to Sales Pitch

<http://www.heritage.org/Research/Labor/wm2335.cfm>

The Heritage Foundation, March 11, 2009

### **EFCA: High-Pressure Spin Selling and Creative Organizing for Labor Unions**

Rian Wathen, a former organizing director of UFCW Local 700 in Indianapolis, recently spoke at The Heritage Foundation about his experiences as part of the labor movement.<sup>[1]</sup> While serving as organizing director, Wathen discovered that the president of Local 700 was mismanaging union funds--funds established by dues that come straight out of employee paychecks. In order to demonstrate how members' dues were being misused, Wathen distributed financial statements to the rank-and-file, a bold stance against corruption that resulted in his termination without notice--two weeks before Christmas.

A 15-year union veteran and a harsh critic of union corruption, Wathen understands how the union movement works from the inside. Wathen explains that union organizers are, in essence, salesmen. They sell a product--union membership--and their jobs depend on making enough sales. As Wathen notes, union organizers "are promoted by bringing in new dues-paying members. ... The person who brings in the most cards, by hook or by crook, is the person who looks productive and gets promoted." Consequently, organizers have one goal: to recruit as many new dues-paying union members as possible.

Since only 13 percent of non-union workers even want a union at their workplace, many labor organizers employ "creative organizing" tactics like the pizza sign-in scenario, as well as high-pressure sales techniques to get workers to sign union cards and realize their sales goals.<sup>[2]</sup>

<http://www.heritage.org/Research/Labor/bg2027.cfm>

The Heritage Foundation

April 23, 2007

### **How the Employee Free Choice Act Takes Away Workers' Rights**

by James Sherk and Paul Kersey

*Backgrounder #2027*

**Sales Pitch.** Even when union organizers do not threaten workers, card checks often do not reveal workers' free and considered choice about joining a union because workers do not hear both sides' pitches and lack time for reflection. Instead, card checks force workers to choose in a high-pressure sales situation.

In a card-check campaign, groups of organizers meet with individual workers at their homes or elsewhere and press them to sign a union authorization card. Organizers do not simply present the arguments for and against joining the union and then ask for a worker's support. Instead, they employ psychological manipulation to induce workers to sign after hearing their pitch.

## No Standardized Cards

<http://www.heritage.org/Research/Labor/wm2335.cfm>

The Heritage Foundation

March 11, 2009

EFCA: High-Pressure Spin Selling and Creative Organizing for Labor Unions

by [James Sherk](#) and Ryan O'Donnell

WebMemo #2335

Manipulative sales tactics are bad enough. To make matters worse, there is no law--or provision in EFCA--regulating what union-authorization cards should look like. The card can be any size, any color, any shape, and contain any language so long as it has one line containing the suggested language from the National Labor Relations Board (NLRB): "I hereby authorize [name of the union] to represent me for the purposes of collective bargaining." This language can be buried between promotional text and color pictures of employees playing softball and taking vacations--it just has to be somewhere in the potentially multi-page authorization "card." As noted, these cards can even be presented as a sign-in sheet for a pizza party, offered in exchange for a ride to or from work--even when the employee is under the influence of alcohol.[\[4\]](#)

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## Removes Good-Faith Bargaining

<http://www.heritage.org/Research/Labor/wm2334.cfm>

The Heritage Foundation

March 10, 2009

### Card Check Creates Government-Run Workplaces

by [James Sherk](#)

*WebMemo #2334*

Mutual consent and good faith negotiating form the foundation of the collective bargaining process: The parties negotiate in good faith until they settle on terms. If both sides cannot reach an agreement, the union may call a strike and the employer may implement its last offer or even lock out workers. Both sides use their bargaining power to win concessions, but neither side must accept terms that they find unacceptable.

Section 8(d) of the National Labor Relations Act specifies that the law "does not compel either party to agree to a proposal or require the making of a concession." The end result is a contract that both sides can live with, even if they would have preferred different terms. No contract takes effect unless workers believe they get a fair deal and management believes the contract will not bankrupt the firm. If negotiations break down, the workers can strike or management can lock them out, but neither side must work under an unsatisfactory contract.

EFCA replaces good faith bargaining with government imposed contracts. Under Section 3 of the act (misleadingly titled "Facilitating Initial Collective Bargaining Agreements"), EFCA provides that—after unions organize a business—the company has 10 days to meet with union officials to begin collective bargaining. After 90 days of bargaining, either party may request mediation by the Federal Mediation and Conciliation Service (FMCS). Thirty days later, if the parties have not settled on a contract or agreed to extend negotiations, the FMCS shall refer the dispute to an arbitration board established in accordance with such regulations as may be prescribed by the Service. The arbitration panel shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of two years, unless amended during such period by written consent of the parties.<sup>[1]</sup>

This government-imposed arbitration radically departs from the foundation of the collective bargaining process: the principle of mutual consent. In place of the agreement of both parties, government arbitrators would simply impose working conditions on both employers and employees, whether such conditions are workable or not.

## Workers Have No Say Under Binding Arbitration

<http://www.heritage.org/Research/Labor/wm2334.cfm>

The Heritage Foundation

March 10, 2009

### Card Check Creates Government-Run Workplaces

by [James Sherk](#)

*WebMemo #2334*

Under current law, workers can vote down a contract they do not support. Workers also have the right to honor a strike or to refrain from striking. All of these rights give workers some degree of autonomy and control over the union and their workplace.

With imposed contracts in place, however, these rights disappear. EFCA does not allow workers to terminate the binding arbitration process. No matter how long arbitration drags on, the workers will remain stuck with it. And an arbitrator's word will be final, so a vote to reject the contract is out of the question. With a government-imposed contract, workers would lose all say in the workplace. They could not even ask their supervisors for a raise for good performance beyond what the contract specified. EFCA deprives workers of all choice regarding employment issues.

<http://www.heritage.org/Research/Labor/bg2027.cfm>

The Heritage Foundation

April 23, 2007

### How the Employee Free Choice Act Takes Away Workers' Rights

by [James Sherk](#) and [Paul Kersey](#)

Backgrounder #2027

Workers Lose All Say. Under current law workers can vote down a contract if they are not satisfied with its terms. Workers also have the right to honor a strike or to refrain from striking, as they think best, if the union calls for its members to cease working. All of these rights serve to give workers some degree of autonomy and some control over the union and in the workplace.

With binding arbitration in place, however, these rights are rendered moot. The EFCA does not allow workers to terminate the binding arbitration process. No matter how long arbitration drags on, the workers will remain stuck with it. Once an arbitrator is called in, his or her word will be final, so a vote to reject the contract is out of the question. With a mediator-imposed contract, workers would lose all say in the workplace. They could not even ask their supervisors for a raise for good performance beyond what the contract allowed. Workers would lose all say in their workplace once an arbitrator stepped in.

## **Binding Arbitration Not Beneficial for Businesses and Workers**

<http://www.heritage.org/Research/Labor/wm2341.cfm>

The Heritage Foundation

March 12, 2009

### **EFCA Authorizes Government Control of 4 Million Small Businesses**

by James Sherk

*WebMemo #2341*

Government control would harm any company, but it would be particularly hard for small businesses to recover from government mistakes because they have less money with which to absorb losses. Consider a small car-repair shop that employs five mechanics. Teamster organizers take three of the mechanics out for beer after work and persuade them to sign union cards before hearing opposing arguments. The Teamsters--under EFCA's card check recognition requirements--then represent all five workers in the shop. If, after four months of negotiations, the owner and the union had not reached a contract--perhaps because the union insisted on extreme demands such as firing any worker who did not join the Teamsters--the union could request mediation through the FMCS. After a lengthy process, approximately 15 months in the public sector, the government would impose a contract.<sup>[9]</sup>

At that point both the small business owner and the mechanics would lose all control over their workplace. Workers have no vote on the contract and they cannot go on strike; workers must accept whatever the government chooses for them.

For instance, the government could:

- Decide that the shop needed to hire two new mechanics while setting wage rates higher than competing repair shops,
- Take away employee health benefits,
- Prevent the shop from installing new labor saving machines,
- Force the shop to fire any worker who does not pay union dues,
- Force the workers into an under-funded union pension plan,
- Impose work rules that prevent the most experienced mechanic from handling the most difficult jobs (unpleasant tasks would be assigned to less senior mechanics), and
- Determine which employee gets the next promotion, irrespective of merit.

Many of these provisions would drive up costs and force the repair shop to raise prices. But if higher prices drove customers to a competitor, putting the shop out of business, the government would not protect the mechanics' jobs. EFCA forces workers to accept whatever the government gives them and live with the consequences.

## **Binding Arbitration has Negative Consequences**

[http://myprivateballot.com/fs/resource.id/x1wr5np68dwc8g/xln8aheaikhpim?  
c=xmtx easoknpb6m](http://myprivateballot.com/fs/resource.id/x1wr5np68dwc8g/xln8aheaikhpim?c=xmtx easoknpb6m)

Coalition for a Democratic Workplace

There is more to the “Employee Free Choice Act” (EFCA) than just the elimination of private ballots. The legislation also would permit a government arbitrator to impose a two year contract on employers and employees – even if neither party consents to the contract terms. In doing so, EFCA would unwisely place the fate of a company and its employees in the hands of a federal bureaucrat, who may lack business experience and know little to nothing about the company, its business operations and the industry in which it operates. This is a radical departure from private-sector contract law dating back to our nation’s birth – where a “contract” has been consistently defined as “an *agreement*” between two or more parties struck through good-faith efforts - not terms imposed by a government.

<http://www.heritage.org/Research/Labor/bg2027.cfm>

Heritage Foundation, April 23, 2007

### **How the Employee Free Choice Act Takes Away Workers' Rights**

A government-imposed contract is a radical departure from America's collective bargaining laws. The principle behind collective bargaining is mutual consent. The government allows workers to form a cartel and threaten to strike in order to offset the employers' bargaining power. Both sides then use their bargaining power to negotiate a contract that they can accept, but neither side is forced to accept a contract that they find unacceptable. Section 8(d) of the National Labor Relations Act specifies that the law "does not compel either party to agree to a proposal or require the making of a concession." This ensures that neither party is stuck with a contract they cannot work under.

The end result of collective bargaining is a contract that both sides can live with, even if they would have preferred different terms. No contract is signed unless both workers believe they get a fair deal and management believes the contract will not bankrupt the firm. If negotiations break down the workers can strike or management can lock them out, but nothing is signed until both sides agree it is workable.

Binding arbitration is a radical departure from this established principle of mutual consent. In place of the agreement of both parties the government would simply impose working conditions on both employers and employees, whether they were workable or not.

While the EFCA purports to "facilitat[e] Initial Collective Bargaining Agreements," it does the opposite, leaving both parties subject to the decisions of an arbitration decision that one side or both sides may not want rather than encouraging them to arrive at a mutually satisfactory contract. In place of an agreement, the EFCA would impose the educated guess of a government-appointed arbitrator, leaving management and workers to deal with the consequences.

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## Binding Arbitration Negatively Affects Bargaining Terms

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### **AN EMPIRICAL ASSESSMENT OF THE EMPLOYEE FREE CHOICE ACT: THE ECONOMIC IMPLICATIONS**

Anne Layne-Farrar is Director at LECG Consulting.

March 3, 2009

Increased Union Membership and Social Welfare. The EFCA provisions for arbitrator-imposed terms, after approximately 130 days from the commencement of bargaining, are presented with the hope that more union representation will translate into more contracts which, in turn, is supposed to improve social welfare. Compulsory arbitration under EFCA would have a significant effect on the means by which wages, benefits and other employer obligations and restrictions are established. Even if a voluntary agreement were reached during the 130-day period for bargaining prescribed by EFCA, the terms of such an agreement would be profoundly affected by compulsory arbitration. In a classic theoretical paper, Farber and Katz conclude that “the presence of any arbitration procedure determines the environment within which the parties negotiate, and consequently, directly affects the terms of the negotiated agreement.”<sup>14</sup> Under the EFCA, then, parties would bargain in the shadow of the law (the anticipated arbitral decree). Indeed, the mere fact that arbitration awaits as a backstop changes the calculus that the firms would go through during negotiations. If a union expects a more favorable arrangement through arbitration than it is currently being offered by the employer, union organizers would have a strong incentive to refuse all terms proffered by the firm, no matter whether they are reasonable or not. And likewise for the employer: if company representatives anticipate favorable treatment from the arbitrator, they will reject all offers from the union, regardless of their merit. Arbitration thus distorts the a priori true valuation of a bargaining agreement by both sides. Moreover, even if the two parties do reach an agreement on a contract prior to the arbitration deadline, the presence of the arbitration outlet nonetheless creates distorted valuations that could mean the agreed contract is inefficient relative to a benchmark contract reached under competitive conditions.

## **Binding Arbitration Negatively Affects Bargaining Terms (Cont'd)**

<http://www.heritage.org/Research/Labor/bg2027.cfm>

The Heritage Foundation

April 23, 2007

### **How the Employee Free Choice Act Takes Away Workers' Rights**

by [James Sherk](#) and [Paul Kersey](#)

*Backgrounder #2027*

**Extreme Demands.** Binding arbitration can affect the entire bargaining process. It is a common practice for both employers and unions in Michigan to make extreme proposals during bargaining with an eye toward the possibility of arbitration. The arbitrator may know little about how a specific corporation stays competitive and may not have the experience necessary to discern which demands are so extreme that they would not be agreed to in collective bargaining.

This complicates collective bargaining, as negotiators must agree to set aside these demands before they can get to negotiating on more realistic provisions. If negotiations break down and an arbitrator is brought in, the arbitrator might not be able to see through the posturing and could include these demands as part of his or her decision. The arbitrator could force companies to:

- Participate in multi-employer union pension plans, many of which are severely underfunded;
- Guarantee no layoffs irrespective of worker productivity; and
- Adopt uncompetitive work rules and production quotas.

These policies would cripple the competitiveness of American firms. In addition, binding arbitration is not without drawbacks for workers. Because of the way that binding arbitration fits in the overall scheme of the National Labor Relations Act, the arbitration process would make unions less accountable to those whom it they are supposed to represent and protect.

## Binding Arbitration has a Bad Record

<http://www.heritage.org/Research/Labor/bg2027.cfm>

The Heritage Foundation

April 23, 2007

### **How the Employee Free Choice Act Takes Away Workers' Rights**

by James Sherk and Paul Kersey

*Backgrounder #2027*

**Binding Arbitration's Bad Record.** The EFCA says little about the specific process of binding arbitration, leaving it to the FMCS to determine how an arbitration panel will be chosen, what sort of evidence it will consider and when, and what process it will use to make a decision. The state of Michigan uses binding arbitration to resolve bargaining impasses involving public safety workers, such as police officers, firefighters, and emergency medical technicians employed by county and municipal governments. The process in Michigan is fairly typical, and the experience of this state is a reasonable guide to the risks involved in binding arbitration.

Under the Michigan statute, binding arbitration is supposed to go quickly. Assembling the arbitration panel should take less than three weeks. Once the panel is named, the first hearing should be held within 15 days, and hearings are supposed to be wrapped up 30 days after they commence.[\[64\]](#)

In reality, the process takes much longer. In the early 1990s, only one out of every six binding arbitration cases was resolved within 300 days of a petition's being filed. The pace of arbitration has improved since then, but not by much.[\[65\]](#) A review of 29 binding arbitration cases resolved in 2005 and 2006 showed that only seven--fewer than one out of four--were resolved within 300 days. On average, binding arbitration takes almost 15 months from the date that a request is filed to the date that a decision is reached.[\[66\]](#)

## **EFCA Does Not Improve Social Welfare**

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I find that while card checks could be expected to increase union membership as hoped by EFCA proponents, EFCA is unlikely to achieve its main goal of improving social welfare, which should take into account possible consequences not only for union members but for all individuals. In particular, my quantitative analysis indicates that passing EFCA would likely increase the US unemployment rate and decrease US job creation substantially.

I find that, while card check union certification backed by mandatory two-year “contract” arbitration could be expected to increase union membership as hoped by EFCA proponents, EFCA is unlikely to achieve its main goal of improving social welfare, which should take into account possible consequences not only for union members but for all other individuals, because the proposed rules would likely have detrimental effects on the unemployment rate and job creation. These are two adverse effects that America can ill afford at any time, but especially at this time of recession.

I conclude, as a result, that the costs of passing EFCA as currently designed would outweigh any benefit, even if I ignore the costs of transition and administration which properly belong in any social calculus. Specifically, my analysis predicts that passing EFCA would lead to a 1 percentage point increase in the unemployment rate for every 3 percentage points gained in union membership brought about by a system of card checks and mandatory arbitration.

The costs should be carefully weighed against any purported benefits of passing the Act, all of which appear to benefit some groups at the expense of others. There is no coherent theoretical argument that explains how the higher costs, greater legal uncertainty, and expanded government intervention entailed in EFCA would improve overall social welfare.

## EFCA Will Raise Unemployment

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### **AN EMPIRICAL ASSESSMENT OF THE EMPLOYEE FREE CHOICE ACT: THE ECONOMIC IMPLICATIONS**

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The precise effect on unemployment will depend on the degree to which EFCA increases union density, but for every 3 percentage points gained in union membership through card checks and mandatory arbitration, the following year's unemployment rate is predicted to increase by 1 percentage point and job creation is predicted to fall by around 1.5 million jobs. Thus, if EFCA passed today and resulted in an increase in unionization from the current rate of about 12% to 15%, then unionized workers would increase from 15.5 to 19.6 million while unemployment a year from now would rise by 1.5 million, to 10.4 million. If EFCA were to increase the percentage of private sector union membership by between 5 and 10 percentage points, as some have suggested, my analysis indicates that unemployment would increase by 2.3 to 5.4 million in the following year and the unemployment rate would increase by 1.5 to 3.5 percentage points in the following year.

At the other end of the spectrum, studies by Scarpetta and by Nickell and Layard find that higher unemployment is associated with higher rates of unionization.<sup>38</sup> By analyzing annual data from a group of OECD countries for the period 1983-1993, Scarpetta shows that a 1 percentage point increase in unionization leads to a 10 to 13 percentage point increase in the unemployment rate.<sup>39</sup>

For example, an OECD study published in 1997 using data from 1980-1994 finds that a 1 percentage point increase in bargaining coverage unambiguously increases unemployment rates by 7.5 percentage points, a result that is supported by Nickell and Layard as well as by Jackman.

On the basis of these results, I conclude that a card check system which increases union membership would also lead to a considerably higher unemployment rate. Translating these results to the US, in order to determine how much the US unemployment rate would rise in response to passage of EFCA, we first need to evaluate by how much union density can reasonably be expected to rise. A few EFCA proponents have predicted specific anticipated increases in union membership. For example, Sheldon Friedman, research coordinator for the AFL-CIO, stated that EFCA "could spur an increase in U.S. union density of nearly 5 percentage points and perhaps much more."<sup>66</sup> Andy Stern, the president of the SEIU, estimates that the passage of EFCA will increase union membership by 1.5 million each year for the next 10-15 years.<sup>67</sup> Carter and Lotke, in a 2007 paper, estimated that EFCA would increase union density by approximately 10 percent.<sup>68</sup>

## EFCA Will Raise Unemployment (Cont'd)

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And Peter D. Hart Research Associates released survey results in 2005 that claimed 53 percent of all non-managerial workers would definitely or probably vote in favor of union representation in their workplace.<sup>69</sup> Using these estimates as a starting point, I consider a range of potential increases for union density and then use the Canadian data regression estimates to calculate the predicted response in the US unemployment rate.

For example, Sheldon Friedman, research coordinator for the AFL-CIO, stated that EFCA “could spur an increase in U.S. union density of nearly 5 percentage points and perhaps much more.”<sup>66</sup> In particular, if card checks and a mandatory contract arbitration system were to increase union density by 5 percentage points, to 17.1 percent (the Friedman prediction), the US unemployment rate is predicted to increase in the following year by 1.49 to 1.77 percentage points over current levels – an increase of 2.28 million to 2.71 million unemployed workers. If union density were to increase by 10 percentage points to 22.1 percent (the Carter and Lotke prediction), in the following year the US unemployment rate would increase by 2.97 to 3.53 percentage points over current levels – an increase of 4.56 million to 5.42 million unemployed workers. Predicted increases in the unemployment rate are progressively higher should the passage of EFCA lead to union densities equivalent to prior decades.

If the passage of EFCA were to increase union membership by 1.5 million each year for the next 10 years (the Stern prediction), then unemployment is predicted to rise by between 5.3 and 6.2 million, with union density settling at just under 23% in 2018. Assuming all other factors remain constant, the effect of this increase in union membership would be to raise the unemployment rate by between 8.6 and 9.2% by 2018.<sup>70</sup>

Just as with the unemployment rate estimates reported above, predicted decreases in the employment rate get progressively higher for larger gains in union membership.

## Higher Wages for Unions Workers is Negative

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Moreover, higher wages for union workers tends to compress the overall distribution of wages, such that the presence of unions significantly reduces the wage differential between industries, between firms in the same industry, and also between workers within a firm.<sup>17</sup>

Not surprisingly, there is a cost to higher union wages. First, employers' profits tend to be lower. Karier concludes that for monopoly firms, a union's share of profits might be as high as 47%.<sup>18</sup> The cost, however, reaches well beyond what employers pay in higher wages. As firms must spend more for their unionized workforce, they tend to cut back in other areas. In particular, the overall cost of higher union wages can lead to fewer unionized positions. This process could arise by a shift of work patterns within unionized firms, or by having nonunionized firms achieve higher market shares. As a result, cutting unionized jobs directly impacts employment growth within unionized firms.

## **Companies with Unions have Lower Employment Growth Rates**

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In the mid 1990s a number of studies considered the employment growth difference between unionized and nonunionized firms. Bronars et al. find that a 10% increase in the unionization rate leads to a 0.5-1.1% decrease in employment growth rates.<sup>19</sup> Lalonde et al. find a much larger impact. These authors analyze a matched dataset of NLRB elections and US Census Bureau's Longitudinal Research Datafile and conclude that by the second year after union elections, plant output (measured as the total value of product shipments in unionized plants) decreases by 9.6%.

## Companies with Unions are Less Productive

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Unions also have an effect on the work hours their members record when compared to nonmembers. In a summary of 16 prior studies, Lewis notes that union members work about 1.8% fewer hours than their nonunionized counterparts.<sup>21</sup> This conclusion is corroborated by Blanchflower, who puts the difference in work hours at 1-2 hours per week.<sup>22</sup> Lalonde et al. find a larger effect, estimating that during the second year after union elections, work hours decrease by 11% in the plants where the union was successful.<sup>23</sup> While there is consensus on the decline in hours, a 1992 survey by Belman of 17 studies in the literature reaches no robust conclusion on whether the productivity level (that is, output for a given hour worked) is higher or lower for unionized shops as compared to non-unionized shops.

In their study of the impact of unions on general capital investment, Odgers and Betts analyze a panel dataset of 18 Canadian industries over a twenty-year period (1967-1987) to determine the impact of union density on the net investment rate controlling for a number of factors including the fraction of days lost to strikes, changes in output, and the user cost of capital.<sup>35</sup> They conclude that the presence of unions appears to reduce investment when the percentage of unionized firms in the industry is between zero and about 50 percent, but the effect plateaus above this level. Their results suggest that an industry moving from no unions to the mean level of unionization is predicted to see a net investment and gross investment loss of 66-74% and 18-25%, respectively.<sup>36</sup>

## Results in Deadweight Loss

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With these caveats in mind, an early paper by Rees finds that employers' reallocation of labor, from union sectors to nonunion sectors, in turn leads to deadweight losses in the gross domestic product (GDP).<sup>27</sup> In other words, as union labor becomes more expensive and firms substitute away from it, the result can be an increase in allocative inefficiencies that in turn lowers national production. Economists have calculated the GDP loss as ranging from 0.14% (per Rees<sup>28</sup>) to 0.40% (according to a 1984 study by Freeman and Medloff).<sup>29</sup> In today's terms, a reduction in GDP of 0.40% would translate into a loss of \$57 billion in national output.<sup>30</sup>

## **Companies with Unions Spend Less on Research and Development**

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March 3, 2009

In contrast, unionized firms tend to invest less on capital and R&D than nonunionized firms, likely because they have fewer resources to devote to such investments due to the reduced profits noted above. Acs and Audretsch, Connolly et al., and other scholars, conclude that unionization reduces spending on R&D.<sup>32</sup> Hirsch concludes that nonunion firms invest roughly 10% more than union firms.<sup>33</sup> At the firm level, Connolly et al. find that higher unionization reduces the return to R&D and thereby reduces firms' investment in R&D.<sup>34</sup> Because R&D is a pivotal input in the innovation process, with less invested in R&D unionized firms can be expected to contribute less to advancing technology.

## **Workers Have Right to Vote in Secret**

<http://www.heritage.org/Research/Labor/bg2027.cfm>

The Heritage Foundation

April 23, 2007

### **How the Employee Free Choice Act Takes Away Workers' Rights**

by [James Sherk](#) and [Paul Kersey](#)

*Backgrounder #2027*

Abolishing elections deprives workers of a fundamental democratic right. Elections guarantee that all workers can express their views on whether they want to belong to a union. Under card check, however, workers who have not been contacted by union organizers have no say in whether their workplace organizes. If organizers collect cards from a majority of workers, all workers must join the union without a vote.

Equally important, a democratic election with private ballots ensures that all workers can express their desires without fear of social stigma or retribution. With a private ballot, no one else knows how any individual worker voted, and workers can express their intentions without outside pressure. For these reasons, the government protects the right of all Americans to vote for elected officials in private. American workers have the same right, and it should not be taken away because it impedes union organizing.

Private ballots ensure that workers' decisions about whether to join a union remain private so that no one can threaten workers for making the "wrong" choice. With card checks, both the company and the union know how workers voted, and this exposes workers to the possibility of retaliation. Though threats are illegal, they still occur, and not all of them are made by employers.

## Employers Should Be Able To Inform Workers

<http://www.unionfacts.com/articles/democracyElections.cfm>

Center For Union Facts

Card check campaigns generally occur in the context of a neutrality agreement, in which the company agrees to not speak to employees about the risks and downsides of union membership. When asked about neutrality agreements versus secret ballot elections in a 2005 Zogby poll, 59 percent of Americans agreed that "employers should be able to provide employees with information about unions and the potential impact of unionizing on their jobs."

<http://www.heritage.org/Research/Labor/bg2027.cfm>

The Heritage Foundation

April 23, 2007

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*Backgrounder #2027*

**Only One Side of the Story.** Organizers have a job to do: recruit new dues-paying members to their union. They are not paid to inform workers of the downsides of unionizing. Instead, they make the strongest case they can for joining a union and ask workers to sign their card right then. A former union organizer explained the process:

We rarely showed workers what an actual union contract looked like because we knew that it wouldn't necessarily reflect what a worker would want to see. We were trained to avoid topics such as dues increases, strike histories, etc. and to constantly move the worker back to what the organizer identified as his or her "issues" during the first part of the house call.<sup>[19]</sup>

## Need More than 50% Cards to Win Election

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An election would occur only when union organizers submit cards signed by a minority of workers; but union organizers do not call for an election without signed cards from a majority of workers. They know that unions usually lose these elections. The AFL-CIO's internal studies show that unions win only 8 percent of elections that are called after less than 40 percent of workers have signed cards.<sup>[8]</sup>

Consequently union guidelines call for organizers to collect cards from 60 to 70 percent of workers in a company before going to the polls.<sup>[9]</sup> Unions openly state that they do not go to an election without a supermajority of cards

Union organizers also acknowledge that a card-check campaign allows them to organize workplaces without workers' majority support. United Food and Commercial Workers organizer Joe Crump openly admits that with card check, "You don't need a majority or even 30% support among employees."<sup>[25]</sup> Crump instructs organizers not to worry that aggressive campaigning for a company to skip an election might turn workers against the union, because "if you had massive employee support, you probably would be conducting a traditional organizing [election] campaign."<sup>[26]</sup>

Metaldyne was not an unusual case. Unions regularly submit publicly signed authorization cards from a large majority of a company's workers only to see the workers reject the union in the privacy of the voting booth. In a study of organizing campaigns, the AFL-CIO admitted that "it is not until the union obtains signatures from 75% or more of the unit that the union has more than a 50% likelihood of winning the election."<sup>[27]</sup>

## Problems with Forming Unions Without Majority Support

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For example, Metaldyne Corporation agreed to allow the UAW to organize its workers with a card-check campaign in exchange for concessions at the bargaining table. The UAW soon collected union cards from a majority of workers, and Metaldyne agreed to recognize the UAW as its employees' representative. Soon afterwards, a majority of the company's workers submitted a signed petition stating that they did not want a union and requesting that the NLRB decertify their union.<sup>[22]</sup> The signed union cards did not reflect the employees' true preferences. This is not unusual. The NLRB recently voted to allow workers organized by card-check to vote on getting ride of the union in a secret ballot election. Subsequently workers at 8 percent of all companies organized by card-check have collected enough signed cards to request a decertification vote.<sup>[23]</sup>

## Union Leaders Have Incentive for More Unions

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by [James Sherk](#) and [Paul Kersey](#)

*Backgrounder #2027*

A union has a direct financial stake in the outcome of an organizing drive. If the workers organize, the union will collect 1 percent to 2 percent of their wages in dues. These high stakes lead some organizers to cross the line and threaten workers who refuse to sign union cards.

Union organizers understandably boast about the benefits unions bring members, but they do not bring up the six-figure salaries that union bosses pay themselves from members' dues, the fact that hundreds of union officials have been convicted of racketeering in the past five years, or the role that unions' inflexibility has played in driving some companies into bankruptcy. Instead, union organizers make their pitch and ask workers to sign their cards immediately. By making card-check organizing the norm, the Employee Free Choice Act would prevent workers from making informed decisions.

The Real Goal: Improving Union Finances. Unions know that private ballots best reveal workers' desires and that card-check organizing would not address, and could exacerbate, the alleged shortcomings of private elections. Yet they still favor card checks over private ballots. This is because their real aim is to reverse the labor movement's long-term decline. Unions are harder to sell to workers today than they were in the manufacturing economy of two generations ago. Today's jobs require unique skills and talents that do not lend themselves to general representation. Most workers in the modern economy do not feel that union membership provides benefits worth the 1 percent to 2 percent of their salary that they would have to pay in dues.

Unions seek to reverse that trend, and they know that card check allows them to organize workplaces without workers' majority support. Unions want the Employee Free Choice Act because it would make it easier to recruit dues-paying members, not because it would somehow defend workers' right to choose freely to unionize.

## Workers Disagree with Union Claims

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*Backgrounder #2027*

Labor activists claim to speak for American workers, but workers disagree with the claims unions make on their behalf. Contrary to union claims of widespread corporate intimidation, Zogby polling shows that 71 percent of union members believe that the current private-ballot process is fair, versus only 13 percent who disagree. [57] Nor do union members want to lose their right to a private vote. Fully 74 percent of union members favor keeping the current system over replacing it with one that provides less privacy.[58]

The vast majority of Americans side with union members and not union bosses, believing that workers should have the choice to keep their views on organizing private. Fully 89 percent of Americans believe that a worker's ultimate choice should be kept private.[59]

In addition, a large majority of workers also oppose any effort to replace organizing elections with publicly signed cards. A recent McLaughlin poll indicates that 74 percent of Americans oppose card-check legislation that would end private-ballot elections. Some 74 percent of union members agree.[60] The very employees that union activists claim to represent oppose replacing private-ballot elections with card checks.

## Misrepresenting the Problem of Union Coercion

<http://www.heritage.org/Research/Labor/bg2027.cfm>

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Backgrounder #2027

Union supporters contend that this differential treatment is justified because unions almost never intimidate or coerce workers during organizing campaigns. Nancy Schiffer, AFL-CIO Associate General Counsel, presents the unions' case:

Is coercion in the signing of authorizations a legitimate concern? A recent review of 113 cases cited by the HR Policy Association as "involving" fraud and coercion identified only 42 decisions since the Act's inception that actually found coercion, fraud or misrepresentation in the signing of union authorization forms. That's less than one case per year.<sup>[68]</sup>

This misrepresents the HR Policy Association's findings to paint a completely false picture of union coercion. In a policy brief on the EFCA, the association included a list of 113 NLRB decisions involving "union deception and/or coercion in obtaining authorization card signatures."<sup>[69]</sup> Union activists examined those cases closely and found that only 42 of those 113 NLRB cases directly concerned those issues, but that does not mean that there have been only 42 cases of union coercion over the past 60 years. It means only that the HR Policy Association referenced 42 National Labor Relations Board decisions that concerned forgery or intimidation in the obtaining of union cards during that time. These are two very different things.

As described above, the NLRB is labor law's equivalent of the Supreme Court and hears only a small proportion of labor cases. Additionally, the HR Policy Association brief was not a comprehensive survey of NLRB decisions but merely a number of cases that they found to demonstrate the problem of union intimidation of workers. The union argument makes as much sense as finding 42 Supreme Court rulings over the past 60 years dealing with arson and arguing that there had been only 42 cases of arson in the United States during that time and therefore fears about arson are not "a legitimate concern."

## Fines Will Prevent Informed Decisions

<http://www.heritage.org/Research/Labor/bg2027.cfm>

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Expanded employer penalties do more than fail to protect workers from union intimidation. They are also designed to chill employer speech and prevent workers from making an informed choice about union representation.

Many unfair labor practices have nothing to do with firing or threatening to fire workers. Labor law is arcane and employers are strictly prohibited from taking many actions that most Americans would assume are innocuous. During an election campaign an employer may not ask employees what is wrong with their working conditions and why they are considering a union. Employers may not ask employees if they are for or against the union. Unions are free to take these actions, but employers are not. Employers may not even raise employees' wages. Employers may not take many harmless actions that most Americans--and employers-- assume are legal before studying labor law.

Consequently, it is not unusual for employers without experience with union campaigns to commit unintentional unfair labor practices. Under EFCA each ULP carries a \$20,000 fine. The wording of the act levies these fines in cases of either intentional or repeated unfair labor practices. An employer who asked five employees why they were considering supporting the union and what issues they have with their workplace would face a \$100,000 fine.

To avoid steep fines many employers will stay clear of saying or doing anything during the organizing campaign--the intended result. The fines are meant to intimidate employers into avoiding violating arcane labor laws by staying silent and not educating their workers about the downside of joining a union. This benefits the union but deprives workers of an informed choice.

It also gives unions tremendous leverage over employers who do commit multiple unintentional unfair labor practices. Unions can offer to withdraw their unfair labor practice charges--and the related fines--if employers agree to stop resisting the organizing drive. These penalties claim to address the problem of employers firing workers during organizing drives but actually will be a weapon used to silence employers and leave workers ignorant of the downsides of joining a union during organizing drives.

## Legislation is Bias

<http://www.heritage.org/Research/Labor/wm2196.cfm>

The Heritage Foundation

January 8, 2009

**Key Questions for Hilda Solis, Nominee for Secretary of Labor**

by James Sherk

*WebMemo #2196*

Unions spent an estimated \$16.5 million of members' dues to elect Barack Obama and another \$85 million for the Democratic Congress and have made it clear that they expect the new Administration to follow through on their priorities. Union leadership unanimously applauded Solis's nomination.

<http://www.unionfacts.com/articles/unionPolitics.cfm>

The Center For Union Facts

Every day, millions of union members have money taken from their paychecks to support some union presidents' political agenda. In 1996, Rutgers economics professor Leo Troy estimated that union political expenditures totaled about \$500 million in each election cycle. More recently, the National Institute for Labor Relations Research estimated that total union political expenditures reached \$925 million in the 2004 cycle. Over time, this has added up: According to The Center for Responsive Politics, eight of the top ten all-time political contributors are labor unions.

[http://www.nytimes.com/2007/03/02/washington/02union.html?\\_r=1](http://www.nytimes.com/2007/03/02/washington/02union.html?_r=1)

The New York Times

Steven Greenhouse

Mar-02-2007

But several Republicans described it as little more than a Democratic reward for labor's help in last November's elections. The Republicans argued that the bill, the Employee Free Choice Act, was a betrayal of workers' access to a secret-ballot election. Some called it the "employee intimidation act," maintaining that the process of majority sign-up could well entail union organizers' bullying workers into signing pro-union cards.

## Delays are Rare

<http://server1.laborpains.org/wp-content/uploads/2009/03/nlrbcuf-analysis-of-nlr-b-data.pdf>

February 26, 2009

J. Justin Wilson

Center for Union Facts

Furthermore, the NLRB reports that the median length of time between employees submitting an election petition and voting is 39 days, and 93 percent of elections are held within 56 days.<sup>12</sup>

<http://www.heritage.org/Research/Labor/bg2027.cfm>

The Heritage Foundation

April 23, 2007

### **How the Employee Free Choice Act Takes Away Workers' Rights**

by James Sherk and Paul Kersey

*Backgrounder #2027*

The unions' claims, however, are simply false. The typical organizing election takes place 39 days after union organizers file an election petition. Over 93 percent of organizing elections take place within eight weeks after organizers have filed a petition.<sup>[49]</sup> Eight weeks is not an unreasonable delay for a decision that demands consideration by workers and that could affect them for years. Congress should not strip workers of their right to a private vote because labor activists think eight weeks is too long to wait for an organizing election.

## **Employee Free Choice Act Would Disenfranchise 105 Million Workers**

<http://www.heritage.org/Research/labor/wm1768.cfm>

The Heritage Foundation

James Sherk

Jan-07-2008

The EFCA applies only to workers covered by the National Labor Relations Act (NLRA), which does not cover government employees, agricultural workers, the self-employed, or railway or airline workers. The Act also excludes supervisors. Still, the EFCA would disenfranchise 105 million American workers, which encompasses more than two-thirds, or 68.8 percent, of the American workforce.

### Politicians against Voting

Every major Democratic presidential candidate wants to end secret ballots for union organizing elections. Senator Hillary Clinton (D–NY) and Senator Barack Obama (D–IL) voted for the bill, while former Senator John Edwards co-sponsored the EFCA during his time in the Senate.

Under the EFCA, millions of workers in key primary states would lose the right to a private vote on joining a union. The act would disenfranchise:

- \* 508,497 workers in New Hampshire;
- \* 1,540,440 workers in South Carolina;
- \* 3,606,930 workers in Michigan; and
- \* 6,652,444 workers in Florida.

Even as they campaign to win a secret ballot election, many presidential candidates would take the right to vote away from American workers.

## **EFCA Effectively Eliminates Secret Ballot Organizing Elections (No ‘Free Choice’)**

<http://www.heritage.org/Research/Labor/bg2175.cfm>

The Heritage Foundation

James Sherk

Aug-27-2008

Organized labor's highest legislative priority is the deceptively named Employee Free Choice Act (EFCA). EFCA replaces secret ballot elections—the method by which most workers join unions—with publicly signed union cards. While eliminating secret ballots is extremely unpopular, many EFCA support-ers argue that the legislation merely gives workers the choice between organizing using secret ballots or publicly signed cards. This argument is false; nothing in the legislation gives workers any control over union organizing tactics. Though EFCA still allows for secret ballot elections under unusual circumstances, standard union organizing tactics ensure that publicly signed union cards will dominate the recognition process. As a result, the misnamed Employee Free Choice Act effectively eliminates secret ballot elections.

## Private Vote Reveals True Preference

<http://www.heritage.org/research/Labor/bg2027.cfm>

The Heritage foundation

James Sherk and Paul Kersey

Apr-23-2007

Does a ballot cast in private or a card signed in public better reveal a worker's true preference about whether to join a union? A private vote is the obvious answer, but organized labor has nonetheless made the misleadingly named Employee Free Choice Act (EFCA, H.R. 800) its highest legislative priority.

Recently, unions have switched the focus of their organizing operations from private balloting to publicly signed cards. These so-called card-check campaigns make it much easier for unions to organize workers, but most companies strongly resist the idea of denying their employees a vote. Unions now want the government to take away workers' right to vote and certify unions after only a card-check campaign.

## **Currently Both Viewpoints Heard Before Election**

<http://www.merithr.com/straight-talk-about-employee-free-choice-act>

Merit Resource Group

Bill Truesdell

Jan-01-2009

Today, union organizing efforts follow rules laid down by the National Labor Relations Board (NLRB). One of the rules is that there must be a secret ballot election among eligible employees to determine if a union will be selected to represent the workers. A majority rules. Half plus one is enough to win that election. Prior to the vote, however, rules call for the union wishing to represent the employee group to ask workers to sign "show of interest cards" indicating there is enough support to warrant the expense of an election. During the period prior to the vote, both union and employer have the opportunity to present their viewpoints to workers, trying to win their vote, as in any other political election.

## **EFCA is the Demise of Civilization**

<http://pittsburgh.indymedia.org/news/2009/02/30731.php>

Pittsburg Independent media Center

Adam Turl

Feb-23-2009

The legislation could play a role similar to Section 7(a) of President Franklin Roosevelt's National Recovery Act, which enshrined into federal law the right to organize and buoyed the formation of mass industrial unions. Labor organizers seized the moment to argue that "the president wants you to join the union."

The class-conscious members of America's corporate elite have no intention of repeating this experience.

"[EFCA] is the demise of civilization," Home Depot founder Bernie Marcus said. "This is how a civilization disappears." During the 2008 elections, Marcus declared that corporate executives "should be shot" if they didn't do their part to re-elect at-risk Republican senators who could filibuster and prevent EFCA's passage.

While no corporate executives appear to have been shot as of yet, EFCA's enemies have marshaled a war chest of at least \$100 million, according to union estimates. The U.S. Chamber of Commerce has already spent \$10 million on its fierce anti-EFCA campaign.

## Other Answers to the Problem

<http://www.heritage.org/Research/Labor/wm1954.cfm>

The Heritage Foundation

James Sherk

Jun-12-2008

Workplace relations and the economy have changed substantially since the 1930s, but federal labor law has not evolved with these changes. The National Labor Relations Act (NLRA) still reflects a top-down, adversarial view of management–labor relations that is foreign to many workers today.

Private-sector union membership has fallen over the past generation as many workers have concluded that traditional unions do not meet their needs. In response, the labor movement is pushing the Employee Free Choice Act. Instead of taking away workers' right to vote on joining a union by secret ballot, Congress should restore employers' and employees' right to explore innovative labor–management relations. Most workers want a voice in their workplace even if they do not want a traditional union.

Employee involvement (EI) programs enable workers to participate cooperatively in workplace decisions, but the NLRA prohibition on creating "company unions" is so broad that it bans any EI programs that give workers a real voice. The Act forces workers to choose between a traditional union and no formal representation at all.

Congress should modify the NLRA to prohibit only employer-dominated unions while allowing workers to participate in work councils and EI programs. This would enhance workers' voice in the workplace and allow employers and employees to seek labor–management relations that fit into the 21st century economy.