110TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 110–23

EMPLOYEE FREE CHOICE ACT OF 2007

FEBRUARY 16, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GEORGE MILLER of California, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 800]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 800) to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Employee Free Choice Act of 2007".

SEC. 2. STREAMLINING UNION CERTIFICATION.

(a) IN GENERAL.—Section 9(c) of the National Labor Relations Act (29 U.S.C. 159(c)) is amended by adding at the end the following:

"(6) Notwithstanding any other provision of this section, whenever a petition shall have been filed by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a majority of employees in a unit appropriate for the purposes of collective bargaining wish to be represented by an individual or labor organization for such purposes, the Board shall investigate the petition. If the Board finds that a majority of the employees in a unit appropriate for bargaining has signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the Board shall not direct

an election but shall certify the individual or labor organization as the representative described in subsection (a).

"(7) The Board shall develop guidelines and procedures for the designation by employees of a bargaining representative in the manner described in paragraph (6). Such guidelines and procedures shall include—

(A) model collective bargaining authorization language that may be used for purposes of making the designations described in paragraph (6); and

(B) procedures to be used by the Board to establish the validity of signed authorizations designating bargaining representatives.".

(b) CONFORMING AMENDMENTS.—

(1) NATIONAL LABOR RELALTIONS BOARD.—Section 3(b) of the National Labor Relations Act (29 U.S.C. 153(b)) is amended, in the second sentence—

(A) by striking "and to" and inserting "to"; and

(B) by striking "and certify the results thereof," and inserting ", and to issue certifications as provided for in that section,".

(2) UNFAIR LABOR PRACTICES.—Section 8(b) of the National Labor Relations Act (29 U.S.C. 158(b)) is amended—

(A) in paragraph (7)(B) by striking ", or" and inserting "or a petition has been filed under section 9(c)(6), or"; and

(B) in paragraph (7)(C) by striking "when such a petition has been filed" and inserting "when such a petition other than a petition under section 9(c)(6) has been filed".

SEC. 3. FACILITATING INITIAL COLLECTIVE BARGAINING AGREEMENTS.

Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended by adding at the end the following:

"(h) Whenever collective bargaining is for the purpose of establishing an initial agreement following certification or recognition, the provisions of subsection (d) shall be modified as follows:

"(1) Not later than 10 days after receiving a written request for collective bargaining from an individual or labor organization that has been newly organized or certified as a representative as defined in section 9(a), or within such further period as the parties agree upon, the parties shall meet and commence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.

"(2) If after the expiration of the 90-day period beginning on the date on which bargaining is commenced, or such additional period as the parties may agree upon, the parties have failed to reach an agreement, either party may notify the Federal Mediation and Conciliation Service of the existence of a dispute and request mediation. Whenever such a request is received, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

"(3) If after the expiration of the 30-day period beginning on the date on which the request for mediation is made under paragraph (2), or such additional period as the parties may agree upon, the Service is not able to bring the parties to agreement by conciliation, the Service 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 2 years, unless amended during such period by written consent of the parties.".

SEC. 4. STRENGTHENING ENFORCEMENT.

(a) INJUNCTIONS AGAINST UNFAIR LABOR PRACTICES DURING ORGANIZING DRIVES.—

(1) IN GENERAL.—Section 10(l) of the National Labor Relations Act (29 U.S.C. 160(l)) is amended—

(A) in the second sentence, by striking "If, after such" and inserting the following:

"(2) If, after such"; and (B) by striking the first sentence and inserting the following:

"(1) Whenever it is charged—

"(A) that any employer—

"(i) discharged or otherwise discriminated against an employee in violation of subsection (a)(3) of section 8;

"(ii) threatened to discharge or to otherwise discriminate against an employee in violation of subsection (a)(1) of section 8; or

"(iii) engaged in any other unfair labor practice within the meaning of subsection (a)(1) that significantly interferes with, restrains, or coerces employees in the exercise of the rights guaranteed in section 7;

while employees of that employer were seeking representation by a labor organization or during the period after a labor organization was recognized as a representative defined in section 9(a) until the first collective bargaining contract is entered into between the employer and the representative; or

"(B) that any person has engaged in an unfair labor practice within the meaning of subparagraph (A), (B) or (C) of section 8(b)(4), section 8(e), or section 8(b)(7);

the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred.".

(2) CONFORMING AMENDMENT.—Section 10(m) of the National Labor Relations Act (29 U.S.C. 160(m)) is amended by inserting "under circumstances not subject to section 10(l)" after "section 8".

(b) REMEDIES FOR VIOLATIONS.—

(1) BACKPAY.—Section 10(c) of the National Labor Relations Act (29 U.S.C. 160(c)) is amended by striking "*And provided further*," and inserting "*Provided further*, That if the Board finds that an employer has discriminated against an employee in violation of subsection (a)(3) of section 8 while employees of the employer were seeking representation by a labor organization, or during the period after a labor organization was recognized as a representative defined in subsection (a) of section 9 until the first collective bargaining contract was entered into between the employer and the representative, the Board in such order shall award the employee back pay and, in addition, 2 times that amount as liquidated damages: *Provided further*,".

(2) CIVIL PENALTIES.—Section 12 of the National Labor Relations Act (29 U.S.C. 162) is amended—

(A) by striking "Any" and inserting "(a) Any"; and

(B) by adding at the end the following:

"(b) Any employer who willfully or repeatedly commits any unfair labor practice within the meaning of subsections (a)(1) or (a)(3) of section 8 while employees of the employer are seeking representation by a labor organization or during the period after a labor organization has been recognized as a representative defined in subsection (a) of section 9 until the first collective bargaining contract is entered into between the employer and the representative shall, in addition to any make-whole remedy ordered, be subject to a civil penalty of not to exceed $20,000 for each violation. In determining the amount of any penalty under this section, the Board shall consider the gravity of the unfair labor practice and the impact of the unfair labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this Act, or on the public interest.".

PURPOSE

H.R. 800, the Employee Free Choice Act of 2007, seeks to strengthen and expands the American middle class by restoring workers' freedom to organize and collectively bargain under the National Labor Relations Act (NLRA). The bill reforms the NLRA to provide for union certification through simple majority sign-up procedures, first contract mediation and binding arbitration, and tougher penalties for violations of workers' rights during organizing and first contract drives. The Employee Free Choice Act of 2007 furthers the long-standing policy of the United States to encourage the practice of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

COMMITTEE ACTION

108TH CONGRESS

The Employee Free Choice Act was first introduced during the 108th Congress. On November 21, 2003, Representative George Miller (D–CA), then Ranking Member of the Committee, introduced

H.R. 3619. A companion bill, S. 1925, was introduced in the Senate by Senator Edward M. Kennedy (D–MA) at the same time. H.R. 3619 garnered 209 cosponsors, both Democratic and Republican. It was referred to the Committee on Education and the Workforce and the Subcommittee on Employer-Employee Relations.

Neither the full Committee nor the Subcommittee took any direct action on the bill. The Subcommittee, however, conducted several hearings which either featured references to the Employee Free Choice Act or raised issues related to the Employee Free Choice Act—particularly union organizing issues. On April 22, 2004, the Subcommittee conducted a hearing on "Developments in Labor Law: Examining Trends and Tactics in Labor Organization Campaigns." On May 10, 2004, the Subcommittee conducted a field hearing in Round Rock, Texas, on "Examining Union 'Salting' Abuses and Organizing Tactics that Harm the U.S. Economy." And on September 30, 2004, the Subcommittee held a hearing on "H.R. 4343, The Secret Ballot Protection Act of 2004."

109TH CONGRESS

On April 19, 2005, the Employee Free Choice Act was re-introduced in the 109th Congress as H.R. 1696 by Representative George Miller, then Ranking Member of the Committee, joined by Representative Peter King (R–NY) as a lead co-sponsor. At the same time, Senator Kennedy introduced its Senate companion, S. 842, joined by Senator Arlen Specter (R–PA) as a lead co-sponsor. In the House of Representatives, the Employee Free Choice Act garnered 214 co-sponsors, both Democratic and Republican. H.R. 1696 was referred to the Committee on Education and the Workforce and the Subcommittee on Employer-Employee Relations.

Neither the full Committee nor the Subcommittee took any action on the bill. Democratic Members of the Committee, however, conducted field forums on the Employee Free Choice Act. For example, on June 13, 2005, Representative George Miller, then-Ranking Member on the full Committee, joined Representative Rosa DeLauro (D–CT) in New Haven, Connecticut, for a field forum on local organizing issues and the Employee Free Choice Act. On June 27, 2005, Representative Robert Andrews (D–NJ), then-Ranking Member on the Subcommittee on Employer-Employee Relations, conducted a field forum on local organizing issues and the Employee Free Choice Act in Trenton, New Jersey, and was joined by other Members of the New Jersey congressional delegation, including Committee Members Donald Payne (D–NJ) and Rush Holt (D–NJ). On April 20, 2006, Representative George Miller conducted another field forum on the Employee Free Choice Act in Sacramento, California. There, he was joined by Representative Doris Matsui (D–CA). In each of these forums, Members of Congress heard from workers attempting to organize unions and expert witnesses on organizing and collective bargaining rights.

110TH CONGRESS

First Economic Hearing: The State of the Middle Class

On January 31, 2007, the Committee on Education and Labor conducted its first full Committee hearing of the new Congress. This hearing, "Strengthening America's Middle Class: Evaluating

the Economic Squeeze on America's Families," provided the Committee with an overview of the state of the American middle class. The Committee heard testimony describing the scope and causes of the middle class squeeze, i.e., the combination of downward pressures on wages and benefits and the rising costs of basic family necessities, such as energy, housing, health care, and education. Witnesses included Professor Jacob Hacker, a professor and author at Yale University; Ms. Rosemary Miller, a flight attendant and middle class mother; Professor Eileen Appelbaum, the Director of the Center for Women and Work at Rutgers University; Ms. Diana Furchtgott-Roth, the Director of the Center for Employment Policy at the Hudson Institute; Ms. Kellie Johnson, President of ACE Clearwater Enterprises, Inc., and Dr. Christian Weller, a senior economist at the Center for American Progress.

Second Economic Hearing: Economic Solutions to the Middle Class Squeeze

On February 7, 2007, the Committee on Education and Labor conducted its second full Committee hearing of the new Congress. This hearing, "Strengthening America's Middle Class: Finding Economic Solutions to Help America's Families," served as the second part of the January 31 hearing. In this hearing, building on what was learned about the state of the middle class, Members and witnesses explored what could be done to alleviate the middle class squeeze and strengthen and expand the middle class. Witnesses testified about the need for fairer trade policies, stronger protections for workers' fundamental rights, more rigorous training and education for a high skills, high wage economy, and a greater commitment to comprehensive health care reform. These witnesses included Mr. Richard L. Trumka, Executive Vice President of the AFL–CIO; Dr. Judy Feder, Dean of the Georgetown Public Policy Institute at Georgetown University; Mr. William T. Archey, President and Chief Executive Officer of AeA; and Dr. Lynn A. Karoly, senior economist at the RAND Corporation.

Introduction of the Employee Free Choice Act

On February 5, 2007, the Employee Free Choice Act, as H.R. 800, was re-introduced in the 110th Congress by Chairman George Miller, joined by 230 original co-sponsors, including Representative Peter King (R–NY) as a lead co-sponsor. In the following days, the number of co-sponsors increased to 234, including both Democratic and Republican co-sponsors.

Subcommittee Hearing on the Employee Free Choice Act

On February 8, 2007, the Subcommittee on Health, Employment, Labor, and Pensions (HELP), led by Chairman Robert Andrews (D–NJ), conducted a legislative hearing on H.R. 800, "Strengthening America's Middle Class through the Employee Free Choice Act." This hearing featured testimony from two panels of witnesses. The first panel consisted of three workers who have attempted to form unions in their workplaces, namely, Mr. Keith Ludlum, an employee of Smithfield Foods in Tar Heel, North Carolina; Mr. Ivo Camilo, a retired employee of Blue Diamond Growers in Sacramento, California; and Ms. Teresa Joyce, an employee of Cingular Wireless in Lebanon, Virginia; as well as a former union

organizer who is currently a union avoidance consultant for employers, Ms. Jennifer Jason, founder of Six Questions Consulting LLC and formerly with UNITE–HERE. These witnesses discussed their experiences in attempting to organize unions. The second panel consisted of two labor lawyers, a labor economist, and a political scientist, namely, Ms. Nancy Schiffer, associate general counsel at the AFL–CIO; Mr. Charles Cohen, a former member of the National Labor Relations Board, speaking on behalf of the U.S. Chamber of Commerce; Professor Harley Shaiken, a labor economist at the University of California-Berkeley; and Professor Gordon Lafer, a political scientist at the University of Oregon. These witnesses discussed the bill.

Full Committee Mark-Up of the Employee Free Choice Act

On February 14, 2007, the Committee on Education and Labor met to markup H.R. 800, the Employee Free Choice Act. The Committee adopted by voice vote an amendment in the nature of a substitute offered by Mr. Andrews. Thirteen other amendments were offered and debated. None of those amendments were adopted. The Committee voted to favorably report H.R. 800, by a vote of 26–19.

SUMMARY

H.R. 800, the Employee Free Choice Act, consists of three basic provisions:

1. The majority sign-up certification provision provides for certification of a union as the bargaining representative of the National Labor Relations Board finds that a majority of employees in an appropriate unit has signed valid authorizations designating the union as its bargaining representative. This provision requires the Board to develop model authorization language and procedures for establishing the validity of signed authorizations.

2. The first contract mediation and arbitration provision provides that if an employer and a union are engaged in bargaining for their first contract and are unable to reach agreement within 90 days, either party may refer the dispute to the Federal Mediation and Conciliation Service (FMCS) for mediation. If the FMCS has been unable to bring the parties to agreement after 30 days of mediation, the dispute will be referred to arbitration and the results of the arbitration shall be binding on the parties for two years. Time limits may be extended by mutual agreement of the parties.

3. The penalties provision makes the following new provisions applicable to violations of the NLRA committed by employers against employees during any period while employees are attempting to organize a union or negotiate a first contract agreement:

   a. Just as the NLRB is required to seek a federal court injunction against a union whenever there is reasonable cause to believe that the union has violated the secondary boycott prohibitions of the NLRA, the NLRB must seek a federal court injunction against an employer whenever there is reasonable cause to believe that the employer has discharged or discriminated against employees, threatened to discharge or discriminate against employees, or engaged

in conduct that significantly interferes with employee rights during an organizing or first contract drive. Likewise, this provision authorizes the courts to grant temporary restraining orders and other appropriate injunctive relief.

b. An employer must pay three times backpay when an employee is unlawfully discharged or discriminated against during an organizing or first contract drive.

c. The NLRB may impose civil fines of up to $20,000 per violation against employers found to have willfully or repeatedly violated employees' rights during an organizing or first contract drive.

COMMITTEE VIEWS

The Committee on Education and Labor of the 110th Congress is committed to strengthening and expanding the American middle class. The middle class is the backbone of this country's strong economy and vibrant democracy. A strong middle class is critical to the long-term prosperity and stability of the United States.

The Employee Free Choice Act of 2007 is—in the final analysis—about saving the American Dream for millions of hard working families who struggle every day to pay for the basics, pay for health care when there is a family illness, to build a nest egg for their future, and to get their children to college in the face of skyrocketing college costs.

To this challenge, Congress must act decisively on behalf of millions of hard working middle class workers who see the American Dream slipping from their reach.

The Employee Free Choice Act is about giving workers basic dignity and respect in their workplace—a tradition that is deeply rooted in our nation's history. It is about allowing employees to make their own decision about whether they want to bargain together—to advocate for fairer wages, benefits, and working conditions—without the threat or fear of harassment and retribution and fear of losing their livelihood.

A HUMAN RIGHTS CRISIS

H.R. 800 addresses a human rights crisis that is a leading cause of the middle class squeeze. The freedom to form or join a labor union and engage in collective bargaining is an internationally-recognized human right. In the United States, the freedom of association is enshrined in the First Amendment of the Bill of Rights. While this freedom is often associated with political ventures, it is a long-standing American principle and tradition that working people may join together to improve their economic circumstances. The most explicit recognition of this principle for private sector workers in federal law is the 1935 Wagner Act, also known as the National Labor Relations Act (NLRA).[1]

Section 1 of the NLRA declares "it is the policy of the United States" to "encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organizing and designation of representatives of their

[1] 29 U.S.C. 151 et seq.

own choosing, for the purpose of negotiating the terms and conditions of their employment, or other mutual aid or protection."[2]

The NLRA is a relatively straightforward law. Section 7 of the NLRA establishes the fundamental rights of workers to "self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities. . ."[3] Section 8 lays out a variety of prohibitions for both employer and union behavior.[4] For example, employers may not interfere with, coerce, intimidate, or discriminate against employees in the exercise of their Section 7 rights. The NLRA also requires employers to bargain in good faith with their employees' exclusive bargaining representative, when a union is voluntarily recognized as such by the employer or certified as such by the National Labor Relations Board (NLRB), the agency which the NLRA establishes to administer and enforce the NLRA.[5]

WORKERS RIGHTS ARE UNDER ATTACK

For more than 70 years, workers' freedom to organize and collectively bargain has depended upon the effectiveness of the NLRA. Today, the NLRA is ineffective, and American workers' freedom to organize and collectively bargain is in peril everyday as a result.

The numbers are staggering. Every 23 minutes, a worker is fired or otherwise discriminated against because of his or her union activity.[6] According to NLRB Annual Reports between 1993 and 2003, an average of 22,633 workers per year received back pay from their employers.[7] In 2005, this number hit 31,358.[8] A recent study by the Center for Economic and Policy Research found that, in 2005, workers engaged in pro-union activism "faced almost a 20 percent chance of being fired during a union-election campaign."[9]

The number of workers awarded backpay by the NLRB also reveals a worsening trend. The NLRB provides backpay to workers who are illegally fired, laid off, demoted, suspended, denied work, or otherwise discriminated against because of their union activity. In 1969 a little over 6,000 workers received backpay because of illegal employer actions.[10] That number has risen by 500 percent although the percentage of the private sector workforce that is unionized has declined over the same time period from nearly 30 percent to just 7.4 percent.[11] In the 1970s, 1-in-100 pro-union workers ac-

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[2] 29 U.S.C. 151.
[3] 29 U.S.C. 157.
[4] 29 U.S.C. 158(a) and (b).
[5] 29 U.S.C. 158(d).
[6] American Rights at Work website, at *http://www.americanrightsatwork.org/resources/23cite.cfm.*
[7] Strengthening America's Middle Class through the Employee Free Choice Act, Hearing Before the Subcommittee on Health, Employment, Labor & Pensions, 110th Cong., 1st Sess. (2007) (written testimony of Harley Shaiken, at 1, n.1) [hereinafter Shaiken Testimony].
[8] Shaiken Testimony, at 1.
[9] John Schmitt & Ben Zipperer, "Dropping the Ax: Illegal Firings During Union Election Campaigns," Center for Economic and Policy Research (January 2007), at 3 [hereinafter Schmitt & Zipperer].
[10] Strengthening America's Middle Class through the Employee Free Choice Act, Hearing Before the Subcommittee on Health, Employment, Labor & Pensions, 110th Cong., 1st Sess. (2007) (written testimony of Nancy Schiffer, at 3) [hereinafter Schiffer Testimony].
[11] Michele Amber, "Union Membership Rates Dropped in 2006 to 12 Percent; Manufacturing Leads the Way," BNA Daily Labor Report (January 26, 2007).

tively involved in an organizing drive was fired. Today, that number has doubled to about 1-in-53.[12]

The anti-union activities of employers have become far more sophisticated and brazen in recent history. Today, 25 percent of employers illegally fire at least one worker for union activity during an organizing campaign.[13] Additionally, 75 percent of employers facing a union organizing drive hire anti-union consultants.[14] During an organizing drive, 78 percent of employers force their employees to attend one-on-one meetings against the union with supervisors, while 92 percent force employees to attend mandatory, captive audience anti-union meetings.[15] More than half of all employers facing an organizing drive threaten to close all or part of their plants.[16]

A 2005 study that focused on organizing campaigns in the Chicago metropolitan area found that 30 percent of employers fired workers engaging in union activities; 49 percent of employers threatened to close or relocate if the union won; and 82 percent of employers hired anti-union consultants to assist with their campaign against the union.[17]

The "union avoidance" industry—comprised of anti-union consultants who help employers defeat organizing drives or encourage the decertification of existing unions—is "worth several hundred million dollars per year."[18] Companies intent on busting organizing drives pay top dollar to anti-union consulting and law firms.[19] These consultants wage highly sophisticated campaigns against workers trying to form a union. These campaigns may include such tactics as "captive speeches, employee interrogations, one-on-one meetings between employees and supervisors, 'vote no' committees, antiunion videos, threats of plant closures, and discriminatory discharges."[20] A rare light was shed on the "union avoidance" industry in a 2004 New York Times exposé. According to the article, the battery company EnerSys had paid the anti-union law firm Jackson Lewis $2.7 million for its services—during which time the company, according to a federal complaint containing some 120 unfair labor practices, fired union leaders, assisted the anti-union campaign, improperly withdrew recognition from the union, and moved production to nonunion plants in retaliation for workers' union activity. EnerSys later accused Jackson Lewis of malpractice for its advice, which Jackson Lewis denied.[21]

This human rights crisis in the United States was highlighted in a 2000 Human Rights Watch report entitled "Unfair Advantage:

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[12] Schmitt & Zipperer, at 3.

[13] Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing," (September 6, 2000).

[14] Id.

[15] Id.

[16] Id.

[17] Chirag Mehta & Nik Theodore, "Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns," A Report for American Rights at Work (December 2005), at 5.

[18] John Logan, "The Union Avoidance Industry in the United States," British Journal of Industrial Relations (December 2006), at 651.

[19] For example, the Republican witness, presented as a former UNITE–HERE organizer in the February 8, 2007, HELP Subcommittee hearing on the Employee Free Choice Act, was paid $225,000 in one year, plus expenses, by Cintas, a company she formerly was trying to organize but had since taken on as a client for her union avoidance consulting firm.

[20] John Logan, "The Fine Art of Union Busting," New Labor Forum (Summer 2004), at 78.

[21] Steven Greenhouse, "How Do You Drive Out a Union? South Carolina Factory Provides a Textbook Case," The New York Times (December 14, 2004).

Workers' Freedom of Association in the United States under International Human Rights Standards," Human Rights Watch warned: "Workers' freedom of association is at risk in the United States, with yet untold consequences for societal fairness."[22] According to the report:

> A culture of near-impunity has taken shape in much of U.S. labor law and practice. Any employer intent on resisting workers' self-organization can drag out legal proceedings for years, fearing little more than an order to post a written notice in the workplace promising not to repeat unlawful conduct. Many employers have come to view remedies like back pay for workers fired because of union activity as a routine cost of doing business, well worth it to get rid of organizing leaders and derail workers' organizing efforts.[23]

In her testimony before the HELP Subcommittee on February 8, 2007, union-side labor lawyer Nancy Schiffer echoed this reality:

> At some point in my career . . . I could no longer tell workers that the [NLRA] protects their right to form a union. Because I knew that, despite the wording of the statute, in practice it does not. And I knew that they would have to be heroes to survive their organizing effort, just because they wanted to form a union so that they could bargain for a better life.[24]

The ineffectiveness of the NLRA has put workers' fundamental freedoms at risk. These developments have spurred a human rights crisis with real economic consequences for America's middle class.

THE ECONOMIC CONSEQUENCES OF THE HUMAN RIGHTS CRISIS

The rise of workers' freedom to organize and collectively bargain dramatically expanded the middle class in 20th Century America. The decline of these freedoms has put the middle class at risk. Workers' inability to join together and bargain for something better, or protect what they already have, has in part manifested itself in the middle class squeeze.

The first two full Committee hearings of the 110th Congress examined the middle class squeeze and explored solutions to it. Witnesses in the first hearing, "Strengthening America's Middle Class: Evaluating the Economic Squeeze on America's Families," held on January 31, 2007, described the state of the middle class.

The middle class is less economically secure today than 30 years ago, as economic burdens and risks have shifted from corporate or government insurance programs to individuals and families. Witness Dr. Jacob Hacker, a professor of political science at Yale University and author of The Great Risk Shift, explained: "Over the last generation, we have witnessed a massive transfer of economic risk from broad structures of insurance, whether sponsored by the corporate sector or by government, onto the fragile balance sheets

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[22] "Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards," Human Rights Watch report (August 2000) [hereinafter Human Rights Watch Report].

[23] Id.

[24] Schiffer Testimony, at 1.

of American families."[25] Dr. Hacker presented research revealing a measurable increase in insecurity—not just a "growing gap between the rungs of our economic ladder" but a "growing risk of slipping from the ladder itself." For example, the instability of family incomes has increased dramatically since the late 1960s. "You can be perfectly average—with an average income, an average-sized family, an average likelihood of losing your job or becoming disabled—and you're still two-and-a-half times as likely to see your income plummet as an average person was thirty years ago," explained Dr. Hacker. Personal bankruptcy filings have risen from less than 300,000 in 1980 to more than 2 million in 2005. The share of households seeing foreclosures on their homes has increased 500 percent since the early 1970s. Americans are burdened by personal debt, with the personal savings rate falling from approximately one-tenth of disposable income to virtually zero between the early 1970s and today. Meanwhile, the American middle class has been losing its access to employer-provided health insurance and guaranteed pensions. This insecurity "strikes at the very heart of the American Dream" but also acts as a drag on the economy in general. Individuals who feel insecure in their economic position are less likely to take on additional risks—such as career changes, new training and education, or entrepreneurial endeavors—which could benefit the economy overall.

These points were supported by witness Dr. Christian Weller, a senior economist at the Center for American Progress.[26] He also presented research which found a growing level of financial insecurity among America's middle class families. For example, according to Dr. Weller: "A substantially smaller share of typical dual income couples between the ages of 35 and 54 who earn between $18,500 and $88,030 a year—those in the middle 60 percent of income distribution—were prepared for an emergency in 2004 (the last year complete data was available) than in 2001." Such emergencies might include the sudden unemployment of a breadwinner or the sudden medical emergency of a family member. Dr. Weller also explained: "One of the foremost reasons for the erosion in middle class economic security is that families face a comparatively weak labor market despite a growing economy." His research showed that, for the first time in any economic recovery, the initial stages of the most recent economic "recovery," beginning in November 2001, were marked by a sustained period of job loss. Between 2000 and 2005, the share of people without any health insurance increased from 14.2 percent to 15.9 percent, and the share of people with employer-provided health insurance decreased from 63.6 percent to 59.5 percent. These structural changes pose an increasing threat to the middle class way of life.

Today's economy is imbalanced. Witness Dr. Eileen Appelbaum, Director of the Center for Women and Work at Rutgers University, testified that working people are not receiving their fair share of the wealth that has been created by economic growth and increased

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[25] Strengthening America's Middle Class: Evaluating the Economic Squeeze on America's Families, Hearing Before the Committee on Education & Labor, 110th Cong., 1st Sess. (2007) (written testimony of Jacob Hacker) [hereinafter Hacker Testimony].

[26] Strengthening America's Middle Class: Evaluating the Economic Squeeze on America's Families, Hearing Before the Committee on Education & Labor, 110th Cong., 1st Sess. (2007) (written testimony of Christian Weller) [hereinafter Weller Testimony].

productivity.[27] She explained: "American workers today produce 70 percent more goods and services than they did at the end of the 1970s. . . . The overwhelming majority of American families haven't shared fairly in this bounty. Workers' pay and benefits have lagged far behind the increase in productivity." Her research pointed out that, since the start of 2001, an 18 percent increase in productivity has been accompanied by only a 3 percent increase in the average real hourly wages of workers, an increase "dwarfed by the increases in corporate profits and in the incomes of the very richest Americans." Dr. Appelbaum suggested a number of prescriptions for tackling the middle class squeeze, including the Employee Free Choice Act. She explained: "Workers need a greater voice at work and the right to form unions if they so desire."

Witness Rosemary Miller, a flight attendant and mother, told the Committee her personal story of the middle class squeeze.[28] After her employer declared bankruptcy, she saw "drastic wage and benefit reductions." She said: "I am now working longer and longer days as well as having to spend more and more time away from home. I have had to miss some of my daughters' school events that I vowed I would never miss because now I have to work longer in order to keep food on the table and a roof over our heads. But not only am I working longer; I'm earning less. My pension has been frozen. My benefits have been reduced." She explained: "We are asking for livable wages, a home that we own, affordable health care, comfortable retirement security, and reasonable means to provide for our children's college costs. It is obscene that in this country, among all others, it is such a struggle to simply live decently."

The Committee's second economic hearing, "Strengthening America's Middle Class: Finding Economic Solutions for America's Families," held on February 7, 2007, looked at a number of economic solutions to the middle class squeeze. All of these solutions complemented one another. For example, one solution forwarded at the hearing was the Innovation Agenda. Better training and education to ensure that workers have sufficient skills and knowledge for a higher-tech economy are necessary but not by themselves sufficient for tackling the middle class squeeze. Better training and education via the Innovation Agenda will ensure that qualified workers are available to fill the jobs of today and tomorrow. Without more, however, there is no guarantee that those jobs—whether service, manufacturing, or high-tech sector jobs—will be middle-class family-supporting jobs. To make those jobs good jobs, workers must be given a fair playing field on which to compete globally and a fair playing field on which to bargain for better wages, benefits, and working conditions. In this regard, the Committee heard testimony on the need for fairer trade practices to allow American workers and business to compete on a global scale and stronger enforcement of workers' rights at home. Finally, the middle class squeeze is not fully addressed without solving the health care crisis—both the coverage crisis and the cost crisis. Testimony was also heard on policy proposals in this area.

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[27] Strengthening America's Middle Class: Evaluating the Economic Squeeze on America's Families, Hearing Before the Committee on Education & Labor, 110th Cong., 1st Sess. (2007) (written testimony of Eileen Appelbaum) [hereinafter Appelbaum Testimony].

[28] Strengthening America's Middle Class: Evaluating the Economic Squeeze on America's Families, Hearing Before the Committee on Education & Labor, 110th Cong., 1st Sess. (2007) (written testimony of Rosemary Miller) [hereinafter Miller Testimony].

The Employee Free Choice Act featured prominently as a key solution to the middle class squeeze in this hearing. Witness Richard L. Trumka, Executive Vice President of the AFL–CIO, testified: "The best opportunity for working men and women to get ahead economically is to unite with their co-workers to bargain with their employers for better wages and benefits."[29] He pointed out that unionized workers earn 30 percent more than non-union workers, are 62 percent more likely to have employer-provided health care coverage, and are four times more likely to have guaranteed defined benefit pensions. According to Mr. Trumka, while nearly 60 million workers say they would join a union if they could, the vast majority have not because of a broken system for forming unions and collective bargaining that does not protect workers' fundamental rights. On behalf of the AFL–CIO, Mr. Trumka called specifically for Congress to pass the Employee Free Choice Act. He explained: "This legislation would represent an enormous step toward restoring balance between workers and their employers and helping repair the ruptured productivity-wage relationship."

UNIONS AND THE MIDDLE CLASS

The link between the Employee Free Choice Act and new hope for a more vibrant American middle class is evident in the numbers. By every measure, workers who join together to bargain for better wages, benefits, and working conditions do indeed receive better wages, benefits, and working conditions. This "union difference" is confirmed by the Bureau of Labor Statistics. Unionized workers' median weekly earnings are 30 percent higher than nonunion workers'.[30] This wage advantage is even more pronounced among women (31 percent union wage advantage), African Americans (36 percent union wage advantage), and Latinos (46 percent union wage advantage). Eighty percent of unionized workers have employer-provided health insurance, while only 49 percent of nonunion workers do. Sixty-eight percent of unionized workers have guaranteed pensions under a defined benefit plan, while only 14 percent of nonunion workers do. Sixty-two percent of unionized workers have the protection of short-term disability benefits, while only 35 percent of nonunion workers do. Unionized workers have, on average, 15 days of paid vacation—time that can be taken to spend with family—compared to only 11.75 average days of paid vacation for nonunion employees. Unionized workers also almost invariably have the protection of just cause employment, while nonunion workers are typically at-will employees, open to firing or layoff for any legal reason or no reason at all.

Unions, however, do not only benefit unionized workers. Strong unions set industry-wide standards that benefit workers across an industry, regardless of their union or nonunion status. Moreover, the threat of unionization often leads employers to attempt to match or approach union pay and benefit scales in order to discour-

[29] Strengthening America's Middle Class: Finding Economic Solutions for America's Families, Hearing Before the Committee on Education & Labor, 110th Cong., 1st Sess. (2007) (written testimony of Richard Trumka) [hereinafter Trumka Testimony].

[30] This and subsequent statistics in this paragraph are attributed to the following sources: U.S. Department of Labor, Bureau of Labor Statistics, Union Members in 2006 (January 25, 2007); U.S. Department of Labor, Bureau of Labor Statistics, National Compensation Survey: Employee Benefits in Private Industry in the United States (March 2006); Economic Policy Institute; Employee Benefits Research Institute (May 2005).

age unionization. A recent study found that, for example, a high school graduate who is not even a union worker but whose industry is at least 25 percent unionized will be paid 5 percent more than similar workers in less organized industries.[31] A 2002 study found that "more than half of the decline in the average wage paid to workers with a high school education or less can be accounted for by the decline in union density."[32] A 1999 study found that the drop in union density explained about 20 percent of the decline in the percentage of workers receiving employer-provided health insurance between 1983 and 1997.[33] A 2005 report recently explained that "further erosion of unionization is likely to coincide with an overall erosion in the percentage of workers with employment-based health benefits."[34]

The union difference extends into other areas as well. The rise in wage inequality in the U.S., particularly among men, has been linked to de-unionization.[35] A 2004 study on workplace hazards produced findings suggesting that unions "could reduce job stress by giving workers the voice to cope effectively with job hazards."[36] Unions improve product or service quality. For example, a 2004 paper revealed that "[a]fter controlling for patient and hospital characteristics . . . hospitals with unionized R.N.'s have 5.5% lower heart-attack mortality than do non-union hospitals."[37] Moreover, unions have been found to increase overall productivity.[38]

Unions, as the only organizations explicitly representing workers qua workers, have been instrumental in building and preserving nationwide and statewide systems of social insurance and worker protections, such as workers' compensation and unemployment insurance, occupational safety and health standards, and wage and hour laws such as the minimum wage, the 40-hour workweek, and overtime premium pay.[39] All Americans reap the benefits of these laws and programs, regardless of their union or nonunion status.

Many of these points were laid out in the testimony of Professor Harley Shaiken at the February 8, 2007, HELP Subcommittee hearing on the Employee Free Choice Act. As Professor Shaiken explained: "[D]eclining unions fuel 'the Great Disconnect'—rising productivity decoupled from wages."[40] But Professor Shaiken went a step further. In his analysis, he found that "more robust unions" not only stem the middle class squeeze but "contribute to a 'High

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[31] Lawrence Mishel (with Matthew Walters), "How Unions Help All Workers," Economic Policy Institute Briefing Paper (August 2003), at 1 [hereinafter Mishel].

[32] Henry S. Farber, "Are Unions Still a Threat? Wages and the Decline of Unions, 1973–2001," Princeton University Working Paper (2002), at 1.

[33] Thomas C. Buchmueller, John DiNardo, & Robert G. Valletta, "Union Effects on Health Insurance Provision and Coverage in the United States," San Francisco Federal Reserve Bank (1999).

[34] Paul Fronstin, "Union Status and Employment-Based Benefits," EBRI Notes (May 2005).

[35] David Card, Thomas Lemieux, and W. Craig Riddell, "Unionization and Wage Inequality: A Comparative Study of the U.S., U.K., and Canada," NBER Working Paper (February 2003).

[36] John E. Baugher & J. Timmons Roberts, "Workplace Hazards, Unions & Coping Styles," Labor Studies Journal (Summer 2004).

[37] Michael Ash & Jean Ann Seago, "The Effect of Registered Nurses' Unions on Heart-Attack Mortality," Industrial and Labor Relations Review (April 2004), at 422–442. See also Saul A. Rubenstein, "The Impact of Co-Management on Quality Performance: The Case of the Saturn Corporation," Industrial and Labor Relations Review (January 2000).

[38] Christos Doucouliagos & Patrice Laroche, "The Impact of U.S. Unions on Productivity: A Bootstrap Meta-analysis," Proceedings of the Industrial Relations Research Association (2004); and "What Do Unions Do to Productivity: A Meta-Analysis," Industrial Relations (October 2003). For an earlier study, see Charles Brown & James L. Medoff, "Trade Unions in the Production Process," Journal of Political Economy (June 1978).

[39] Mishel, at 11–14.

[40] Shaiken Testimony, at 2.

Road Competitiveness'—a more broadly shared prosperity that benefits working families as well as consumers and shareholders."[41]

In his testimony, Professor Shaiken cited a number of studies showing how "unionization and productivity often go hand-in-hand." For example, greater fairness on the job and wages that reflect a company's success lead to more motivated employees. Unions foster "greater commitment and information-sharing" between employees and management. A 1984 study found that approximately 20 percent of the union productivity effect resulted from lower turnover in unionized firms. This is not difficult to understand. As Professor Shaiken pointed out: "Lower turnover means lower training costs, and the experience of more seasoned workers translates into higher productivity and quality." On a microeconomic level, Professor Shaiken cited a number of companies as examples of high-road competitiveness, where an employer respected workers' rights, paid higher compensation, and achieved higher levels of productivity and quality. These examples included the New United Motor Manufacturing plant, Costco, Cingular Wireless, and the relationships between Culinary Local 226 and the hospitality industry in Las Vegas.[42]

Professor Shaiken concluded:

> The [Employee Free Choice Act] 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.[43]

On every score, the collective bargaining process has produced better wages, benefits, and quality of life for America's working families. The decline in collective bargaining—in workers' ability to join together to press for a better deal—mirrors the tightening squeeze on the middle class. That decline also mirrors a rising tide of employer disregard for the law and for the fundamental rights of workers.

THE NEED FOR THE EMPLOYEE FREE CHOICE ACT

H.R. 800, the Employee Free Choice Act, will help lift the middle class and help working people get ahead by restoring their freedom to organize and bargain for better wages, benefits, and working conditions. It does so by strengthening the nation's labor law in three fundamental ways.

THE NEED FOR INCREASED PENALTIES FOR VIOLATIONS OF WORKERS' RIGHTS

Current penalties for employers who violate the NLRA are insufficient to enforce compliance with the law. Instead, many employ-

[41] Id.
[42] Id. at 5–8.
[43] Id. at 8–9.

ers treat those penalties as a mere cost of doing business to prevent their company from being unionized. When an employer fires a worker for his pro-union activities, the employee must file a charge with the NLRB. After what are often many years of appeals by the employer, the employee may finally prevail. Employers are only required to reinstate the employee, post a notice promising to never do it again, and pay the employee back wages minus what the worker earned or should have earned in the interim.[44] In 2003, the average backpay amount was a mere $3800.[45] While nearly cost-free, illegal firings are extremely effective in stopping an organizing drive, sending a chilling effect throughout the workforce. Additionally, for other serious violations, such as illegal threats to close the workplace if the union prevails, employers are merely subjected to a cease and desist order and notice posting. Again, this remedy is often imposed years later, once all appeals are exhausted. By that time, the violation has served its unlawful purpose of intimidating or coercing employees.

The HELP Subcommittee heard from two witnesses in the February 8, 2007, hearing with direct experience in unlawful firings. Keith Ludlum began working at a Smithfield Foods meatpacking plant in Tar Heel, North Carolina, soon after returning from a tour of duty in Iraq during Operation Desert Storm.[46] After experiencing and witnessing poor treatment of workers, Mr. Ludlum began trying to organize a union at the plant in December 1993. He testified that, in 1994, he was fired by the company for attempting to get his co-workers to sign union cards with the United Food and Commercial Workers (UFCW). He explained that supervisors and a deputy sheriff marched him out of the plant in front of his coworkers that day "as an example to intimidate them." After more unlawful worker filings, a string of unfair labor practices, and 12 years of litigation, Mr. Ludlum finally won his job back. In 2006, Smithfield settled to reinstate Mr. Ludlum and pay him backpay after the company was found liable by a U.S. Court of Appeals, for, among other things, assaulting, intimidating, firing, and unlawfully arresting workers who were trying to organize a union. Mr. Ludlum testified: "Smithfield was not fined or indicted for breaking the law and none of its executives were punished." The Smithfield facility in Tar Heel, North Carolina, remains nonunion.

Ivo Camilo worked as an electronic machine operator at the Blue Diamond Growers plant in Sacramento, California, for 35 years.[47] He told the Subcommittee of how he started working with fellow employees on a union organizing drive in October 2004. On April 15, 2005, he and his coworkers presented the company with a letter from the organizing committee, signed by 58 workers, including himself, demanding that their rights under the NLRA be respected. Less than a week later, Mr. Camilo, a leader of the organizing drive, was fired. In addition to firing Mr. Camilo, the company con-

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[44] 29 U.S.C. 160(c); NLRB Rules and Regulations, Sections 103.101 and 103.102(a); NLRB Casehandling Manual, Paragraph 10528 (reinstatement) and Paragraphs 10530–10546 (backpay).

[45] Schiffer Testimony, at 6.

[46] Strengthening America's Middle Class through the Employee Free Choice Act, Hearing Before the Subcommittee on Health, Employment, Labor & Pensions, 110th Cong., 1st Sess. (2007) (written testimony of Keith Ludlum) [hereinafter Ludlum Testimony].

[47] Strengthening America's Middle Class through the Employee Free Choice Act, Hearing Before the Subcommittee on Health, Employment, Labor & Pensions, 110th Cong., 1st Sess. (2007) (written testimony of Ivo Camilo) [hereinafter Camilo Testimony].

ducted group captive audience meetings and one-on-one meetings between employees and their supervisors, where management threatened that, if the union won, workers could lose pensions and other benefits. They also threatened to close the plant if it unionized. Soon, two more workers were fired. In March 2006, an NLRB Administrative Law Judge issued a decision finding more than 20 labor law violations by the company, including unlawfully firing Mr. Camilo and another worker. Under threat of a discretionary NLRA Section 10(j) injunction which could have put Mr. Camilo and his coworker back to work pending any appeal, the company relented and reinstated Mr. Camilo in May 2006. However, two more pro-union workers were fired in September 2006 soon after Mr. Camilo's reinstatement. These unfair labor practice charges are awaiting decisions from the NLRB. In the end, compared to Mr. Ludlum and countless other workers fired for organizing a union, Mr. Camilo was one of the lucky ones—he was only out of his job for a little over a year. But, as Mr. Camilo put it, even under such circumstances: "Getting a union shouldn't be so hard. We shouldn't have to pay such a high price in hardship when our employers break the law." The Blue Diamond Grower plant in Sacramento remains nonunion.

Stories like Mr. Ludlum's and Mr. Camilo's are far too common in the United States and are unacceptable in a democracy that respects fundamental human rights, including workers' freedom of association. While the hardship imposed by an unlawful firing on these individuals and their families is enough to demand action, these firings do not happen in a vacuum. The human rights violation is compounded by the fear and intimidation—fully intended by these unlawful acts—that spreads through the workplace when coworkers see pro-union activists fired or disciplined for speaking up. The firings have a chilling effect on any attempts to exercise workers' basic, federally-protected right to organize.

The remedies for unlawful employer activity during organizing and first contract drives, when workers are just beginning to understand and exercise their rights, are simply insufficient to deter unlawful behavior. This problem was apparent to the Congress three decades ago when the U.S. House of Representatives passed H.R. 8410, the Labor Reform Act of 1977, and the Senate came just two votes short of ending debate and passing the bill. The Labor Reform Act of 1977, like the Employee Free Choice Act, also stiffened penalties for workers' rights violations. In the years since, numerous studies have drawn similar conclusions. The 1994 Dunlop Commission, for example, found that unlawful employer activity had increased five-fold since the 1950s, affecting 1-in-20 union election campaigns in 1951–55 and 1-in-4 union election campaigns in 1986–90.[48] In 2000, Human Rights Watch pointed out: "Many employers have come to view remedies like backpay for workers fired because of union activity as a routine cost of doing business, well worth it to get rid of organizing leaders and derail workers' organizing efforts."[49]

In protecting fundamental human rights of workers, the NLRA's remedial scheme fails miserably. Its offer of reinstatement and

[48] Commission of the Future of Worker-Management Relations ("the Dunlop Commission"), Fact Finding Report (1994), at 70 [hereinafter Dunlop Fact Finding].
[49] Human Rights Watch Report.

backpay, minus interim earnings, to workers whose Section 7 rights have been violated stands in stark contrast to other federal labor laws. The Fair Labor Standards Act, for instance, provides for double backpay to workers who are not paid proper overtime. Anti-discrimination statutes, such as Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act, provide for further compensatory damages, such as for emotional distress and inconvenience, as well as punitive damages. The remedial or punitive differences between the NLRA and these other statutes sends a disturbing message about the seriousness with which federal law treats workers' organizing and collective bargaining rights violations. This lack of serious treatment has resulted in employers running roughshod over workers' rights. It is time for the NLRA to be updated and strengthened.

In the case of firings, it should be pointed out that, in addition to the problem of weak monetary penalties under the NLRA, the affirmative order of reinstatement is weakened by long delays. By the time the order is issued, the employee has likely moved on to other work or simply does not wish to return to the employer who treated him so unfairly.[50] Under current law, the NLRB has the option—but not the requirement—to seek an injunction in federal court against unlawful employer activity.[51] Such an injunction—known as a 10(j) injunction—might order a fired worker reinstated pending the outcome of her unfair labor practice charge. That option is rarely utilized by the NLRB and is today more rarely utilized than ever before. In the first four years of the George W. Bush Administration, for example, the NLRB filed just 69 injunctions, compared to 219 in President Clinton's first term and 142 in President Clinton's second term.[52] By contrast, under current law, the NLRB is required to seek an injunction where there is reasonable cause to believe that a union has violated the NLRA's secondary boycott prohibitions.[53] In other words, while the NLRA currently mandates that the NLRB seek an injunction when a business fears negative economic repercussions from an allegedly unlawful picketing, it does not mandate an injunction request when a working family fears negative economic repercussions from an allegedly unlawful firing. This imbalance is in need of correction.

Firings themselves are not the only labor law violations that anti-union employers find effective in battling organizing drives. Forms of fear and intimidation which fall short of firings or discipline are also frequently used. Although employers often illegally threaten to close plants, or unlawfully fire or discipline workers, the remedies under current law for such threats inadequate. Under current law, threats of that nature are punished merely with a cease and desist order and an order to post a notice in the workplace that the employer will not engage in those activities again. By the time the decision is issued and the order enforced—sometimes years later—the damage to workers' organizing rights has

[50] The Dunlop Commission found that most illegally discharged workers do not take up the offer of reinstatement. Dunlop Fact Finding, 71–72.

[51] 29 U.S.C. 160(j).

[52] 42nd through 69th NLRB Annual Reports (fiscal years 1977–2004); "Workers Rights Under Attack by Bush Administration: President Bush's National Labor Relations Board Rolls Back Labor Protections," Report by Honorable George Miller, Senior Democratic Member, Committee on Education and the Workforce, U.S. House of Representatives (July 13, 2006), at 18–19.

[53] 29 U.S.C. 160(l).

been long done. There is no fine. No backpay is awarded unless a worker was actually fired or disciplined in some manner that resulted in a loss of pay.

Penalties for employers' labor law violations must be enhanced and rendered more effective in deterring unlawful behavior. Even outright opponents of the Employee Free Choice Act have admitted as much. Lawrence B. Lindsey, an opponent of H.R. 800 and a visiting scholar at the American Enterprise Institute, wrote on February 2, 2007, that "it would be reasonable to stiffen the penalties for employers who break the law." [54]

Accordingly, as explained in more detail in the Section-by-Section Analysis of this Report, the Employee Free Choice Act increases the monetary penalty and injunctive remedies for illegal firings and discrimination against employees during any period while employees are attempting to organize a union or bargain a first contract. The Committee finds that seriously stiffening the penalties for violations of workers' fundamental human rights is absolutely necessary to restore workers' freedom to organize and collectively bargain.

THE NEED FOR MAJORITY SIGN-UP CERTIFICATION

Under current law, employees generally have two means to obtain union representation. The employer, however, decides which means will be used:

1. NLRB Election Process. If 30% of the workforce signs a petition or cards asking for union representation or an election, the NLRB will conduct an election. If a majority of those voting favor union representation, the NLRB certifies the union, and the employer must recognize and bargain with the union. This election process sets up the union and the employer as adversaries and is tilted dramatically in favor of the employer.

2.Voluntary recognition (card check or majority sign-up). If a majority of the workforce signs cards asking for union representation, the employer may recognize the union and begin bargaining. The employer, however, is not required to recognize a union when a majority signs cards. Instead, the employer may insist that the employees undergo the NLRB election process described above. Given the advantages afforded in that election process, many employers do insist on an election,. Under majority sign-up, a union is formed only if a majority of all employees signs written authorization forms (compared to a majority of those who actually vote in an NLRB election). A worker who does not sign a card is presumed to not support the union.

Majority-sign up has always been allowed under the NLRA. Indeed, the original framers of the NLRA viewed NLRB secret ballot elections as a tool for deciding between unions (given both the phenomenon of company unions and the rivalry between the American Federation of Labor and the Congress of Industrial Organizations),

[54] Lawrence B. Lindsey, "Abrogating Workers' Rights," Wall Street Journal (February 2, 2007).

not as a tool for deciding whether there would be collective bargaining in the workplace or not.[55]

Today, many employers insist on NLRB elections because they are a tool for killing an organizing drive. In short, this election process is broken and undemocratic. In the NLRB election process, delays of months and even years are common in obtaining and certifying election results. Management has almost unlimited and mandatory access to employees, while union supporters have almost none. Management has total access to a complete and accurate list of employees at all times, while union supporters may have access very late in the process to a list that is often intentionally inaccurate. Under the NLRB election process, the union and employer are pitted against one another as campaign adversaries. One party—the employer—has inherently coercive power over those voters, controlling their work lives and having the authority to reward, punish, promote, or fire the voters.

At the HELP Subcommittee hearing on February 8, 2007, Professor Lafer presented his research on the nature of NLRB elections and how they measure up to American standards for free, fair, and democratic elections. He testified: "Unfortunately, I must report that NLRB elections look more like the discredited practices of rogue regimes abroad than like anything we would call American."[56]

As Professor Lafer pointed out, American democratic elections involve, as a first step, obtaining a list of eligible voters. Under U.S. election law, both parties have equal access to the voter rolls. In NLRB elections, on the other hand, "management has a complete list of employee contact information, and can use this for campaigning against unionization at any time—while employees have no equal right to such lists." Once an election petition is filed and an election scheduled, the union is entitled to an "Excelsior List"—with employee names and addresses—with no right to apartment numbers, zip codes, or telephone numbers. On average, the Excelsior list is received less than 20 days before an election, even though the employer had total access to every employee for the entire period of the organizing drive.[57]

Professor Lafer also made the point that economic coercion is the hallmark of NLRB elections but entirely forbidden under American democratic standards. He quoted Alexander Hamilton, who warned that "power over a man's purse is power over his will." Accordingly, under U.S. election law, it is unlawful for an employer to tell employees how to vote or suggest that the victory or loss of a particular candidate would result in job or business loss. In NLRB elections, however, the employer is free to tell its employees how to vote—and often does so in perfectly legal, mandatory captive audience meetings and what are termed "eyeball to eyeball" or one-on-one supervisor meetings with employees. Under the NLRA, an employer can "predict" that a plant will close if the workers

[55] David Brody, "Why U.S. Labor Law Has Become a Paper Tiger," New Labor Forum (Spring 2004).

[56] Strengthening America's Middle Class through the Employee Free Choice Act, Hearing Before the Subcommittee on Health, Employment, Labor & Pensions, 110th Cong., 1st Sess. (2007) (written testimony of Gordon Lafer, at 1) [hereinafter Lafer Testimony].

[57] Id. at 2.

unionize, so long as it does not cross the line into "threatening" closure if they unionize.[58]

In NLRB elections, there is no such thing as free speech or equal access to the media, as American democracy understands them. Employers have total access to the eligible voters, as they convene everyday in the workplace. The union would be trespassing if it attempted to access the voters in the workplace. Relegated to standing on public sidewalks outside a worksite or making house calls, the union obviously would be trespassing if it attempted to access a voter at home—the only other place a voter is certain to be—when the voter tells a union organizer to leave. Pro-union workers also find their speech and access to the media circumscribed. Management can plaster a workplace with anti-union propaganda, wherever and whenever it wants. Pro-union workers cannot. Management can hand out leaflets and talk to employees whenever and wherever it wants. Pro-union workers can only talk about the union on non-work time. Management can force employees to attend mass captive audience meetings or one-on-one supervisory meetings against the union, under threat of discipline if they do not attend—and even under threat of discipline if they speak up during the meeting. Unions have no such ability to force workers to attend meetings—and certainly have no right to equal time at a company-sponsored captive audience meeting. According to Professor Lafer, "in a typical campaign, most employees never even have a single conversation with a union representative."[59]

While much is made of the "secret ballot" in NLRB elections, these elections are fundamentally undemocratic. Moreover, the "secret ballot" is often not secret at all. As Professor Lafer explained in response to Congresswoman Linda Sanchez at the HELP Subcommittee hearing, employers often know how every employee is voting on election day. They engage in eyeball-to-eyeball or one-on-one supervisor meetings with employees to discern their union sentiments. They conduct interrogations of employees. They conduct surveillance of employees—which is perfectly legal, so long as it is not overt. In short, employers keep count of the votes.

In recent years, because of increased anti-union activity—both illegal and perfectly legal—by employers in the context of NLRB elections, unions have turned more and more to majority sign-up or card check agreements as a means to gain recognition. Many cutting-edge employers, such as Cingular Wireless, Kaiser Health, Marriott, and the National Linen Company, have embraced these agreements. Majority sign-up procedures have been shown to reduce conflict between workers and management, reduce employer coercion and interference, and allow workers to freely choose for themselves, whether to bargain with their employer for better wages and benefits.[60]

A recent survey of employees at worksites that had undergone organizing drives found that, across the board, coercion and pres-

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[58] Id. at 2–3.
[59] Id. at 3–4.
[60] See e.g., "Partnerships that Work, In Focus: Cingular Wireless," American Rights at Work, Socially Responsible Business Program (2006) (quoting Rick Bradley, Executive Vice President of Human Resources at Cingular Wireless, regarding its majority sign-up agreement with the Communications Workers of America, "We believe that employees should have a choice. . . . Making that choice available to them results, in part, in employees who are engaged in the business and who have a passion for customers.").

sure (both anti-union and pro-union) drop under majority sign-up or card check procedures, compared to the NLRB election process. Specifically, the survey revealed that "NLRB elections invite far more exposure to coercion than card check campaigns." In NLRB elections, 46 percent of workers reported that management coerced them to oppose the union, compared to 23 percent of workers in card check campaigns. In NLRB elections, 22 percent of workers reported that they felt peer pressure from coworkers to support the union, compared to 17 percent in card check campaigns. In short, the majority sign-up process reduces both pressure and coercion, compared to NLRB elections.[61]

The HELP Subcommittee heard testimony on February 8, 2007, that affirmed these findings. Cingular Wireless employee Teresa Joyce testified about the differences between AT&T Wireless and Cingular Wireless, which signed a card check and neutrality agreement.[62] When her worksite was owned by AT&T Wireless, management "did everything they could to stop us from exercising our right to form a union. Our supervisors constantly threatened that AT&T Wireless would leave our town and that we would lose our jobs," she explained. When she and her coworkers tried to distribute union flyers in the break room, supervisors "would immediately gather the information and dispose of it." She described efforts by management to keep employees uninformed or misinformed about the union and to "instill fear through constant threats and lies about the union." When Cingular Wireless bought AT&T Wireless and brought the facility under a card check agreement, however, "the harassment and intimidation stopped." Employees were allowed to distribute literature in the break room and even set up a table with literature about the union, the Communications Workers of America (CWA). Then, in 2005, a majority of the employees signed union authorization cards. Cingular Wireless recognized their union and soon bargained a contract with them. Ms. Joyce argued that all workers should be given the same free and fair opportunity she received with Cingular Wireless:

> Cases such as mine, where the employer agrees to take no position and allow their workers to freely choose whether or not they want a union, are few and far between . . . I had two uncles sacrifice their lives for this great country during World War II. I lost a cousin in the war in Iraq. I have another cousin in Afghanistan and my daughter, Laura, and her husband serve in the U.S. Navy. Every day they risk their lives to protect our freedoms. Every day they work to spread democratic principles and values to audiences abroad. It's outrageous and it's shameful when the very freedoms they fight to preserve are the very freedoms that are routinely trampled on, here, at home.[63]

Not all workers enjoy the same freedoms that Ms. Joyce has had as an employee at Cingular Wireless. Current law allows workers to organize via majority sign-up only where the employer agrees to

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[61] Adrienne Eaton & Jill Kriesky, "Fact Over Fiction: Opposition to Card Check Doesn't Add Up," American Rights at Work Issue Brief (March 2006).

[62] Strengthening America's Middle Class through the Employee Free Choice Act, Hearing Before the Subcommittee on Health, Employment, Labor & Pensions, 110th Cong., 1st Sess. (2007) (written testimony of Teresa Joyce) [hereinafter Joyce Testimony].

[63] Joyce Testimony, at 6.

it. The critical change that the Employee Free Choice Act makes is providing the option of majority sign-up to all workers. The bill would amend the NLRA by providing that if the NLRB finds that a majority of the employees in the proposed bargaining unit have signed union authorization cards, then the Board will certify the bargaining unit. In other words, the employer may not refuse to recognize the union and insist on an NLRB election when a majority of workers sign cards saying they want a union.

H.R. 800 does not eliminate the NLRB election process, as some critics incorrectly claim. The election process would remain available as an option. If 30 percent of the bargaining unit signed cards or a petition asking for an NLRB election, they would have one. If, however, 50 percent plus one of the bargaining unit signed authorization cards asking for recognition of their union, and the NLRB verified their validity, their union would be certified and recognized. Instead of the employer having the authority to veto that majority employee choice, the choice of the employee majority would rule. More details on how this majority sign-up process works under the Employee Free Choice Act are provided in the Section-by-Section Analysis.

It is also important to note that H.R. 800 does not change the process for decertifying or withdrawing recognition from a union. Under current law, majority sign-up is effectively already available to workers seeking to decertify or disband their union. In fact, the withdrawal of recognition doctrine requires an employer to withdraw recognition from a union—which has the same effect as a decertification—when the employer has objective evidence that the union has in fact lost majority support. Such evidence might come in the form of cards or a petition against the union. In those cases, unless an election is pending, the employer is obligated to withdraw recognition.[64] H.R. 800 does nothing to alter this doctrine.

Finally, it is important to note that the signed authorization cards in H.R. 800's majority sign-up process are not "publicly signed," as some critics claim. These cards are treated no differently than signed authorization cards under the majority sign-up agreements that have been in existence since the NLRA's inception. And they are treated no differently than the cards or petitions that have been used to obtain an NLRB election.

THE NEED FOR FIRST CONTRACT MEDIATION AND BINDING ARBITRATION

Even when workers, against all odds, manage to win recognition of their union, the victory often proves a hollow one. For workers, the entire point of organizing is often to negotiate and adopt a collective bargaining agreement with the employer. But rather than bargaining in good faith with the intention of reaching a final contract, many employers delay and undermine the collective bargaining process to frustrate employee aspirations for a contract and ultimately bust the union.

A 2001 report on the status of first contract negotiations following union election victories in 1998 and 1999 found that 34 percent of those victories still had not resulted in a collective bargaining agreement—in some cases three years after the union's cer-

[64] See Levitz Furniture Company of the Pacific, 333 NLRB No. 105 (2001).

tification.[65] While the parties have an obligation to bargain in good faith, this obligation is difficult to enforce. Employers easily drag their feet in negotiations in order to avoid reaching a contract. Employers do so to run out the clock because, after a year of bargaining without a contract, employees may decertify the union or the employer may unilaterally withdraw recognition, if there is a showing of lack of majority support for the union. As Human Rights Watch pointed out: "The problem is especially acute in newly organized workplaces where the employer has fiercely resisted employee self-organization and resents their success."[66]

First contract negotiations often become part and parcel of an employer's anti-union campaign. Rather than bargaining in good faith to reach an agreement, as one scholar points out:

> Consultants advise management on how to stall or prolong the bargaining process, almost indefinitely—"bargaining to the point of boredom," in consultant parlance. Delays in bargaining allow more time for labor turnover, create employee dissatisfaction with the union and prevent the signing of a contract. Without a contract, the union is unable to improve working conditions, negotiate wage increases or represent workers effectively with grievances; and by exhausting every conceivable legal maneuver, certain firms have successfully avoided signing contracts with certified unions for several decades.[67]

Even the current Bush II National Labor Relations Board recognizes that "[i]nitial contract bargaining constitutes a critical stage of the negotiation process because it forms the foundation for the parties' future labor-management relationship."[68] In a memorandum, Bush II General Counsel Meisburg wrote in April 2006 that, "when employees are bargaining for their first collective bargaining agreement, they are highly susceptible to unfair labor practices intended to undermine support for their bargaining representative." According to General Counsel Meisburg, "our records indicate that in the initial period after election and certification, charges alleging that employers have refused to bargain are meritorious in more than a quarter of all newly-certified units (28%). Moreover, of all charges alleging employer refusals to bargain, almost half occur in initial contract bargaining situations (49.65%)." These statistics are high despite the fact that proving a lack of good faith in bargaining is notoriously difficult.

Under existing law, the Federal Mediation and Conciliation Service (FMCS) may provide mediation and conciliation services upon its own motion or upon request of one or more of the parties to the dispute, whenever it believes that the dispute threatens a substantial interruption to commerce. The NLRA currently does not provide for the use of binding arbitration to resolve disputes. When an employer bargains in bad faith or otherwise unlawfully refuses to

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[65] Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing, Part II: First Contract Supplement," Submitted to the U.S. Trade Deficit Review Commission (June 1, 2001), at 7. The Dunlop Commission also found high rates of first contract failures. See Dunlop Fact Finding Report, at 73.

[66] Human Rights Watch Report.

[67] John Logan, "Consultants, Lawyers and the 'Union Free' Movement in the USA Since the 1970s," 33 Industrial Relations Journal 197 (August 2002).

[68] Ronald Meisburg, "First Contract Bargaining Cases," General Counsel Memorandum, GC 06–05 (April 19, 2006).

bargain, the NLRA's remedy is merely an order from the NLRB to resume bargaining.

The Employee Free Choice Act would provide for more meaningful good faith bargaining in first contract cases. As detailed in the Section-by-Section analysis, it would provide that the parties must begin bargaining within 10 days of receiving a written request to begin. Either party may request mediation of a first contract after 90 days of bargaining. If the mediation does not result in a contract within 30 days, the parties then go to binding arbitration. This process would only be available during the highly sensitive first contract negotiation. It would not be available for subsequent contracts. And the time frames are extendable by mutual agreement of the parties.

To effectuate a fundamental purpose of the NLRA—encouraging collective bargaining—it is critical that the law facilitate bargaining particularly in first contract situations. This stage serves as "the foundation for the parties' future labor-management relationship," as NLRB General Counsel Meisburg has pointed out. Achieving a first contract fosters a productive and cooperative collective bargaining relationship.

Binding contract arbitration has a proven track record. It has long been available for postal service union contracts. In Canadian provinces where binding contract arbitration is available, it has served to encourage labor and management to settle their agreement on their own terms, "knowing that the alternative may be an imposed agreement."[69] For example, in 2002, Ontario saw a total of nine applications for first contract arbitration, and eight of those were withdrawn or settled. British Columbia saw a total of 16 applications, and 15 were withdrawn or settled.[70]

SECTION-BY-SECTION ANALYSIS

Section 1. Provides that the short title of H.R. 800 is the "Employee Free Choice Act."

Section 2(a). Provides that Section 9(c) of the NLRA is amended to provide for a majority sign-up certification process for gaining union recognition.

Specifically, whenever any employee, group of employees, individual, or labor organization files a petition alleging that a majority of employees in an appropriate bargaining unit wish to be represented by an individual or labor organization for collective bargaining purposes, the NLRB shall conduct an investigation. Such investigation shall involve determining whether a majority of employees in an appropriate bargaining unit have signed valid authorization cards. If the NLRB finds that they have, the NLRB shall certify their designated representative as their exclusive bargaining representative.

Section 2(a) eliminates the employer's prerogative to deny recognition on the basis of a majority sign-up with cards and eliminates the employer's right to insist upon an NLRB election before recognizing a union. This Section does not eliminate the NLRB election process, which remains an option for employees as it is

[69] Alberta Federation of Labour Backgrounder—First Contract Arbitration (November 9, 2005), at 1.
[70] Id. at 2.

under current law. However, employees, individuals, or labor organizations may submit signed authorization cards to the NLRB, as part of a petition for certification, and gain recognition without undergoing the NLRB election process. Indeed, if a majority sign and submit valid authorization cards to the NLRB, notwithstanding any other provision in the NLRA, the NLRB must certify their union.

Section 2(a) also directs the NLRB to establish guidelines and procedures for the designation of a bargaining representative under the majority sign-up process. Such guidelines and procedures must include model language for the authorization card to ensure that the purpose of the card will be clearly understood by employees, making clear, for example, that the card may be used to gain recognition of an exclusive bargaining representative without conducting an NLRB election. Such guidelines and procedures must also include procedures that the NLRB shall use to determine the validity of signed authorization cards. The Committee envisions that the NLRB will establish procedures similar to those currently used to hear election objections. Importantly, the Employee Free Choice Act of 2007, as introduced in the 110th, makes clear that the cards must be valid. An invalid card would be any card that is coerced, obtained by fraud, or inauthentic. Such invalid cards may not be counted toward a showing of majority support.

Section 2(a) also makes clear that the NLRB cannot certify an exclusive bargaining representative via the majority sign-up process in cases where the employees in question already have a certified or otherwise already recognized exclusive bargaining representative. In those cases, where one union seeks to replace an existing union, the appropriate determination of employees' wishes is via an NLRB election under current rules. Indeed, conducting elections in cases of competing unions was the original intent of the NLRA's election process.[71] This section does not change current law on decertification or the withdrawal of recognition doctrine.

Section 2(b). Provides for conforming amendments in light of the new majority sign-up certification process. Specifically, under this Section, regional directors of the NLRB may be authorized to conduct majority sign-up processes, just as they are currently authorized to conduct NLRB elections. Also, under this Section, the prohibitions on recognitional picketing are adjusted to conform with the availability of the majority sign-up process for NLRB union certification.

Section 3. Provides for the mediation and binding arbitration of initial collective bargaining agreements in order to facilitate a good faith bargaining relationship from the very beginning between the parties. This Section only applies in cases involving a newly certified or otherwise newly recognized exclusive bargaining representative and an employer negotiating an initial collective bargaining agreement. Under this Section, the parties must begin good faith collective bargaining within 10 days of receiving a request for bargaining from the other party. If the parties do not execute a col-

[71] This long-standing rule, preserved by the Employee Free Choice Act, is consistent with the call for "secret ballot elections" in Mexico, made in 2001 by Members of Congress, in the unique context of Mexican labor law and in a situation where the workers were attempting to abandon an allegedly sham union controlled by the government and company and replace it with their own independent union.

lective bargaining agreement within 90 days of the start of bargaining, either party may request mediation from the FMCS. The FMCS is directed to use its best efforts, via mediation and conciliation, to then bring the parties to agreement. If, 30 days after mediation request is made, there is still no first contract, the FMCS is directed to refer the contract negotiations to an arbitration board, under regulations as may be prescribed by the FMCS. The arbitration board must issue a decision settling the negotiations, binding on the parties for two years. The parties may amend the binding, arbitrated settlement agreement by written consent during that two year period. All time frames within this section may be extended by mutual agreement of the parties.

Section 4(a)(1). Provides for mandatory requests for injunctions against employer unfair labor practices during organizing and first contract drives. Specifically, in cases where an employer is charged to have fired or otherwise discriminated against an employee in violation of the employee's Section 7 rights, or threatened to do so, or engaged in activities that significantly interfere with, restrain, or coerce employees in the exercise of their Section 7 rights, during an organizing or first contract drive, if the NLRB finds that there is reasonable cause to believe that the charge is true and a complaint should issue, the NLRB must petition the appropriate United States District Court and seek appropriate injunctive relief pending final adjudication of the matter.

Section 4(a)(2). Provides for a conforming amendment to ensure that investigating and pursuing such unfair labor practice charges are given top priority at the NLRB, just as was required for other charges subject to mandatory injunctions, such as unlawful secondary boycott charges.

Section 4(b)(1). Provides for treble backpay for employees discriminated against by an employer during an organizing or first contract drive. Specifically, an employee who lost pay under such circumstances is entitled to receive their backpay, plus two times that amount, as liquidated damages.

Section 4(b)(2). Provides for civil penalties for employer unfair labor practices during organizing and first contract drives. Specifically, this Section subjects employers during organizing and first contract drives to civil penalties of up to $20,000 for each willful or repeated unfair labor practice, so long as those unfair labor practices constitute interfering, restraining, coercing, or discriminating against employees in the exercise of their Section 7 rights. The NLRB is directed to consider the gravity of the unfair labor practice and its impact on the charging party, other persons seeking to exercise rights under the NLRA, or the public interest when determining the amount of the civil penalty.

Under this formulation, for example, the civil penalty should be larger for larger employers and smaller for smaller employers in order to act as an appropriate deterrent to unlawful behavior, i.e., to ensure the civil penalty has a positive impact on the exercise of Section 7 rights by other persons. In any event, these civil penalties are punitive in nature, not remedial, and are intended to serve as a deterrent to unlawful behavior.

EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a Substitute is explained in the body of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. The purpose of H.R. 800 is to strengthen and expand the middle class. The bill reforms the National Labor Relations Act to provide for union certification through simple majority sign-up procedures, first contract mediation and binding arbitration, and tougher penalties for violation of workers' rights during organizing and first contract drives. As the Congressional Accountability Act provides for the application of the Federal Labor Relations Act but not the application of the National Labor Relations Act, 29 U.S.C. 151 et seq., to the legislative branch, H.R. 800 has no application to the legislative branch.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. CBO has determined that the requirement would increase the costs of an existing mandate and would thereby impose a mandate under the Unfunded Mandates Reform Act (UMRA). CBO estimates, however, that the direct cost of complying with the new requirements would be negligible. H.R. 800 contains no governmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

EARMARK STATEMENT

H.R. 800 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

ROLLCALL VOTES

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 1 **BILL: H.R. 800** **DATE: 2/14/2007**
AMENDMENT NUMBER: 2 **DEFEATED**
SPONSOR/AMENDMENT: McKEON – SECRET BALLOT PROTECTION ACT

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY				X
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE		X		
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**19**	**27**		**3**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 2 BILL: H.R. 800 DATE: 2/14/2007
AMENDMENT NUMBER: 3 DEFEATED
SPONSOR/AMENDMENT: KLINE – CARD CHECK FOR DECERTIFICATION

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI		X		
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**19**	**28**		**2**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 3 **BILL: H.R. 800** **DATE: 2/14/2007**
AMENDMENT NUMBER: 4 **DEFEATED**
SPONSOR/AMENDMENT: BOUSTANY – NLRB REPRESENTATIVE PRESENT

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER		X		
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**19**	**28**		**2**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 4 **BILL: H.R. 800** **DATE: 2/14/2007**
AMENDMENT NUMBER: 5 **DEFEATED**
SPONSOR/AMENDMENT: DAVIS (TN) – CIVIL PENALTIES

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**20**	**27**		**2**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 5 **BILL: H.R. 800** **DATE: 2/14/2007**
AMENDMENT NUMBER: 6 **DEFEATED**
SPONSOR/AMENDMENT: WALBERG – RIGHT TO VOTE ON CONTRACT

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT		X		
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**19**	**28**		**2**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 6 **BILL: H.R. 800** **DATE: 2/14/2007**
AMENDMENT NUMBER: 7 **DEFEATED**
SPONSOR/AMENDMENT: FOXX – DO NOT CONTACT LIST

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA				X
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS				X
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI				X
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP				X
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**18**	**25**		**6**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 7 **BILL: H.R. 800** **DATE: 2/14/2007**
AMENDMENT NUMBER: 8 **DEFEATED**
SPONSOR/AMENDMENT: PRICE – RETURN OF CARD

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA				X
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI				X
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**19**	**26**		**4**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 8 **BILL: H.R. 800** **DATE: 2/14/2007**
AMENDMENT NUMBER: 9 **DEFEATED**
SPONSOR/AMENDMENT: EHLERS – BONA FIDE WORKERS ONLY

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE				X
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI				X
Mr. HOEKSTRA				X
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**18**	**26**		**5**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 9 BILL: H.R. 800 DATE: 2/14/2007
AMENDMENT NUMBER: 10 DEFEATED
SPONSOR/AMENDMENT: MARCHANT – IMMIGRATION STATUS ON CARD CHECK

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE				X
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI				X
Mr. HOEKSTRA				X
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO				X
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**17**	**26**		**6**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 10 **BILL: H.R. 800** **DATE: 2/14/2007**
AMENDMENT NUMBER: 11 **DEFEATED**
SPONSOR/AMENDMENT: WILSON – UNION VIOLENCE

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE				X
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI				X
Mr. HOEKSTRA				X
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**18**	**26**		**5**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 11 BILL: H.R. 800 DATE: 2/14/2007
AMENDMENT NUMBER: 12 DEFEATED
SPONSOR/AMENDMENT: KLINE – TRIBAL LANDS

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE				X
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI				X
Mr. HOEKSTRA				X
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS		X		
Mrs. BIGGERT	X			
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**17**	**27**		**5**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 12 BILL: H.R. 800 DATE: 2/14/2007
AMENDMENT NUMBER: 13 DEFEATED
SPONSOR/AMENDMENT: WILSON – NATIONAL RIGHT TO WORK ACT

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE				X
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI				X
Mr. HOEKSTRA				X
Mr. CASTLE				X
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT				X
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**16**	**26**		**7**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 13 BILL: H.R. 800 DATE: 2/14/2007
AMENDMENT NUMBER: 14 DEFEATED
SPONSOR/AMENDMENT: BIGGERT – STRIKE MANDATORY ARBITRATION SECTION

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE				X
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI				X
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS				X
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mr. INGLIS				X
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
TOTALS	**19**	**26**		**4**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 14 BILL: H.R. 800 DATE: 2/14/2007 PASSED 26Y/19N
SPONSOR/AMENDMENT: ANDREWS MOTION TO FAVORABLY REPORT THE BILL TO THE HOUSE

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE				X
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. SUSAN DAVIS	X			
Mr. DANNY DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP	X			
Ms. SANCHEZ	X			
Mr. SARBANES	X			
Mr. SESTAK	X			
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE	X			
Mr. YARMUTH	X			
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Mr. McKEON		X		
Mr. PETRI				X
Mr. HOEKSTRA		X		
Mr. CASTLE		X		
Mr. SOUDER		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS				X
Mr. KELLER		X		
Mr. WILSON		X		
Mr. KLINE		X		
Mr. INGLIS				X
Mrs. McMORRIS RODGERS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mr. KUHL		X		
Mr. ROB BISHOP		X		
Mr. DAVID DAVIS		X		
Mr. WALBERG		X		
TOTALS	**26**	**19**		**4**

COMMITTEE CORRESPONDENCE

None.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 800 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 16, 2007.

Hon. GEORGE MILLER,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 800, the Employee Free Choice Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christina Hawley Anthony.

Sincerely,

PETER R. ORSZAG,
Director.

Enclosure.

H.R. 800—Employee Free Choice Act of 2007

H.R. 800 would amend the National Labor Relations Act to allow workers to unionize by signing a card or petition, in lieu of a secret-ballot election. The bill also would provide a time frame for employers to begin discussions with the workers' union. In addition, the bill would impose civil monetary penalties of up to $20,000 for repeated violations of fair labor practices. Enacting H.R. 800 could increase revenues from those penalties. However, CBO estimates that the amount is likely to be less than $500,000 annually.

H.R. 800 would impose a mandate on private-sector employers by adding requirements under the National Labor Relations Act, including requiring that employers commence an initial agreement for collective bargaining no later than 10 days after receiving a request from an individual or a labor organization that has been newly organized or certified. CBO has determined that the requirement would increase the costs of an existing mandate and would

thereby impose a mandate under the Unfunded Mandates Reform Act (UMRA). CBO estimates, however, that the direct cost of complying with the new requirements would be negligible. H.R. 800 contains no intergovernmental mandates as defined in UMRA, and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Christina Hawley Anthony (for federal costs) and Paige Shevlin (for private-sector mandates). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c) of House rule XIII, the goal of H.R. 800 is to strengthen and expand America's middle class by restoring workers' freedom to organize and collectively bargain under the National Labor Relations Act. The bill reforms the National Labor Relations Act to provide for union certification through simple majority sign-up procedures, first contract mediation and binding arbitration, and tougher penalties for violation of workers' rights during organizing and first contract drives. The Employee Free Choice Act of 2007 furthers the long-standing policy of the United States to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 800. The Committee believes that the amendments made by this bill, which amend the National Labor Relations Act, are within Congress' authority under Article I, section 8, clause 1 and clause 3.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 800. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

NATIONAL LABOR RELATIONS ACT

* * * * * * *

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) * * *

(b) The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, [and] to direct an election or take a secret ballot under subsection (c) or (e) of section 9 [and certify the results thereof,], *and to issue certifications as provided for in that section,* except that upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

* * * * * * *

UNFAIR LABOR PRACTICES

SEC. 8. (a) * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) * * *

* * * * * * *

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) * * *

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted *or a petition has been filed under section 9(c)(6)*, or

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided,* That [when such a petition has been filed] *when such a petition other than a petition under section 9(c)(6) has been filed* the Board shall forthwith, without regard to the provisions of section

9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further,* That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

* * * * * * *

(h) Whenever collective bargaining is for the purpose of establishing an initial agreement following certification or recognition, the provisions of subsection (d) shall be modified as follows:

(1) Not later than 10 days after receiving a written request for collective bargaining from an individual or labor organization that has been newly organized or certified as a representative as defined in section 9(a), or within such further period as the parties agree upon, the parties shall meet and commence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.

(2) If after the expiration of the 90-day period beginning on the date on which bargaining is commenced, or such additional period as the parties may agree upon, the parties have failed to reach an agreement, either party may notify the Federal Mediation and Conciliation Service of the existence of a dispute and request mediation. Whenever such a request is received, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(3) If after the expiration of the 30-day period beginning on the date on which the request for mediation is made under paragraph (2), or such additional period as the parties may agree upon, the Service is not able to bring the parties to agreement by conciliation, the Service 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 2 years, unless amended during such period by written consent of the parties.

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(6) Notwithstanding any other provision of this section, whenever a petition shall have been filed by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a majority of employees in a unit appropriate for the purposes of collective bargaining wish to be represented by an indi-

vidual or labor organization for such purposes, the Board shall investigate the petition. If the Board finds that a majority of the employees in a unit appropriate for bargaining has signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the Board shall not direct an election but shall certify the individual or labor organization as the representative described in subsection (a).

(7) The Board shall develop guidelines and procedures for the designation by employees of a bargaining representative in the manner described in paragraph (6). Such guidelines and procedures shall include—

(A) model collective bargaining authorization language that may be used for purposes of making the designations described in paragraph (6); and

(B) procedures to be used by the Board to establish the validity of signed authorizations designating bargaining representatives.

* * * * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) * * *

* * * * * * *

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided,* That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: **[***And provided further,***]** *Provided further, That if the Board finds that an employer has discriminated against an employee in violation of subsection (a)(3) of section 8 while employees of the employer were seeking representation by a labor organization, or during the period after a labor organization was recognized as a representative defined in subsection (a) of section 9 until the first collective bargaining contract was entered into between the employer and the representative, the Board in such order shall award the employee back pay and, in addition, 2 times that amount as liquidated damages: Provided further,* That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2), and in deciding such cases, the same regulations and rules of decisions shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order

may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

* * * * * * *

(l) [Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred.] *(1) Whenever it is charged—*

(A) that any employer—

(i) discharged or otherwise discriminated against an employee in violation of subsection (a)(3) of section 8;

(ii) threatened to discharge or to otherwise discriminate against an employee in violation of subsection (a)(1) of section 8; or

(iii) engaged in any other unfair labor practice within the meaning of subsection (a)(1) that significantly interferes with, restrains, or coerces employees in the exercise of the rights guaranteed in section 7;

while employees of that employer were seeking representation by a labor organization or during the period after a labor organization was recognized as a representative defined in section 9(a) until the first collective bargaining contract is entered into between the employer and the representative; or

(B) that any person has engaged in an unfair labor practice within the meaning of subparagraph (A), (B) or (C) of section 8(b)(4), section 8(e), or section 8(b)(7);

the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred.

(2) If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the United States District Court for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such per-

son resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restaining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further,* That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) if a charge against the employer under section 8(a)(2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition other courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D).

(m) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 8 *under circumstances not subject to section 10(l)*, such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under subsection (i).

* * * * * * *

SEC. 12. [Any] *(a) Any* person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

(b) Any employer who willfully or repeatedly commits any unfair labor practice within the meaning of subsections (a)(1) or (a)(3) of section 8 while employees of the employer are seeking representation by a labor organization or during the period after a labor organization has been recognized as a representative defined in subsection (a) of section 9 until the first collective bargaining contract is entered into between the employer and the representative shall, in addition to any make-whole remedy ordered, be subject to a civil penalty of not to exceed $20,000 for each violation. In determining the amount of any penalty under this section, the Board shall consider the gravity of the unfair labor practice and the impact of the unfair

labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this Act, or on the public interest.

* * * * * * *

MINORITY VIEWS

INTRODUCTION

The right to a private ballot is the cornerstone of our democracy. For centuries, Americans—regardless of race, creed, or gender—have fought for the right to vote, and the right to keep that vote to themselves. In the context of the question of whether employees wish to form and join a union, the right to vote on that question—free of harassment, coercion, or intimidation—and the right to have one's vote known only to oneself—not an employer, not a coworker, and not a union—has been among the most vital protections our federal labor law provides to workers.

H.R. 800, the deceptively-named "Employee Free Choice Act," would strip that right from every American worker. Moreover, the bill makes changes to federal labor law's scheme of penalties and remedies that are one-sided, unnecessary, and unprecedented. Finally, H.R. 800, for the first time in labor law's history, imposes a one-size-fits-all scheme of mandatory, binding interest arbitration with respect to initial contracts, on bargaining parties, again stripping American workers of the right to vote on the terms and conditions of their employment. For these reasons, we oppose this legislation.

THE "EMPLOYEE FREE CHOICE ACT"

H.R. 800 represents a three-pronged attack on worker rights, each prong of which should be rejected. Specifically, the bill:

Strips Workers of the Right to Private Ballot Elections. Current law protects employees from harassment, intimidation, and coercion, and ensures that their voices are heard on the vital question of whether to form and join a union, by providing for a federally-supervised private ballot election conducted and supervised with rigorous scrutiny by the National Labor Relations Board (the "NLRB" or the "Board"). Simply put, H.R. 800 would strip American workers of this right. Although bill supporters have attempted to dissemble and characterize mandatory "card check recognition" as something that has been in the law for 60 years, that is simply not the case. As noted in the Majority's own views, supra, H.R. 800 provides that if a union presents a majority of signed union authorization cards to the Board, the union must be certified, and the right of employees to a private ballot election is immediately and absolutely extinguished. This change in the law is unprecedented, unwise, and unsupportable.

Strips Workers of the Right to Vote on Their Collective Bargaining Agreement. H.R. 800, for the first time in the history of federal labor law, provides that if an employer and a union are unable to reach agreement on a first contract within 90 days, the Federal Mediation and Conciliation Service is provided 30 additional

days to do so. If the parties cannot reach agreement, the matter is removed entirely from the hands of the employer and the union and a federal arbitrator is charged to set the terms and conditions of employment for all covered employees for two years. Wholly missing from this equation is the voice of workers, and the ability of the men and women who will be forced to live with this contract for two years, to express their views. This provision rewards bad behavior, and allows parties to overpromise, posture, and bargain in bad faith, while devolving all responsibility for the outcome onto a federal bureaucrat. Employers lose, unions lose, but most importantly, workers lose.

Imposes One-Sided and Unwarranted Penalties on Employers, but Not Unions. Federal labor law embodied in the National Labor Relations Act ("NLRA" or the "Act") is a balanced system of rights, responsibilities, and penalties that mete out justice to employers and unions on a fair and level basis. H.R. 800's provisions regarding remedies would, for the first time, require the NLRB to seek mandatory injunctive relief, and impose triple backpay and civil penalties, on employers who violate specified sections of the NLRA. Wholly missing from the bill's proposal is any provision applying these same penalties to unions who violate the Act. Put more simply, under the bill, an employer who violates the rights of an employee faces harsh and immediate punishment, while unions who engage in exactly the same behavior are not. These provisions unfairly tip the balance of law in favor of one side, and should be rejected.

REPUBLICAN VIEWS

The right to a secret ballot is sacrosanct

Republican Members of the Committee could not be more clear or resolute on this point: the right to a federally-supervised private ballot election represents perhaps the greatest protection American workers are afforded under federal labor law. We cannot and will not support efforts to strip workers of this right. Nor, would it appear, do American workers want us to. They too recognize the importance of this right, and in overwhelming numbers reject efforts for it to be eliminated. A January 2007 polling[1] of likely voters in all fifty states makes their views on this clear:

- Almost 9 in 10 voters (87 percent) agree that "every worker should continue to have the right to a federally supervised secret ballot election when deciding whether to organize a union";
- Four in five voters (79 percent) oppose the Employee Free Choice Act;
- When asked to make a choice as to whether a worker's vote to organize a union should remain private or be public information, 9 in 10 voters (89 percent) say it should remain private; and
- Nine in ten voters (89 percent) believe having a federally-supervised secret ballot election is the best way to protect the

[1] Polling conducted by McLaughlin & Associates of Alexandria, Virginia, of 1,000 likely general election voters in the United States, January 28–31, 2007.

individual rights of workers. Only 6 percent think that the Employee Free Choice Act's card signing process is better.

The American public recognizes that the private ballot should be sacred, and that a federally-supervised private ballot election conducted by the NLRB is the best way to ensure that the rights of all workers are protected, and that the outcome reflects an employee's true sentiments with respect to the question of unionization. They are not alone. The Supreme Court, federal appeals courts, and the National Labor Relations Board itself each recognize that a federally-monitored private ballot election provides workers with the most protection, and is the only true way to ascertain whether a majority of workers support unionization:

> [A secret ballot election is the] "most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support." Gissel Packing, 395 U.S. 395 U.S. 575, 602 (1969).
>
> [Card checks are] "admittedly inferior to the election process." Id.
>
> "[I]t is beyond dispute that 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.*, 347 F.2d 74, 78 (2d Cir. 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.*, 386 F.2d 562,565 (4th Cir. 1967).
>
> "An election is the preferred method of determining the choice by employees of a collective bargaining representative." *United Services for the Handicapped* v. *NLRB*, 678 F.2d 661, 664 (6th Cir. 1982).
>
> "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, Inc.*, 723 F.2d 1360, 1371 (7th Cir. 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, Inc.* v. *NLRB*, 931 F.2d 924, 934 (D.C. Cir. 1991) (citations omitted).

Unions themselves appear to recognize the importance of the private ballot, and the critical protections they provide for worker rights—at least when the issue is a question of whether to decertify a union. The United Food and Commercial Workers were direct and succinct in their assertion that secret ballot elections run by the National Labor Relations Board are far superior to "card check" schemes:

> "Board elections are the preferred means of testing employees' support." Brief of United Food and Commercial Workers (UFCW), Levitz Furniture Co. of the Pacific, 333 NLRB 717, 725 (2001).

In the 109th Congress, former NLRB Member John Raudabaugh testified at length as to the superiority of the secret ballot election, its recognition by courts as the preferred means of testing employee support, and perhaps most important, the rigorous and scrupulous regulation of these elections by the federal labor board. As Mr. Raudabaugh explained,

> Under current law, employee designation or selection may be by a Board supervised secret-ballot election or by voluntary recognition based on polls, petitions, or union authorization cards. 29 U.S.C. δδ 159 (a), (c) (2004). *Of these various methods, the United States Supreme Court and the Board have long recognized that a Board conducted secret-ballot election is the most satisfactory, indeed preferred method of ascertaining employee support for a union.* (emphasis added).

Mr. Raudabaugh continued:

> As the Board announced in General Shoe Corp., 77 NLRB 124 (1948), "In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees. . . .Conduct that creates an atmosphere which renders improbable a free choice will sometimes warrant invalidating an election, even though that conduct may not constitute an unfair labor practice. An election can serve its true purpose only if the surrounding conditions enable employees to register a free and untrammeled choice for or against a bargaining representative."
>
> The Board's "laboratory conditions" doctrine sets a considerably more restrictive standard for monitoring election related misconduct impairing free choice than the unfair labor practice prohibitions of interference, restraint and/or coercion. Over many years, the Board has developed specific rules and multi-factored tests to evaluate and rule on election objections. *In contrast, recognition based on methods other than a Board conducted secret-ballot election is without these "laboratory conditions" protections and unless the interfering conduct amounts to an unfair labor practice, there is no remedy for compromising employee free choice* (emphasis added; citations omitted).

Very few points of labor law are black and white. This is one of those few. Courts, agencies, experts, lawmakers, and most important, American workers, recognize that the secret ballot election process is the only way to ensure that workers are given true "choice" in determining whether to form and join a union. Again, in the very words of organized labor:

> [A representation election] "is a solemn . . . occasion, conducted under safeguards to voluntary choice," . . .

> [Other means of decision-making] are "not comparable to the privacy and independence of the voting booth," and [the secret ballot] election system provides the surest means of avoiding decisions which are "the result of group pressures and not individual decision[s]." Joint Brief of the United Automobile, Aerospace, and Agricultural Implement Workers of America, the United Food and Commercial Workers, and the AFL–CIO, Chelsea Industries and Levitz Furniture Co. of the Pacific, Inc., Nos. 7–CA–36846, 7–CA–37016 and 20–CA–26596 (NLRB) at 13 (May 18, 1998) (citations omitted).

Finally, it bears note that some of the very same Members of Congress who support this bill have made clear their belief that the right to a secret ballot ought to be protected in other countries—but not here. No amount of contextualizing, pigeonholing, or explanation can deny the inconsistency in these Members arguments. As they wrote:

AUGUST 29, 2001.

Junta Local de Conciliacion y Arbitraje del Estado de Puebla,
Lic. Armando Poxqui Quintero, 7 Norte, Numero 1006 Altos, Colonia Centro, Puebla, Mexico C.P.

DEAR MEMBERS OF THE JUNTA LOCAL DE CONCILIACION Y ARBITRAJE OF THE STATE OF PUEBLA: As members of Congress of the United States who are deeply concerned with international labor standards and the role of labor rights in international trade agreements, *we are writing to encourage you to use the secret ballot in all union recognition elections*.

We understand that the secret ballot is allowed for, but not required by, Mexican labor law. However, *we feel that the secret ballot is absolutely necessary in order to ensure that workers are not intimidated into voting for a union they might not otherwise choose*.

We respect Mexico as an important neighbor and trading partner, and we feel that *the increased use of the secret ballot in union recognition elections will help bring real democracy to the Mexican workplace*.

Sincerely,

George Miller, Marcy Kaptur, Bernard Sanders, William J. Coyne, Lane Evans, Bob Filner, Martin Olav Sabo, Barney Frank, Joe Baca, Zoe Lofgren, Dennis J. Kucinich, Calvin M. Dooley, Fortney Peter Stark, Barbara Lee, James P. McGovern, Lloyd Doggett.

(Emphasis added).

The Republican Members of the Committee could not say it better.

The One-Sided Penalty Provisions of the Bill Are Unjust and Unwarranted, and Its Mandatory Arbitration Provisions Further Strip Workers of Rights

Extended discussion of the other flaws in this bill is not necessary. As noted above, the bill's penalty provisions are, simply put, a one-sided swipe at only one side of the bargaining equation, namely, employers. Neither the bill nor its supporters attempt to

disguise this fact. Indeed, as detailed below, Committee Democrats unanimously opposed an effort to bring some fairness to this provision in rejecting an amendment that would have provided that the enhanced penalties contained in the bill would apply to union violations as well as employer violations of the Act. Under H.R. 800, if an employer engages in a variety of specified behavior, it is immediately subject to new and severe labor law penalties. A union engaging in exactly the same behavior is exempted. That's not fair, that's not right, and that's not good policy.

Nor do Republicans support the bill's effort to take away a worker's right to vote on his or her contract. As the Supreme Court has noted, the Act is founded on the notion that the parties, not the government, should determine the applicable terms and conditions of employment:

> The object of this Act was not to allow governmental regulation of the terms and conditions of employment, but rather to ensure that employer and their employees could work together to establish mutually satisfactory conditions. The basic theme of the Act was that through collective bargaining the passions, arguments, and struggles of prior years would be channeled into constructive, open discussions leading, it was hoped, to mutual agreement. But it was recognized from the beginning that agreement might in some cases be impossible, and *it was never intended that the Government would in such cases step in, become a party to the negotiations and impose its own views of a desirable settlement. H K. Porter* v. *NLRB*, 397 U.S. 99, 103–04 (1970) (emphasis added).

Current law embodies a delicate balance with respect to the parameters within which unions and employers negotiate the terms and conditions of employment for workers in a particular bargaining unit. H.R. 800 would dramatically upset that balance by imposing, via government fiat, mandatory binding arbitration—essentially rendering the collective bargaining process nearly useless.

As federal labor law expert and former NLRB Member Charles Cohen testified:

> [T]his interest arbitration requirement is unwise public policy. With respect to employees, it would parlay the taking away of a vote on representation with the taking away of a vote on ratification. This is because the contract mandated by the interest arbitrator renders moot employee endorsement. Likewise, it is the employer that must run the business, remain competitive, and pay the employees each week. The union has the opportunity to influence the employer's thinking by engaging in economic warfare. But, the actual agreement is forged in the crucible of what the business can sustain.

Testimony of Charles Cohen, Subcommittee on Health, Employment, Labor, and Pensions Hearing "Strengthening the Middle Class Through the Employee Free Choice Act" (February 8, 2007).

Apart from eliminating their right to vote with a secret ballot on the question of unionization, it is hard to imagine a more undemo-

cratic provision, or a rule that provides employees with less "choice."

For all of these reasons, we oppose this legislation.

COMMITTEE CONSIDERATION OF H.R. 800

In light of the significant problems in H.R. 800 discussed above, during the Committee's consideration of the legislation on February 14, 2007, Committee Republicans offered a series of amendments designed to protect the rights of workers and ensure that federal labor law remains fair, balanced, and equitable with respect to all parties. Despite the Majority's rhetorical flourishes about protecting the rights of workers, each of these amendments met with unanimous Democrat opposition.

The Committee's Senior Republican Member, Mr. McKeon, offered an amendment in the nature of a substitute which would have ensured that employees remain free of harassment, intimidation, or coercion by any party—union, employer, or co-worker—by affirmatively prohibiting the use of card check recognition, and providing that a union may only be recognized and certified after a secret ballot election conducted by the NLRB. The McKeon Amendment embodied the text of H.R. 866, the Secret Ballot Protection Act, sponsored by the late Honorable Charlie Norwood, who chaired the Education and Workforce Subcommittee on Workforce Protections in the 107th, 108th, and 109th Congresses. All Committee Democrats voted against this proposal.

Health, Education, Labor and Pensions Subcommittee Ranking Republican Mr. Kline offered an amendment that would have provided equity and fairness to the card check process by allowing employees who wish to decertify a union as their bargaining agent to do so by way of a card check decertification. All Committee Democrats voted against this proposal.

Dr. Boustany offered an amendment to ensure that workers are afforded the opportunity to sign cards free of harassment and coercion, and that they have a neutral party from whom to seek information, by requiring that an authorization card is not valid unless signed in the presence of an NLRB representative. All Committee Democrats voted against this proposal.

Mr. Davis of Tennessee offered an amendment to provide fairness and equity in H.R. 800's remedial scheme, by ensuring that the bill's new civil penalty provisions would apply equally to employers and unions who violate the National Labor Relations Act. All Committee Democrats voted against this proposal.

Mr. Walberg offered an amendment designed to ensure that workers—whose economic livelihood and survival bear the greatest risk when union leadership calls a strike—are able to choose for themselves whether to strike, by providing that a union may not commence strike unless its members voted on management's last, best contract offer. All Committee Democrats voted against this proposal.

In light of the evidence the Subcommittee heard at its hearing on February 8, 2007 on H.R. 800 from employees who had been badgered and harassed by union organizers, Ms. Foxx offered an amendment to ensure that workers are free of intimidation, harassment, and coercion by allowing workers to notify a union that they

did not wish to be contacted in connection with a recognition drive and requiring the union to honor the worker's request. All Committee Democrats voted against this proposal.

At that same hearing, the Subcommittee also heard testimony that union organizers are routinely trained to ignore requests from employees to return signed authorization cards, despite employees' requests to do so, and that thereafter unions use these cards to seek recognition as a bargaining representative of these employees. See Testimony of Jennifer Jason, Subcommittee on Health, Employment, Labor, and Pensions Hearing "Strengthening the Middle Class Through the Employee Free Choice Act" (February 8, 2007) ("I know many workers who later, upon reflection, knew that they had been manipulated and asked for their card to be returned to them. The union's strategy, of course, was never to return or destroy such cards, but to include them in the official count towards the majority. This is why it is imperative that workers have the time and the space to make a reasoned decision based on the facts and their true feelings."). In light of this testimony, Dr. Price offered an amendment which would have made it an unfair labor practice for a union to fail to return a signed authorization card within five days of an employee's request, and prohibited the union from using them to establish a card check majority or for any other purpose. All Committee Democrats voted against the proposal.

Over the years, the Committee has heard ample testimony as to the union practice of "salting" a workforce. To ensure that newly-hired union organizers who have no interest in the long-term well-being of a company and no vested interest in their employment could not bind their bona fide coworkers to union representation, Mr. Ehlers offered an amendment to protect the right of bona fide workers. The Ehlers Amendment would simply have provided that a worker be employed with a company for 180 days before being eligible to sign a union authorization card. All Committee Democrats voted against this proposal.

To ensure that the safety and well-being of all workers are protected from the very real threat of union violence, Mr. Wilson of South Carolina offered an amendment that would have enhanced the NLRB's authority with respect to union organizers and labor organizations engaged in or encouraging violent and dangerous behavior, prohibited the NLRB from ordering reinstatement of an organizer or employee who has engaged or is engaging in union violence, and required the NLRB to decertify any union found to engage in or encourage the use of violence. All Committee Democrats voted against this proposal.

To protect the right of all workers to be protected from forced unionism, Mr. Wilson also offered an amendment which would have ensured that no employee can be forced to join a union or pay union dues or agency fees. This legislation, based on the National Right to Work Act that Mr. Wilson of South Carolina has previously sponsored, simply amends the National Labor Relations Act to prohibit the use of "union security agreements" and provide that employees may not be required to use their hard-earned pay to pay union dues, simply as a condition of keeping their job. All Committee Democrats voted against this proposal.

To address one of the widest-spread problems facing the United States—the flagrant violation of its immigration laws, and the massive and growing crisis of illegal immigration, Mr. Marchant offered an amendment that would have simply required that to be considered valid by the Board, a signed authorization card be accompanied by an attestation (supported by documentary evidence) that the employee was, in fact, a legal resident of the United States. Notably, the Marchant Amendment would have required no more of unions than is already required of employers under federal immigration law, and simply would have insured that illegal aliens are not given the right to dictate the terms and conditions of legal coworkers. All Committee Democrats voted against this proposal.

Mr. Kline offered an amendment recognizing the special and sovereign nature of our nation's Indian tribes, which would have provided that the card check provisions contained in H.R. 800 could not be used to organize employees working for businesses owned by Indian tribes and operating on their tribal lands. The Kline Amendment would have simply provided that much in the way federal labor law does not mandate "card check" agreements for sovereign state and local governments, it should not do so for sovereign Indian tribes. All Committee Democrats voted against this proposal.

Finally, recognizing the wholesale and unprecedented change to federal labor law embodied in H.R. 800's provisions mandating binding first-contract interest arbitration, Mrs. Biggert offered an amendment to strike that section of the bill. The Biggert Amendment would have at least ensured that while employees may be stripped of a right to vote on whether to unionize via H.R. 800's "card check" provisions, their right to vote on a collective bargaining agreement governing the terms and conditions of their employment could not be taken away. All Committee Democrats opposed this proposal.

Given the irremediable flaws in this politically-motivated legislation, Committee Republicans were unanimous in opposing this bill, and voting against reporting this measure to the full House of Representatives.

CONCLUSION

Despite its contortionist title, the so-called "Employee Free Choice Act" represents an egregious and frontal assault on worker rights, the likes of which have not come before the Committee in more than a decade. The bill would strip American workers of their right to vote their conscience on the question of unionization in a federally-supervised private ballot election. Instead, the bill is an open invitation to subject workers to intimidation, harassment, and deception until they "sign the card." The bill's provisions increasing damages, penalties, and remedies are unwarranted and one-sided, and unfairly tip the balance of labor law in the direction of one party. Finally, H.R. 800's mandatory, binding arbitration provisions would strip workers of the right to vote on the terms of a collective bargaining agreement, and would serve only to foster more over-promising and misleading claims, with even less fear of repercussion.

H.R. 800 represents the worst sort of legislation, and we respectfully oppose it.

HOWARD P. MCKEON.
TOM PETRI.
PETER HOEKSTRA.
MIKE CASTLE.
MARK SOUDER.
VERNON J. EHLERS.
TODD R. PLATTS.
RIC KELLER.
JOE WILSON.
JOHN KLINE.
CATHY MCMORRIS RODGERS.
K. MARCHANT.
TOM PRICE.
LUIS FORTUÑO.
C. W. BOUSTANY, Jr.
VIRGINIA FOXX.
ROB BISHOP.
DAVID DAVIS.
TIM WALBERG.

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