

**REBUILDING ECONOMIC SECURITY: EMPOWERING  
WORKERS TO RESTORE THE MIDDLE CLASS**

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**HEARING**  
OF THE  
**COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS**  
**UNITED STATES SENATE**  
**ONE HUNDRED ELEVENTH CONGRESS**

FIRST SESSION

ON

EXAMINING REBUILDING ECONOMIC SECURITY, FOCUSING ON  
EMPOWERING WORKERS TO RESTORE THE MIDDLE CLASS

MARCH 10, 2009

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**REBUILDING ECONOMIC SECURITY: EMPOWERING WORKERS TO RESTORE THE MIDDLE CLASS**

**TUESDAY, MARCH 10, 2009**

U.S. SENATE,  
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:10 a.m. in Room SD-106, Dirksen Senate Office Building, Hon. Tom Harkin, presiding.

Present: Senators Harkin, Murray, Sanders, Brown, Casey, Hagan, Merkley, Isakson, Alexander, and Roberts.

OPENING STATEMENT OF SENATOR HARKIN

Senator HARKIN. The Senate Committee on Health, Education, Labor, and Pensions will please come to order.

First of all, I want to thank you all for joining me here today for this very critically important meeting. I know we don't have enough room for everyone here, but I understand we have an overflow room someplace else, in which it's being piped in.

No doubt we are in the midst of an economic crisis of historic proportions. Unfortunately, we're seeing that the labor and economic policies of the recent past were an abysmal failure on all counts. As I've said many times in the recent past, we've been trying to feed the birds by giving more oats to the horse. If you don't understand that, ask somebody who lives in the country; they'll tell you what that means.

[Laughter.]

Anyway, it just hasn't worked.

In a speech in 1965, the Reverend Martin Luther King, Jr., said,

"The labor movement was the principal force that transformed misery and despair into hope and progress. Out of its bold struggles, economic and social reform gave birth to unemployment insurance, old-age pensions, government relief for the destitute, and, above all, new wage levels that meant not mere survival, but a tolerable life. The captains of industry did not lead this transformation; they resisted it until they were overcome. When, in the '30s, the wave of union organization crested over the Nation, it carried to secure shores not only itself, but the whole society."

During the Great Depression, President Roosevelt and Congress realized that the way to get the economy moving again was to give real people real buying power. In 1935 we passed the Social Secu-

Act, it was signed into law, and the National Labor Relations Act, the Wagner Act. In 1938, the Fair Labor Standards Act was signed into law, providing, for the first time, for minimum wage. These reforms really changed the course of American history, to create a situation where workers on an assembly line could afford to buy the products they were manufacturing, and ushered in a long era of economic prosperity that even FDR probably could not have foreseen. They did it, not by giving people handouts, but by giving workers a voice, a chance to earn a living through hard work.

The National Labor Relations Act built upon previous laws, not just allow workers to organize, but prohibits employer interference in that right. It provided a real, solid framework for workers to organize and bargain collectively rather than to beg individually.

Well, that's what this hearing is about. How do we craft a recovery that includes real workers in the recovery? How do we make sure everyone can participate in our economy? Well, I believe one way is to make sure that work pays. It's time that we asked ourselves, the country, how we think we can compete globally. If we think we can somehow have cheaper labor costs than the developing world, we'd better think again. We win, as an economy, by having the smartest, best-trained, most talented workforce in the world, and ensuring that workers get a fair share of productivity gains. This is what I mean, right here. If you look at what's happened in the past, if you look, back here, from the 1940s to the 1960s, where we had peak union membership, wages and productivity went up together. When union membership started to decline, productivity kept going up and real wages started going down. That's what's been happening since the mid-1960s. How do workers get a better share of the productivity gains that they themselves are producing?

Well, I'm saying that unions can help us get there. They ensure better—

[Applause.]

Senator HARKIN [continuing]. Productive workplaces.

Senator ALEXANDER. Mr. Chairman, I would like to ask that we not have disruptions during the testimony today.

Senator HARKIN. Well, I'll let people express themselves as they will. I'm chairing this hearing, and they can express themselves as they will.

[Applause.]

Senator ALEXANDER. Mr. Chairman, I think that is entirely out of order. Mr. Chairman, that's entirely out of order for a Senate hearing.

Senator HARKIN. I'll finish my statement.

Unions ensure better and more productive workplaces, they provide worker training, they will help us to rebuild our middle class in the United States. Historically, as we've been more unionized, more Americans have had a better standard of living.

Here's a chart put together by the Economic Policy Institute that shows that unionization rates have, if anything, a positive effect on global competitiveness. What this chart basically shows—it's kind of busy, but it shows that the export-oriented countries that are producing things for export are the countries that are most heavily

unionized. Yet, here's the United States, down here, with our current accounts balances, one of the worst in the world, and one of the lowest rates of unionization. So, don't tell me that unionization does away with competitiveness. Germany, Denmark, New Zealand, Sweden, Finland, Austria, Belgium, Canada, Japan, they're all doing quite well, and they have high rates of unionization.

We're going to hear from a number of witnesses today, and we'll hear from the Reverend Jim Wallis, who will testify that from 1995 to 2005, CEO pay has gone up five times faster than that of the average worker. In 2004, the average CEO made 431 times that of an average worker. Adjusted for inflation, average worker payroll rose 8 percent from 1995 to 2005, but median CEO pay rose about 150 percent over the same period. In my home State of Iowa, real median household income fell by 3.4 percent over that period, from \$48,142 to \$46,500.

Concentrating so much power in the hands of so few has never been sustainable. It's also a matter of freedom of association. I believe that a person should be able to join a union the same way they join any other organization in this country. If 51 out of 100 workers sign a card to join a union, then management should bargain with those workers.

[Applause.]

In addition, 30 percent of the time, even after workers jump through all the hoops and vote in a union, they never get a contract out of it. You know, it's getting to the point in this country where the only places they get to have a union are places where management says it's OK to have a union there, in which case they probably don't even need one. It's a ridiculous Catch 22. We have to do something to make sure that, once workers are organized, they have the ability to get a first contract.

When 60 percent of workers want to join a union, but only 7 percent belong to one, something is broken. When the average CEO makes 400 times what an average worker makes, something's broken. When ordinary workers lose their pensions, but executives get gold-plated deferred compensation arrangements, something's broken.

From 2000 to 2007, the income of the median working-age household fell \$2,000, despite the fact that productivity increased 4.7 percent, as that chart I showed indicated. People are working harder, they're getting less.

Unions have been responsible for almost every major improvement in the standard of living in this country's history, from the 40-hour work week to the minimum wage to the Family Medical Leave Act, health insurance, pensions, OSHA, MSHA, the Equal Pay Act, Social Security. If you want to know what created the middle class in America, just look at unions. Unions created the middle class in America.

[Applause.]

Well, I think we're going to have to get just as ambitious in the coming years, to get people back to work, get them in good jobs; and if they want to form unions, they ought to have the right and the freedom to do so.

Well, today we'll hear from a labor economist, a representative of the faith community, a civil rights leader, and several real work-

ers who can tell us, in their own words, how to restore prosperity in this great Nation. I know the fear that people here in this room and throughout the country feel in the face of this economic downturn, but it doesn't have to be that way. In the Great Depression, that's when we made the biggest gains, in terms of getting workers organized and unionized so we could lay the groundwork for solid economic recovery. We will not have solid economic recovery in this country unless and until workers get a fair share of the productivity gains in our industries.

With that, I will turn to our Ranking Member, Senator John Isakson.

#### STATEMENT OF SENATOR ISAKSON

Senator ISAKSON. Well, thank you very much, Senator Harkin, for calling this meeting. On behalf of all of us on the committee, we send our best wishes to Chairman Kennedy on his continued recovery from his illness.

You know, Mr. Chairman, I was listening to your speech, and—as I oftentimes do as a businessman—I think about what makes America really great and what has made America really great. It's a lot of different things, working together. It's the American worker, it's the American entrepreneur, and it's the captain of industry, as well, the risk-taker, the worker, the manager. Unfortunately, so many times, labor-management issues become adversarial at their base and we don't talk to each other, we talk at each other.

Today, we ask ourselves an important question. How can we empower workers to achieve their economic goals? What can we do in Washington to make sure the worker in Dublin, GA, or Dubuque, IA, has a bright future and reaches their goals?

Apparently, support for this legislation is based in a fear that, left to their own devices, a worker will not cast a smart vote in the secrecy of their own ballot. Instead, they want to impose a system whereby union organizations could show up at a worker's house, obtain a signature on 51 percent of the cards issued—establish a union, and the other 49 percent who you wanted all to have a say, wouldn't even ever get to have the say, because the 51 percent threshold would have been passed. In a secret ballot, they all would have cast their vote, and the majority would win, but everybody would have had their say.

This is just the beginning of problems that you have to look at and study. Ninety days after the union bosses have obtained the required 51 percent of signatures, a process called "mandatory interest arbitration" will commence. Now, what that means is, under the process, a Washington bureaucrat will arrive at the newly organized business, proceed to write the rules under which the business will operate for the next 2 years. How this bureaucrat has the expertise to devise wage systems, working conditions, vacation policies, pension arrangements, and healthcare benefits for a business about which he or she may know nothing at all—moreover, both sides would have no choice but to accept the bureaucrat's ruling, no matter how removed from reality it may be. The employer would not appeal the decision, and the worker would not have the opportunity to vote on whether or not to ratify the new contract.

As we will hear today, Canadians have already suffered under the damage that a card-check system can inflict on the economy. Dr. Layne-Farrar will report that the increased unionization under those systems consistently resulted in higher unemployment. Her study concludes that the enactment of card check and a resultant increase in forced organization of 3 percentage points will increase the unemployment rate by at least 1 full percentage point and will cost the country approximately 600,000 jobs per year.

There are many areas where we may agree, and there are many areas where we may disagree, but we must all understand this is the greatest country on the face of this Earth because of the worker, the entrepreneur, and the risk-taker. As Warren Buffett said recently, "I think the secret ballot is a pretty important thing in this country, and I'm against card check, to make it clear to anyone that wants to know." Like Mr. Buffett, I simply cannot support even a watered-down version of this attempt to deprive American workers of a right to cast their ballot in secret. The decision as to whether or not to join a union is an important one and should always be available to the worker, as it has been since the 1930s. And this is precisely why the law provides for a secret ballot election, which is the framework and the hallmark and the underlying strength of the government of the United States of America.

Senator HARKIN. Thank you very much, Senator Isakson.

I will yield to Senator Sanders for a brief opening statement.

Senator Sanders.

#### STATEMENT OF SENATOR SANDERS

Senator SANDERS. I will be very brief, Senator Harkin.

The reality, today, is that the middle class of this country is shrinking rapidly, poverty is increasing. Over the last 7 years, 6 million more Americans have entered the ranks of the poor, and the gap between the very, very rich and everybody else has not only grown wider, but it is wider than in any country in the industrialized world, with the top one-tenth of 1 percent earning more income than the bottom 50 percent, and the top 1 percent owning more wealth than the bottom 90 percent. What we have seen—and this is even before the disaster on Wall Street caused by the greed and recklessness and probably illegal behavior of a handful of Wall Street titans, and even before that—is a situation in which the wealthiest people in this country have never had it so good, while the vast majority of the people suffered, as Senator Harkin indicated, a significant decline in their standard of living.

What we are combating today on Wall Street and so many other sectors of our society is a culture of greed. Some people give you all kinds of reasons why they're opposed to this legislation; in my view, the real reason is that big business does not want to make sure that workers earn a decent wage. That's the bottom line.

[Applause.]

What we have seen for the last 8 years is the CEOs get huge bonuses, workers get thrown out of their jobs, their jobs go to China, and they've got nothing to say about it. What we have seen is CEOs do phenomenally well, workers lose their healthcare, their pensions are ripped away from them, and they have no power to fight back.

[Applause.]

The challenge that we face today, especially in the midst of the severe recession that we're in—the challenge that we face is, How do we rebuild the middle class? How do we make sure that people do not have to work the longest hours—how many people even know—how many of you know that in the United States today, our people work the longest hours of any people in the industrialized world? We're working longer and longer hours, our people are stressed out, husbands barely see their wives because they're both working. This is not what a great country is supposed to be. We can do a little bit better than that.

[Applause.]

Let me just join with Senator Harkin in saying I strongly support this legislation so we can give working people a fair shot at a decent life.

Thank you, Senator.

Senator HARKIN. Thank you, Senator Sanders.

[Applause.]

Senator Alexander.

#### STATEMENT OF SENATOR ALEXANDER

Senator ALEXANDER. Thank you, Mr. Chairman.

In the mountains of east Tennessee, where I grew up, most of the mountain people fought with the union—with Abraham Lincoln, during the Civil War. If you went into the town and asked the sheriff whether it was a Confederate town or a Union town, the sheriff would tell you Confederate, because he was picked by the bosses. But, if you had a secret ballot vote, 80 percent would vote with Abraham Lincoln. That's what a secret ballot does for little people.

In the U.S. Senate, we elect our leaders by secret ballot. I know that, because I once wrote 27 thank you notes for 24 votes. Not everyone wants to say exactly how they're going to vote. They might feel some pressure. In this committee, we use a secret ballot. In my view, this legislation that we're considering today is the most radical piece of legislation before the Congress. It's called the Employee Free Choice Act. It ought to be called the Employee No Choice Act, because it takes away the secret ballot, it forces—

Senator HARKIN. Excuse me, Senator.

As I said, I will permit expressions from clapping and stuff. I will not permit any hissing or booing or foot-stomping or throwing of things like that. OK? I mean, there are limits as to what people can express here. So, I don't want to hear any booing or hissing or anything like that. Thank you.

Please proceed.

Senator ALEXANDER. I thank the Chairman.

It takes away the employees' right to a secret ballot and replaces it with forced arbitration. The question I would have—and I will look forward to the testimony—but, why are we having this hearing? I mean, what are the priorities right now before us? I thought we were having the summit on healthcare. We didn't have time to ask questions about the education bill that was just passed. Why aren't we talking about nationalizing the student loan program? Why aren't we talking about making Pell Grants an entitlement?

All of these are going through the Congress, all of these are the President's priorities; yet, in the first early weeks we're talking about taking away the employees' right to a secret ballot.

Today, on the Senate floor, we're throwing 1,700 low-income kids out of the schools of the District of Columbia who are there on a voucher program. Why aren't we having a hearing about that, or about the stem cell policy that's being changed, or about deregulation of higher education? Those are just the issues that we could be discussing before this committee.

We've got banks, we've got auto companies teetering on the brink of insolvency, housing is stuck, regulations need to be written, and the first priority, apparently, of the Democratic majority is to talk about taking away the secret ballot of union workers and employees and to talk about forcing arbitration. I think that has a lot to say about saying one thing and doing another thing.

My final comment would be that if we're looking for ways to be bipartisan in this town, which this committee is usually very good at, we start by looking at the 80-percent of issues that we can agree on, and we work those out, and not the 20 percent we disagree on. This is clearly the most divisive issue before the Senate, and it will split us right down the middle and slow everything else important down that we ought to be working on if we continue with it.

Thank you.

Senator HARKIN. Thank you, Senator Alexander.

Senator Casey.

#### STATEMENT OF SENATOR CASEY

Senator CASEY. Mr. Chairman, thank you for calling the hearing. I want to reiterate what was said earlier; we're grateful for Senator Kennedy's leadership. He leads when he's here, and he leads even when he's not physically here, and we're grateful for that leadership over a generation. Thank you for calling the hearing.

I think it's, in my judgment, entirely appropriate that we meet here today to talk about, not only this legislation, the Employee Free Choice Act, but what the American family is living through—the trauma of this recession. This is a hearing to explore the economy, to explore jobs and how we create jobs, how we create some kind of economic security for families that don't have it. One of the best ways to ensure economic security for the American family is to be a member of a union, in my judgment.

We have a lot to debate, and we will, but we also have to put some basic facts on the table. When it comes to this legislation, the other side has done a very good job over the last couple of months making their arguments; I'll give them credit for political skill. What they haven't told the American people is what happens here.

This is very simple. This legislation, the Employee Free Choice Act, gives workers two different ways to choose whether they want a union: through an election process or through majority sign-up. There is a choice for the worker in the workplace. I come from Pennsylvania. We've had a lot of tough years, watching people be trampled by corporate power, going back to the beginning of the last century. Unfortunately, we still have some remnants of those problems.

I know in Pennsylvania, for example, we had a problem with healthcare workers, where they would try to form a union, and the employer would bring in one of those paid white-shoe law firms or union intimidation firms to intimidate people from forming a union. I've seen this up close. OK? We don't want that to happen in the rest of the country, but, unfortunately, it is. This legislation is one way to make sure that we help workers.

This is a process. Far from the arguments we've heard over the last couple of weeks and months, this act doesn't abolish a secret ballot election process. That process is still available, it would still be available. The bill simply enables workers to also form a union through majority sign-up if they prefer that method. Again, we have a choice. I'll read it again. The choice is an election or majority sign-up. That's the choice that's presented. We know from our history—

[Applause.]

Senator CASEY [continuing]. We know from our history, when people collectively organize and bargain for their rights and benefits, that isn't just good for that worker and his or her family, and that group of workers, it's good for the American economy.

One of the reasons why we've had a strong middle class, which has been the envy of the world over a long period of time, even though it's taken some hits lately—the middle class has had a couple of hammer blows applied to it—but, one of the reasons why we've had such a strong middle class, since World War II, is because we've had organizing and unions that helped build the middle class. That's what this is about.

One final thought here. I believe this issue of allowing people to organize and to bargain for their rights and their benefits isn't just a labor issue or an economic issue; I believe this is an issue of fundamental justice. This country was best, and is always best, when we appeal to our sense of justice. We've done that in the past. We don't always do it, but we know we've done it in the past, and will continue to do it.

I'm reminded by what St. Augustine said, a long, long time ago. He said, "Without justice, what are kingdoms but great bands of robbers?" If we don't have economic justice in this country—and one of the ways to get there is to have strong unions for our workers, for our families, and for our economy—and if we don't support that basic principle, we will be a country of a great band of robbers, and that is not in the interest of justice.

[Applause.]

Senator HARKIN. Senator Merkley.

#### STATEMENT OF SENATOR MERKLEY

Senator MERKLEY. Thank you very much, Mr. Chair. Thank you for holding this hearing.

The question was raised, Why are we holding this hearing? I think we're holding this hearing because this is one of the most fundamental issues that faces our Nation; that is, How do we make America work for working Americans?

Now, I will just say that I don't think America has been working for working Americans very well. We've seen enormous losses over the last 30 years, with working families getting the short end of

the stick, time after time after time, while productivity has grown enormously, America's workers have not shared in that productivity. It's time for that to change. We see families working hard that are on the very edge, they are one job decision away from collapse, one increase in their mortgage payment away from financial destruction, one healthcare issue away from financial disaster.

It is our challenge, as a U.S. Senate and as a committee of this U.S. Senate, to address this question of, How do we rebuild the middle class in this Nation? Before us, we're addressing one of the issues of, How do workers get a fair chance to organize in order to share in the productivity, the spectacular productivity, of this Nation?

I will just note that fairness is not equal to a secret ballot. If only one side of an issue has the ability to present their case, then a secret ballot is not a fair outcome, or is not a fair process. It's important that both sides of an issue have a chance, and that is not possible in the workplace today. We're going to explore why that is and how that can be changed and how we can join the great number, the great majority, of industrialized nations in giving their workers a fair chance to organization so that they can share in the richness of their own Nation.

Thank you.

[Applause.]

Senator HARKIN. And last, Senator Brown.

#### STATEMENT OF SENATOR BROWN

Senator BROWN. Thank you, Mr. Chairman. I will be brief. I'm sorry for arriving late, I was at a veterans hearing with General Shinseki, talking about veterans benefits for mostly working class veterans who have served this country and haven't been rewarded by the VA with education and healthcare benefits the way that they should.

I come to this hearing in understanding that the—I don't want to see us, 50 years from now, look back and say, "What happened to America's middle class, in the first part of the 21st century, while the House and Senate stood by and did little?"

[Applause.]

If you look back since World War II and you chart economic growth, if you chart the profits of American corporations since World War II, if you chart productivity since World War II, you will see—between World War II and the beginning of the Bush administration—mostly that productivity and wage growth kept up; if workers were more productive, if they made more money for the boss, if they helped their company be profitable, the workers shared in the wealth they create. That's really what the American dream is about—that workers who are productive and create wealth for their employer share in the wealth they create. It really is as simple as that. That's why America has historically—particularly the last half-century, the last century—why America has had such a strong middle class, because workers do share in the wealth they create. Without a union, without representation, it makes it much, much harder for workers to share in the wealth that they create. That's the lesson for the last 50 years, at least, of American political history.

Let me close with this brief illustration. I wear, in my lapel, a pin given to me about 10 years ago at a workers' Memorial Day rally. It's a depiction of a canary in a bird cage. The mineworkers, 100 years ago, used to take a canary down in the mines. If the canary died from lack of oxygen or toxic gas, the mineworker knew he had to get out of the mine immediately. He had no union strong enough to protect him 100 years ago, and he had no government that cared enough to protect him 100 years ago.

In those days, a child born in the United States of America at the end of the 20th century, around the year 1900 had a life expectancy of 46 or 47 or 48 years. Today, we live 30 years longer, not because of heart transplants and high-tech medicine, although that lengthens the lives of some Americans, for sure, many of us—but, we live 30 years longer because of what—the union movement, because of progressives, because of the women's movement and civil rights and children—advocates for children have done—Medicare, Medicaid, Social Security, safe drinking water laws, prohibition on child labor, minimum wage, workers compensation—all the protections for workers and for the middle class that government has done. Government didn't do those things out of the kindness, by and large, of our hearts; government did those things because people advocated in their church basement, gym, and in the civil rights movement, and in labor halls and—those advocates, ethnic groups, and neighborhoods that fought for Medicare and Social Security and safe drinking water and clean air laws and workers compensation and minimum wage, and all of the things that brought this country forward.

That's what this is all about; it's moving this country forward, it's giving people the opportunity to join a union if they so want. Poll after poll shows well over a majority of Americans wish they could join a union if they had the opportunity. We know that will help to close the gap between the very rich getting richer and richer and richer, and the middle class shrinking the way that it has in our country in the last 10 years. That's got to stop. We need a different direction.

[Applause.]

Senator HARKIN. Thank you, Senator Brown.

Well, thank you all very much.

Now we'll turn to our two panels. I will introduce each, then we'll just go down the line.

Paula Voos is a professor in the School of Management and Labor Relations at Rutgers University in New Jersey, former director of the Industrial Relations Research Institute at the University of Wisconsin. Professor Voos received a Ph.D. in economics from Harvard in 1982. She's author of numerous scholarly articles on U.S. labor markets and labor unions. She's also past president of the Labor and Employment Relations Association, and was appointed by President Clinton to the Commission on the Future of Worker Management Relations in 1993–1994.

Mr. Wade Henderson is president and CEO of the Nation's premier civil and human rights coalition, the Leadership Conference on Civil Rights, and counselor to the Leadership Conference on Civil Rights Education Fund. Born and raised here in Washington, DC, Mr. Henderson attended Howard University, received his law

degree from Rutgers University School of Law, began his career with the Washington Office of the American Civil Liberties Union, was later hired to head the NAACP's Washington Bureau. Mr. Henderson is the Joseph L. Rauh professor of public interest at the University of the District of Columbia.

Reverend Jim Wallis is a best-selling author, theologian, speaker, activist, preacher, and international commentator on religion and public life, faith, and politics. He is the founder and chief executive officer of Sojourners, where he also serves as editor-in-chief of Sojourners magazine. He has taught at Harvard's Divinity School and the Kennedy School of Government. Reverend Wallis attended Michigan State University and Trinity Evangelical Divinity School in Illinois.

Dr. Layne-Farrar is an economist and director of LECG Consulting in Chicago, IL. Dr. Layne-Farrar holds a B.A. in economics from Indiana University and a masters and Ph.D. in economics from the University of Chicago.

Thank you all for being here today, for your long work in this area. Each of your statements will be made a part of the record in their entirety, and I would ask if you would just sum up your statements and your points within 5 minutes, 7 minutes—somewhere between 5 and 10 minutes. We'll be a little loose on that. Say, several minutes. I would certainly appreciate it. We'll just go in the order in which I just announced, so we'll start with you, Dr. Voos.

**STATEMENT OF PAULA VOOS, Ph.D., CHAIR, DEPARTMENT OF LABOR STUDIES AND EMPLOYMENT RELATIONS, RUTGERS UNIVERSITY, NEW BRUNSWICK, NJ**

Ms. VOOS. Thank you for the opportunity to appear before the committee.

You are engaged in examining one of the most important problems in the United States, the issue of how to rebuild our middle class. I begin my written testimony by summarizing some of the things I have learned as an economist over the years about what unions do, based on numerous empirical studies by other economists.

I'd like to jump right to the heart of the matter which concerns our current economic crisis and our current economic situation. You can look at various periods—and, in your opening statements, I can see that you're all aware of the fact that income has been growing much more unequaled in the United States for a long period of time. For example, if you look at the period between 1989 and the present—Dr. Larry Mischel has found that, if you look at all the income growth in that period, more than half of it went to the top 1 percent of the Nation, and more than one-third of it went to the top one-tenth of 1 percent. The CEOs, hedge-fund managers, Wall Street executives, and other extremely wealthy individuals had the money to engage in substantial speculation that created a bubble economy, speculation in real estate, speculation in new financial instruments, speculation in stocks, speculation that was part of the creation of our current crisis.

The other side, of course, was the middle and lower-middle classes, which failed to share in the growth of their productivity, failed to have the money to buy the goods that we can create; and hence,

often took credit cards to pay for groceries at the end of the month, or took mortgages with low teaser rates, because that's how they can make the payments. Inequality of income distribution definitely created this crisis, in part; and solving that problem is really an important matter for the Nation.

Some say that we should not be raising wages or giving people the opportunity to exercise their rights to join a union because we are in an economic crisis. I would say, no, actually, that's a very important way that we can rebuild purchasing power and get out of this problem and lay the way for a sound economy in the future so that we don't build another bubble economy based simply on cheap credit.

What about international competitiveness? Well, as was mentioned, in fact, most of our major competitors have strong unions, much higher levels of unions than we do, and many of those nations compete very well. The United States can never compete against China by low wages. How can we ever do that? I think we have agreement on both sides of the aisle, everyone knows that we can't ever be cheaper than China. We have to be more innovative, have higher productivity, have higher quality.

Can unions contribute to that? Yes, they can. Economists have found that, not only do unions equalize income distribution, in part, make things more equal, they actually contribute to higher productivity. Why is that? Well, because higher wages stimulate more capital investment, higher wages have more investment in training, employees are less likely to quit, they retain their skills, and, in fact, union workers are very productive. There's no evidence that unions destroy firms. Union businesses are no more likely to go out of business than any other firm, according to all studies. Union jobs are good jobs, and unions care about their firms; they often are willing to talk to the firm and be sure that the contracts save jobs of the employees involved when there are difficulties.

I think that the United States can be competitive, our businesses can be competitive, and unions will take that into account. Most centrally, Americans have the right to form or join a union if they so desire. To do that, we need to have a way that that can happen without a lot of conflict, because economists have also found that it's in those situations of high labor-management conflict where unions do not increase productivity, but where there may be problems. With a less conflictual way of forming a union, I would say that is a really central issue for this committee, because that is how we can be competitive and raise wages again.

Thank you.

[Applause.]

[The prepared statement of Dr. Voos follows:]

PREPARED STATEMENT OF PAULA B. VOOS, PH.D.

Thank you for the invitation to speak today. I am pleased to have the opportunity to consider the role unions can play in rebuilding the American middle class, a matter of utmost importance not only for ending the current economic downturn, but also for our Nation in the longer term. As an economist, I have been studying the role unions play in our economy for some time and in 1993-1994, I had the opportunity to serve on the Dunlop Commission in its consideration of how labor law should be modernized to serve the "Future of Worker Management Relations in the United States."

There is now a substantial body of research evidence on the economic impact of U.S. unions. Unions typically:

- Raise the wages of the employees they represent;
- Increase the fringe benefits of those same employees, usually by a greater extent than they increase wages;
- Reduce income inequality within the represented firm, by reducing differentials between low-paid and high-paid employees, men and women, various racial/ethnic groups, younger and older employees, and so forth;
- Increase pay of nonunion workers in occupations and industries with substantial union presence as nonunion employers move closer to union standards;
- Reduce income inequality in the wider society by reducing inequality not only within and between represented firms, but also across entire industries as nonunion employers increase compensation to discourage unionization, all of which strengthens the middle class (Card, Lemieux, and Riddell, 2007).
- Reduce employee turnover by lessening the number of quits (voluntary separations); and
- Thus increase the retention of skilled employees, enhancing human capital and productivity in both the firm and the economy as a whole; (See Freeman and Medoff, 1984; Bennett and Kaufman, 2007).

Furthermore:

- Because they suffer less turnover, unionized employers have greater incentives for employee training and for high-skill, high commitment human resource policies, rather than low-skill, high-turnover or other “low road” approaches to human resources. Reduced turnover avoids costs to employers but also lessens society’s costs associated with unemployment, such as Food Stamps, uncompensated care and other social programs.
- Union-represented employees have been found to be more productive, on average. This is probably both due to the fact they have more work experience and due to greater employer investments in them and in physical capital (see Doucouliagos and Laroche 2003 for an overview of 73 statistically independent studies);
- The nature of the labor-management relationship is crucial in this regard: good union-management relationships are ones that foster high workforce productivity, but workplaces characterized by labor strife and worker resentment—whether union or non-union—do not (Belman, 1992).
- Union employees typically cannot be disciplined or discharged without a reason, termed “just cause.” This assurance of fair treatment is one reason union employees have greater “voice” than non-union employees and typically are more willing to make suggestions or speak up to improve business operations.

The most important reason to improve the ability of employees to organize into unions is that such membership is a fundamental right in democratic societies, related to freedom of association and the right of all human beings to band together to improve their lives. For that reason alone, I would urge you to pass legislation to make real in the United States once again the promise of the National Labor Relations Act. Section 1 of that Act puts Federal law behind “the practice and procedure of collective bargaining and . . . the exercise by workers of the full freedom of association, self-organization, and designation of representatives of their own choosing.” (NLRA Sec. 1).

Nonetheless, some may be concerned with the economic consequences of increased unionization at this moment in time. They should be assured that the economic consequences would be positive. There are two main reasons:

- First, greater union membership would help the United States recover from the current economic downturn and help prevent future economic crises.
- And second, greater union membership would help the United States make the transition to competing internationally on the basis of high productivity, high quality, and innovation, rather than on the basis of low wage labor or long hours—a race to the bottom that we can never win against nations like China.

Let me explain.

#### THE ECONOMIC CRISIS AND THE MIDDLE CLASS

The growth of income inequality in the United States and the related decline of the middle class are critical factors in the current economic crisis: the collapse in the housing market, the crisis of inadequate capital in the Nation’s banking institutions, the decline in the stock market, the free-fall in consumer spending, declining employment and other aspects of the recession that are worsening daily.

In the early part of this decade, stagnating incomes for the bottom 80 percent of American families led many people to go into excessive debt to meet ordinary needs

such as adequate housing—particularly in parts of the country like California in which housing prices and rents had soared. Many took on inappropriate subprime mortgages because low “teaser rates” made them able to afford monthly payments. All this was common in an era in which wages and salaries were failing to rise even though productivity was rising steadily and profits were good.

Meanwhile, at the top of the income distribution, there was an explosion of speculation as the wealthy put their money into multiple homes, hedge funds, securities, and new financial instruments, like bonds securitized by mortgages. This other aspect of inequality of incomes in the United States—excessive compensation for CEOs, Wall Street executives, hedge fund managers, and other wealthy individuals—contributed to the bubble that inevitably burst, precipitating the current recession.

In fact, 59 percent of all the income growth since 1989 accrued to the upper 1 percent of households and about 36 percent accrued to the upper tenth of that upper 1 percent (Mishel, et al., 2008). The shift of income to the upper 1 percent since 1979 (their income share rising from 10 percent to 22.9 percent) represents an additional \$1 trillion of income for that group. This type of unbalanced income growth has greatly contributed to our current economic misfortunes.

Increased union organization would tend to shift the income distribution in favor of the middle class, enhancing the purchasing power of this key group of the Nation’s consumers and allowing them to once again afford to buy automobiles, homes with 30-year fixed rate mortgages, and all the other goods and services important to American life. Unionization of low-wage service workers similarly would increase purchasing power and help revive the economy. Putting more dollars into the pockets of working families stimulates the American economy—both in the short term and in the long run—because they spend such a high proportion of those dollars here.

It is no accident that the prosperity and consumer boom of the 1950s—a period of unprecedented middle class expansion, broad business growth, increased home ownership, rising consumer spending, and the shared expectation that a college education was within the reach of everyone and that the lives of our children would be better than our own—followed the greatest sustained expansion of unionization in American history.

The notion that greater unionization is harmful to an economic recovery is misguided. Unions, as institutions, and the members that form them are economically rational and do not pursue demands that force firms out of business. There are several studies that show that firms that become unionized (see the review of studies in DiNardo and Lee, 2004) are no more likely to fail than are firms that remain nonunion. If anything, unions are more important in a recession. As was stated in a statement signed by 40 prominent economists and released on February 25, “The current recession will further weaken the ability of workers to bargain individually. More than ever, workers will need to act together.”

Economic recovery and future economic stability depend on a middle class once again having sufficient purchasing power to sustain the economy; we must not rebuild another bubble economy. Greater unionization can contribute to that goal because wages and benefits for ordinary workers will rise and income inequality in the economy as a whole will be reduced. In short, unions help foster the broad middle class that is essential to our Nation’s economic strength.

#### THE LONG-RUN IMPACT ON AMERICAN COMPETITIVENESS

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

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

Second, low labor costs are never going to be a reliable basis for U.S. competitiveness in a global economy—rather, the United States needs to compete on the basis

of innovation, high value-added, high quality, and high productivity. Unionization tends to promote the shift to these latter bases of competition by foreclosing the low-wage alternative.

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

Research on this topic indicates that there is substantial variation in the "union productivity effect." The effect is much larger where there is a good relationship between labor and management, whereas in high-conflict situations, there is little likelihood that unions enhance productivity (Belman 1992). Strikes, of course, are particularly deleterious. Hence it is important that public policy not only makes it possible for workers to organize should they so desire, but also that the Federal Government provides a path to unionization that reduces conflict and gets the labor management relationship off to a good start.

In fact, this was part of the reasoning behind the National Labor Relations Act when it was passed in 1935. Section 1 of that Act, quoted earlier, speaks about the need to protect commerce "from injury, impairment, or interruption . . . by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employees and employers." The idea in 1935 was that if employers were legally required to recognize and bargain with their employees' chosen representatives, recognition strikes would be unnecessary and contentious disputes over wage and working conditions would be channeled into the collective bargaining process, to the benefit of all.

Unfortunately, because of a series of changes in the interpretation of the law over time, employers are now able to insist that before collective bargaining can commence, employees must prove their support for their chosen bargaining representative through an election process that is so conflict-laden that it fails to fulfill the purpose of getting collective bargaining relationships off to a constructive beginning. The waiting period prior to an NLRB representation election creates a period of counterproductive labor-management strife that increases workplace tension and undoubtedly hurts workplace productivity. Even when employees win the right to representation through an election, they are often unable to negotiate a first contract. This occurs because the strike is the dispute resolution procedure when the parties are unable to agree on a contract. American workers often don't want to strike, and yet they often cannot get a first contract without a successful strike. The entire representation election process is still extremely conflict-laden and is ripe for reform. The proposed Employee Free Choice Act is one option that shows particular promise to lessen labor-management conflict during the unionization stage.

In short, we can be competitive while allowing American employees to exercise their rights to form a union. To do so, we need a way for workers who want union representation to organize in a less conflict-laden way and to initiate a constructive labor-management relationship.

#### WHAT ABOUT SMALL BUSINESS?

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

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

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

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

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

#### CONCLUSION

For all these reasons, I urge you to enact changes in our Nation's labor law that would make it easier for workers to organize, should they so desire, to obtain an initial agreement, and to build a successful working relationship with their employer, free of unnecessary labor-management conflict.

The restoration of a strong middle class is indispensable to the restoration of the American economy. Unions are an essential part of rebuilding that middle class.

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Senator HARKIN. Thank you very much, Dr. Voos.  
Mr. Henderson.

#### **STATEMENT OF WADE HENDERSON, PRESIDENT AND CEO, LEADERSHIP CONFERENCE ON CIVIL RIGHTS, WASHINGTON, DC**

Mr. HENDERSON. Senator Harkin, Ranking Member Isakson, and members of the committee, I'm honored to be here, and I want to thank you for the opportunity today to express the strong support of the Leadership Conference's over 200-member organizations for the restoration of American workers' right to organize and to explain why a strong labor movement is critical to the continuing advancement of civil rights in our Nation.

The 2008 presidential election was a watershed moment in the evolution of American democracy. Regardless of one's partisan affiliation, the election of the first African-American President rep-

resents a validation of our Nation's long struggle to resolve the challenges of racial discrimination, ethnic and gender bias, and the structural inequality that makes a mockery of the concept of equal opportunity and makes attaining the American dream impossible for many individuals.

While we should all be proud of these milestones, our quest for equality under law and for meaningful economic opportunity for all Americans is far from an end. For many individuals, particularly those on the lower rungs of our economic ladder, equal opportunity remains an elusive goal.

Now, as I will discuss today, many employers' relentless attack on the right to organize in our Nation has made it more difficult for all workers, and most specifically for African-Americans, Latinos, Asian Americans, and women, to achieve the economic opportunity which is the foundation of the American dream.

Now, why is the Leadership Conference on Civil Rights supporting the Employee Free Choice Act? Well, the right of workers to organize has long been a bedrock principle of our Nation's civil and human rights movement. It was such an accepted principle that First Lady Eleanor Roosevelt helped include the right of workers to organize in the Universal Declaration of Human Rights in 1948. Dr. Martin Luther King, Jr., and Leadership Conference co-founder and African-American union leader A. Philip Randolph, both recognized that it was not racial segregation and prejudice alone, but the joint effects of racial discrimination and economic privation that denied real opportunity to African-Americans and other marginalized workers.

Unions offer the most surefire path to addressing this deep inequality. This is why Dr. King highlighted their struggle and marched with striking sanitation workers in Memphis, TN, during the final days of his life.

Now, in the early and mid-20th century, unions forged America's middle class by organizing previously disenfranchised European immigrants. In later decades, unions turned their focus to promoting opportunities for women and racial minority workers. In the 1960s, for example, Walter Reuther and his UAW championed antidiscrimination laws. By the way, it was the same UAW that provided the organized manpower and financial support that was essential to the success of the 1963 March on Washington.

Even with these efforts, however, over time it became clear that antidiscrimination laws were insufficient to help all women and racial minorities achieve better standards of living. Strong unions could have provided an important corollary to antidiscrimination laws. The assault on the right to organize in the decades since the 1960s prevented unions from being a more powerful force for economic opportunity.

Now, data shows the profound impact unions can have on reducing income inequality. In 2006, median earnings for women in unions were 31 percent higher for nonunion women, 36 percent greater for unionized African-Americans, 8 percent for Asian Americans, and 46 percent for Latinos. Union members are also far more likely to have strong safety standards, healthcare benefits, retirement benefits, sick leave and other paid time off. These benefits give our poorest workers the stability and resources they need to

forge better lives for themselves and their families, and they provide a toehold on the ladder of economic opportunity leading to solid middle-class lives.

Unions also protect workers from arbitrary treatment at work by negotiating transparent procedures for wage rates and job assignments, by pursuing grievances for discrimination. This is especially important, given the weak workplace protections under both State and Federal law. For LGBT workers, who today do not even enjoy basic protection from discrimination and Federal law, unions may be the only protection against mistreatment based on their sexual orientation or gender identity.

Because many employers were successful in exploiting loopholes in our labor laws so as to deny the right to organize, women and minority workers still struggle. In the current economic downturn, they are at risk of losing significant ground. Unions can help preserve the economic status of women and minorities by minimizing layoffs and pay cuts and by establishing safety nets.

Moreover, the notion that pro-worker measures are bad for the economy is misguided. Economic security for workers will increase consumer demand. Better wages and benefits make workers more content and more productive. Improved wages and benefits lead to more stable households, where children receive the benefits of a better education and enter the labor market as better workers.

Now, the Employee Free Choice Act promises to restore the right to organize in our Nation. Employees have made a mockery of the secret ballot by using tactics of delay and intimidation available under the current system, but this bill does not eliminate the secret ballot.

Now, Dr. King's effort to achieve economic opportunity for the disenfranchised remains the unfinished business of America. Restoring the fairness to the process by which workers choose a union is one of the most important—first of all, it's a fundamental civil and human right, and it is one of the most important steps we can take as a nation to advance economic opportunity for all Americans.

Thank you very much.

[Applause.]

[The prepared statement of Mr. Henderson follows:]

PREPARED STATEMENT OF WADE HENDERSON\*

Senator Harkin, Ranking Member Enzi, and members of the Senate Committee on Health, Education, Labor, and Pensions, I am Wade Henderson, President and CEO of the Leadership Conference on Civil Rights (LCCR). I am also honored to serve as the Joseph L. Rauh, Jr. Professor of Public Interest Law at the University of the District of Columbia. I appreciate the opportunity to speak before you today to express LCCR's strong support for the restoration of American workers' right to organize, and to explain why a strong labor movement is critical to the continuing advancement of civil rights in our Nation.<sup>1</sup>

\* Mr. Henderson's addendum to this statement may be found at <http://www.civilrights.org/publications/voices-2009/efca-report-web-final.pdf>.

<sup>1</sup> In connection with this testimony, I am also submitting a pre-release version of a forthcoming report by LCCR, entitled *Let All Voices Be Heard: Restoring the Right of Workers to Form Unions—A National Priority and Civil Rights Imperative*. The report, which was originally released in 2007 and has been updated to reflect recent data, includes an in-depth explanation of why protecting the right to form a union is critical to the advancement of civil rights. This report may be found at [www.civilrights.org/publications/voices-2009/efca-report-web-final.pdf](http://www.civilrights.org/publications/voices-2009/efca-report-web-final.pdf).

LCCR is the Nation's oldest and most diverse coalition of civil rights organizations. Founded in 1950 by A. Philip Randolph of the Brotherhood of Sleeping Car Porters, Roy Wilkins of the NAACP, and Arnold Aronson of the National Jewish Community Relations Council, a core mission of LCCR is to further the goal of economic opportunity and workplace dignity through legislative advocacy and public education. LCCR consists of approximately 200 national organizations representing persons of color, women, children, organized labor, persons with disabilities, the elderly, the LGBT community, and major religious groups. I am privileged to represent the civil and human rights community in submitting testimony for the record to the committee—and I want to express my strong gratitude to you for today's hearing and also for your support over the years for the rights of women and minorities in America's workforce.

#### A DECLINING LABOR MOVEMENT HURTS THE CAUSE OF CIVIL RIGHTS

Over the past four decades, employers have, with increasing aggressiveness, sought to keep unions out of the American workplace. By exploiting weaknesses in our labor laws that allow businesses to coerce workers with virtual impunity, employers have made a mockery of the right to form a union. As a result, workers have endured rising income inequality and diminished rights and dignity in the workplace.

Today I would like to focus on the particularly strong negative impact the decline of our labor movement and our inadequate labor laws have on women and minorities in the workplace. LCCR co-founder A. Philip Randolph, the longtime leader of the African-American Sleeping Car Porters union, embodied the idea that a broad pro-worker agenda, with a strong labor movement as its cornerstone, was essential to promoting racial equality in our Nation. Following in Randolph's footsteps, Dr. Martin Luther King, Jr., when he marched in support of striking Memphis sanitation workers, recognized that it was not racial prejudice alone, but the joint effects of racial discrimination and economic privation that denied economic opportunity to poor African-American workers.

As King realized, unions hold forth the promise of bringing us closer to a society where all Americans enjoy economic opportunity. Unions markedly improve wages and benefits for those trapped at the bottom of the economic ladder, who disproportionately are women and minorities. They also make workplaces fairer and more humane through the enforcement of contract provisions addressing issues like sick leave and workplace safety—measures which help all workers but are of particular benefit to women and minorities.

Moreover, one of the twentieth century's great champions of civil and human rights in our Nation, Eleanor Roosevelt, recognized that the right to organize was instrumental to securing human rights domestically and globally. Roosevelt led the efforts to draft the 1948 Universal Declaration of Human Rights, which laid the foundation for international human rights standards. The Declaration states that "[e]veryone has the right to form and to join trade unions for the protection of his interests."<sup>2</sup>

Women and minorities need unions now more than ever. The current economic downturn is a particularly strong threat to low-wage workers. Indeed, whatever modest economic gains women and minority workers have garnered in recent decades may be wiped out if they are unable to push back against wage and benefit cuts and to fight for better job security.

The Employee Free Choice Act, a bill to be introduced soon in the 111th Congress, presents the best opportunity in a generation to restore workers' right to unionize. If we do not bring fairness back to the process by which workers form a union, we will lose perhaps our best chance to preserve recent economic gains for women and minorities, and to give them a better path to economic prosperity for themselves and their children.

#### LABOR'S PROVEN RECORD OF IMPROVING WORKING CONDITIONS FOR THE POOREST AMERICAN WORKERS

To fully understand the positive effect unions can have on our poorest workers, one only has to look at labor's accomplishments in the twentieth century. Organized labor has a proven track record of bestowing economic security and upward mobility on Americans previously condemned to the economic margins of our society.

Beginning in the 1930s, after decades of focusing mainly on skilled workers, at the urging of John L. Lewis of the Mine Workers union, labor took on the task of organizing unskilled industrial workers. These factory workers were largely recent

<sup>2</sup>Universal Declaration of Human Rights, at <http://www.udhr.org/UDHR/default.htm>.

immigrants from eastern and southern Europe, and themselves were victims of stigma and prejudice based on differences in language and custom.

These early twentieth century immigrants, despite being isolated by their lack of workplace skills and cultural barriers, were catapulted into the economic mainstream by labor unions. The result of these union organizing efforts was the birth of a broad and stable American middle class in the 1940s and 1950s.

LABOR'S UNFINISHED TASK: ECONOMIC OPPORTUNITY FOR WOMEN  
AND MINORITY WORKERS

However, African-Americans received fewer economic benefits from the mid-twentieth century union upsurge. This was due to a wide range of factors. African-Americans were frequently assigned by employers to the most difficult, worst-paying jobs. Although many unions attempted to defy workplace racial hierarchies, others acquiesced and focused primarily on organizing white workers, while either neglecting African-Americans or relegating them to the worst job classifications. Notably, the United Auto Workers (UAW) stood bravely athwart some of its own members in demanding equal treatment of African-American workers within Detroit's auto plants.<sup>3</sup>

Later decades brought about the dawning of a new day in the relationship of unions to African-American workers. Unions became much more strongly focused on organizing and promoting opportunities for African-American workers. In the 1960s, Walter Reuther and his UAW championed antidiscrimination laws, by funding the March on Washington of 1963 and by lobbying for the Civil Rights Act of 1964. Ironically, while unions helped pass laws to break down barriers to opportunity for America's African-American workers, the decline of the labor movement in the coming decades would eventually deal a great blow to the poorest workers who were not rescued by antidiscrimination laws. While antidiscrimination laws were a necessary measure, they were not sufficient to address the deep inequality, rooted in both race and poverty, which inheres in poor neighborhoods from which our most vulnerable workers cannot escape without access to greater financial resources.

Similarly, newer entrants to the workforce have failed to benefit from the tide of unionization in the mid-twentieth century. Women were at much lower levels of workforce participation during this time. Similarly, large-scale Latino and Asian-American immigration occurred in later decades. But today, women, African-Americans, Latinos, Asian Americans, as well as LGBT Americans, all suffer from inequality in the workplace. All of these groups (other than LGBT Americans) are protected by title VII, but disparities in income and working standards have persisted in spite of antidiscrimination protection. (LGBT Americans, meanwhile, must cope with a complete absence of Federal workplace protection.)

Women are burdened by stereotypes and societal expectations that force them into lower-paying jobs with fewer benefits, and often impose on them the primary obligation for family care, making it harder for them to sustain the same income trajectories as men. Women today make about 78 cents for every dollar earned by their male counterparts.<sup>4</sup>

Many Latinos and Asian Americans, unlike the early-twentieth century immigrants, have arrived at a time when anti-union attacks have weakened the movement to the point where it is not able to raise these newest arrivals into the ranks of the middle class. Indeed, these immigrant groups today are often forced to take the most difficult and unsafe jobs for the lowest wages, such as dangerous construction jobs.

THE DIFFERENCE A UNION MAKES

The labor movement today is strongly committed to organizing women and minorities. A re-invigorated labor movement offers the most sure-fire path to fulfilling the promise of economic opportunity in American society for all these groups. The data shows the profound impact unions have on income inequality. In 2006, median earnings for women in unions was 31 percent higher than for non-union women; 36 percent greater for unionized African-Americans; 8 percent more for Asian Americans; and 46 percent more for Latinos.<sup>5</sup>

<sup>3</sup> See Robert H. Zieger, *American Workers, American Unions* (2d ed., Johns Hopkins Press 1994).

<sup>4</sup> U.S. Census Bureau 2007 Current Population Survey, Aug. 2008.

<sup>5</sup> House of Representatives, Committee on Education and Labor, Report on the Employee Free Choice Act of 2007, at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_reports&docid=f:hr023.110.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_reports&docid=f:hr023.110.pdf). Even when adjusted for experience, education, region, industry, occupation and marital status, the wage premiums remain large: 10.5 percent for women, 20.3 percent for African-Americans, 21.9 percent for Latinos and 16.7 percent for Asian Americans.

Union members are also far more likely to have health care benefits, and to have a greater share of health care benefits paid for by their employers.<sup>6</sup> They are also more likely to receive sick leave and other types of paid time off. For many minority workers, already living from paycheck to paycheck, illness can be devastating financially, and union-negotiated benefits provide an important safety net. These benefits also help ensure that women workers with significant family-care responsibilities do not have to trade career advancement in order to care for their families. Unions also monitor and enforce contractual safety standards to ensure that no worker is unreasonably exposed to danger in the workplace—something especially beneficial to immigrant workers in highly dangerous fields. Further, union members are more likely to have retirement benefits.

These wage and benefit premiums can help give the poorest workers the stability and access to resources they need to forge better lives for themselves and to greatly expand their children's opportunities.

Often forgotten in the discussion about the value of unions in our society is the role they play in bringing dignity and fairness to the workplace. Apart from the fact that they give workers themselves a fairer share of the prosperity they help create, unions protect workers from arbitrary and unfair treatment at work. Indeed, unions can help stamp out discrimination. Union contracts provide transparent and uniform procedures for pay levels, job assignments, and promotions, making it difficult for employers to get away with race and gender discrimination. Moreover, union grievance procedures allow workers to seek redress for unfair treatment. In many cases, discriminatory actions—which might be difficult to prove in a courtroom under antidiscrimination laws—can be resolved through the grievance process, resulting in a far more just workplace. Also, while not a substitute for the right to sue, the grievance process can sometimes be a simpler and more streamlined approach for workers who do not want the time and expense of litigation.

For LGBT workers, who today enjoy no Federal legal protection, unions may be the only protection against mistreatment based on their sexual orientation or gender identity. Unions can also help negotiate for equal benefits for LGBT workers, including same-sex partner health care coverage.

Finally, today, unions remain catalysts for new laws to improve the workplace, just as they once contributed to the passage of the Civil Rights Act of 1964. Most recently, unions stood side-by-side with civil rights groups in support of the Lilly Ledbetter Fair Pay Act, which was signed by President Obama this January and restored workers' ability to pursue pay discrimination claims.

#### UNIONS' EFFECTIVENESS HAS BEEN SAPPED BY WEAKNESSES IN OUR LABOR LAWS

In spite of the benefits strong unions bring to women and minorities, we have failed to revise and strengthen our labor laws to deal with the changing circumstances that have dramatically weakened the labor movement. Employers routinely push the boundaries of our laws by delaying elections, coercing their workers to oppose unions, retaliating against union supporters, and refusing to agree to first contracts. Even when they overstep the law's boundaries, penalties are weak—nothing more than a slap on the wrist—so employers routinely decide they would rather risk the law's meager penalties in order to keep a union away.

In addition to aggressive employer resistance to the right to organize, the changing characteristics of the American workplace have also made it extremely difficult to organize women and minorities. Not only has our workforce shifted from manufacturing to low-skill service-sector jobs, but women and minority workers are most likely to be concentrated within these service jobs. Unlike manufacturing, the service industry presents unique obstacles to union organizing. The kind of shop-floor solidarity that often occurs in factories where workers toil side by side is less likely to take root. In contrast to large factories with many workers at a single site, smaller service industry locations, like retail stores or restaurants, require enormous investments by unions just to unionize a handful of workers. Without a change in our laws, it is difficult to imagine how unions will be able to organize widely in the service sector.

As a result of these factors, the decline of America's unions has reached a crisis point. One out of every three workers in the private sector was a union member in the late 1950s, a time when America enjoyed a growing middle class. Today,

Economic Policy Institute, *State of Working America 2006/2007*, at [http://www.stateofworkingamerica.org/tabfig/03/SWA06\\_Table3.34.jpg](http://www.stateofworkingamerica.org/tabfig/03/SWA06_Table3.34.jpg).

<sup>6</sup> Lawrence Mishel and Matthew Walters, *How unions help all workers*, Aug. 2003 (EPI Briefing Paper #143), at <http://www.epi.org/page/-/old/briefingpapers/143/bp143.pdf>.

fewer than 1 in 12 workers in the private sector are union members.<sup>7</sup> Unions, more than ever before, stand ready to organize fields with large concentrations of minority workers. However, weaknesses in our labor laws and an all-out attack by the business community on labor unions have prevented unions from being a far greater force for economic opportunity than they might otherwise be.

For these reasons, the Employee Free Choice Act is one of the most significant pieces of civil rights legislation in many years. This bill will prevent employers from using the many unfair tactics currently at their disposal to frustrate the desire of their workers to join unions. The Employee Free Choice Act will, among other things, provide for union representation as soon as a majority of workers express their desire to be represented, rather than allowing employers to use tactics of delay and intimidation during the lengthy NLRB election process to coerce workers into rejecting a union. The bill will also enhance penalties for anti-union retaliation and will prevent employers from dragging their feet on first contract negotiations, a tactic frequently used to erode confidence and support for the union.

UNIONS CAN HELP PROTECT VULNERABLE WORKERS AND IMPROVE THE ECONOMY  
DURING ECONOMIC DOWNTURNS

The women and minority workers who can least afford pay and benefit cuts or layoffs will be the most adversely affected by the current economic downturn. Notably, while the jobless rate last month was a very high 7.3 percent for white Americans, it was far worse for African-Americans (13.4 percent), and Latinos (10.9 percent).<sup>8</sup> Large numbers of women and minority workers, who lack personal savings and other resources to weather the crisis, will face enormous economic setbacks that will threaten their families' livelihood.

Unions provide a buffer in difficult economic times. They help preserve economic benefits and maintain job security. Moreover, unions do so in a manner that is sensitive to the needs of business. It is certainly not in the interest of unions to see the companies their members work for go out of business. Thus, unions may work out arrangements where hardship is shared among workers, so that layoffs are avoided. Or they can ensure that, when wage and benefit cuts are required, those cuts occur in a way that preserves the items that workers need the most, and that employers don't use bad economic news as an excuse to unnecessarily slash worker payroll.

The notion that pro-worker measures are somehow bad for the economy and should be avoided during difficult economic times is misguided. There are many ways unions help the economy, and I now list but a few of them. Economic security for workers will increase consumer demand, which in turn will spur economic recovery. Better wages and benefits, along with the ability to speak out at work about one's workplace concerns, make workers more content and therefore more productive. Improved wages and benefits will lead to more stable households where children receive the benefit of a good education, and will enter the labor market as better workers. Union-negotiated benefits like sick leave will allow workers to stay home and recover rather than go to work day-in and day-out in a debilitated state, or expose colleagues to illness.

The current foreclosure crisis gives us a very timely example of how pro-worker policies can help the economy. The current economic downturn was precipitated in good part by the foreclosure crisis in which many home purchasers could not afford to continue payments on their homes. Many of these home purchasers were minority workers who were steered into subprime loans, whose unforgiving terms made it impossible for them to keep up their payments. If more workers were in unions, far more would have had the resources to continue payments on their mortgages—and many would have had the credit rating and financial acumen that would have prevented them from being steered into subprime loans in the first place.

Unions are most certainly not a drag on the economy: they protect our most vulnerable workers and make our economy stronger. Our economy sustained remarkable growth over the many decades when unions represented large segments of the American workforce. This is because unions fostered happier, more productive workers, and helped sustain consumer demand. I reiterate that, in times of economic downturn, civil rights gains are very much at risk as the souring economy takes the greatest toll on women and minority workers. Unions can play a critical role in preventing such a setback for the civil rights movement.

<sup>7</sup> Barry T. Hirsch and Jeffrey M. Hirsch, Remarks for Allied Social Science Association Meetings: *The Rise and Fall of Private Sector Unionism: What Comes Next?*, Dec. 2005.

<sup>8</sup> Bureau of Labor Statistics, Employment Situation Summary, Feb. 2009, at <http://www.bls.gov/news.release/empsit.nr0.ht>

## CONCLUSION

As Martin Luther King said when he addressed the striking Memphis sanitation workers, "Memphis Negroes are almost entirely a working people. Our needs are identical with labor's needs—decent wages, fair working conditions, livable housing, old age security, health and welfare measures, conditions in which families can grow, have education for their children and respect in the community."<sup>9</sup> King's words haunt us today as many women and minorities toiling at low-wage jobs still have little chance of achieving these very aspirations. The Employee Free Choice Act will restore fairness to the process by which workers choose a union. It is one of the most important steps we as a nation can take to address the remaining hurdles we face on our path to becoming a society where all our people enjoy the opportunity to succeed and to expand our children's horizons.

Thank you for inviting me to address the committee. I look forward to your questions.

Senator HARKIN. Thank you. Thank you, Mr. Henderson.  
Now we turn to Reverend Jim Wallis.

**STATEMENT OF REVEREND JIM WALLIS, PRESIDENT AND  
EXECUTIVE DIRECTOR, SOJOURNERS, WASHINGTON, DC**

Rev. WALLIS. Thank you, Senators. I want to add my voice to those who miss Senator Kennedy here today. I'm one who has admired his moral courage, for many years, in addressing issues of economic justice, and I do feel, as you said, his spirit with us today. Good to see you in the chair, Senator Harkin. Good to see a lot of you.

I think this is a fairness issue. And fairness is a religious issue. I suspect that's why I'm here today. Let me start with the fundamental principles, which are that the system, I would argue, of employee-employer relationships is fundamentally lopsided. I would hope we could agree to that on both sides of the aisle. There's a need to level the playing field, to redress a great imbalance, to restore more balance. When a system is in such fundamental imbalance, I think it is our obligation, on both sides of the aisle, to remedy that.

The Catholic bishops issued a pastoral letter on Catholic social teaching and the U.S. economy 23 years ago. Now, I'm not a Catholic, I'm an evangelical, but I'm an evangelical convert to Catholic social teaching.

[Laughter.]

Which I often find to be very wise. The letter said this,

"Our faith calls us to measure this economy, not by what it produces, but also by how it touches human life and whether it protects or undermines the dignity of the human person. Economic decisions have human consequences and moral content; they help or hurt people, they strengthen or weaken family life, they advance or diminish the quality of justice in our land."

Then the bishops go on to say this about our topic here today,

"The way power is distributed in a free market economy frequently gives employers greater bargaining power than employees in the negotiation of labor contracts. The Church fully supports the right of workers to form unions or other associa-

<sup>9</sup>Peter Dreier, Why He Was in Memphis, American Prospect Online, Feb. 15, 2007, at [http://www.prospect.org/cs/articles?article=why\\_he\\_was\\_in\\_memphis](http://www.prospect.org/cs/articles?article=why_he_was_in_memphis).

tions to secure their rights to fair wages and good working conditions.”

The words of Pope John Paul II, the Pope says,

“The experience of history teaches that organizations of this type are an indispensable element of social life, especially in modern industrial societies. No one may deny the right to organize without attacking human dignity itself.”

Now, we either believe those things or we don't. Those are principles to be paid attention to.

The right to organize is at the heart of this issue, the Employee Free Choice Act, and that's why this hearing is about, I think, fundamentally moral issues. How do we level the playing field? How do we give workers a collective voice in the wages, benefits, and conditions of their employment? How do we ensure human dignity? If the system has been abusive—I think the facts show it has been—how do we correct the abuses?

The right to organize has been steadily eroded over the last number of years. Too often, organizers have been fired, workers have been threatened, and employers flatly have refused to negotiate contracts. There are facts not really in dispute. So, they can't be ignored, in my view. How must they be addressed?

As a result of these facts, only 12.4 percent of U.S. workers are union members, when, only 25 years earlier, in 1983, it was 20.1 percent. Now, this is either, in our point of view, a good thing or a bad thing. If it's a good thing, we have no problem. If it's a bad thing, it's a problem we have to fix, very simply.

The Employee Free Choice Act assures that if the majority of workers want a union, they will have one; it compels employers to negotiate in good faith; it strengthens penalties for violating workers' rights—all things that have been done in the past several years.

Mohandas Gandhi once warned of what he called the “Seven Deadly Social Sins.” One of them was wealth without work. Another was commerce without morality. Those two social sins are now diagnostic of why we are in this mess that we're in.

Rather than a society in an economic system building on the solid rock of productive work, we have built on the sand of speculation in mortgages and other financial instruments. As has been said by my colleagues, too many people at the top of the pyramid have gotten too wealthy without enough productive work. It is simply a fact that we have now seen rapid and massive increases in American inequality. Again, this, for me, is not just an economic issue, this is a religious issue.

When I hear that the top 1 percent of households now receive 70 times as much in average after-tax income as the bottom one-fifth—1 percent, one-fifth—and 21 times more than the middle one-fifth, or that CEO pay has gone from, 1965, of being 24 times more than a worker's pay to, now in 2004, 431 times the worker's pay, I will say that is not just an economic issue, that is a sin of biblical proportions.

[Applause.]

Now, I know that biblical archeology isn't a hot topic in Senate hearings, but I have learned something from the biblical archeolo-

gists. When they dig down in the ruins of ancient Israel, they find periods of time when the relics and artifacts show a shared prosperity—not a sameness, but no big mansions and no small shacks. They were sharing the fruits of their labor. During those times, there were no prophets—no Amos, Isaiah, Micah, Jeremiah—none, no prophets. When they dig down in other periods, like the 8th century B.C., and find tremendous gaps and chasms in the relics that they dig up, that’s when the prophets rise up to thunder the justice and judgment of God. Religiously, inequality is bad for human beings and society.

It’s no wonder that we have collapsed. We have not listened to the canary, Senator Brown. The canary always chokes when the atmosphere is toxic. It’s been toxic. We haven’t listened to the poor, and now we’re all choking.

The studies show unionization raises the wages of typical low-wage workers significantly, and the studies show unionization is a critical tool in the fight against poverty. That’s why I’m here.

[Applause.]

Unions don’t just help individual workers, they make a more productive workforce, good wages and benefits; that helps the entire economy. It contributes to something that we call, in the faith community, “the common good.” It leads to more people with health insurance. That’s a good thing. It strengthens the tax base of local communities. That’s a good thing. It allows families to buy their own homes and send their kids to college. These are, for us, good things.

The churches are more and more united against poverty across our political and theological differences. Faith communities in all of your States have signed up to make poverty a fundamental religious and moral issue. In all your constituencies, church leaders will be asking how this bill impacts on the fight against poverty. If they decide that it does, you’ll hear from the faith community in all of your States and in all your constituencies.

There is a growing consensus among us that, when one in eight families are living below the poverty line, when one of every five children are poor in the richest country in the world, that tests both our faith and our civic values. When 9 million more people are about to plunge into the quicksand of poverty due to this recession and economic crisis, this becomes even more urgent.

I would say, no matter what our initial thoughts are on this bill, we have an obligation to address the facts. Inequality is growing. That’s a bad thing. Unionization is declining. That’s a bad thing. The system is being abused. That’s a bad thing. How do we fix the system? How do we make sure that we attend to the common good? The Employee Free Choice Act represents one critical way to promote the dignity of work and, I would say, to protect the common good.

Thank you very much.

[Applause.]

[The prepared statement of Reverend Wallis follows:]

PREPARED STATEMENT OF REV. JIM WALLIS

The U.S. Catholic Bishops issued a pastoral letter on Catholic social teaching and the U.S. economy 23 years ago. While I am not a Catholic, I frequently refer to the wisdom of Catholic social teaching. That letter began by saying:

“Our faith calls us to measure this economy, not by what it produces but also by how it touches human life and whether it protects or undermines the dignity of the human person. Economic decisions have human consequences and moral content; they help or hurt people, strengthen or weaken family life, advance or diminish the quality of justice in our land.”<sup>1</sup>

With that foundation, the Bishops went on to observe that:

“The way power is distributed in a free market economy frequently gives employers greater bargaining power than employees in the negotiation of labor contracts. . . . The Church fully supports the right of workers to form unions or other associations to secure their rights to fair wages and working conditions. . . . In the words of Pope John Paul II, ‘The experience of history teaches that organizations of this type are an indispensable element of social life, especially in modern industrial societies.’ . . . No one may deny the right to organize without attacking human dignity itself.”<sup>2</sup>

That “right to organize” is what is at stake with the Employee Free Choice Act (EFCA), and it is why EFCA is fundamentally a moral issue. It is a way to level the playing field, to give workers a collective voice in the wages, benefits, and conditions of their employment. It is a way to ensure their basic human dignity.

It is a right that has been steadily eroded over the last number of years. Far too often, organizers have been fired, workers threatened, and employers flatly refusing to negotiate contracts. As a result, only 12.4 percent of U.S. workers are union members; when only 25 years earlier, in 1983, it was 20.1 percent.<sup>3</sup>

EFCA assures that if the majority of workers want a union, they will have one. It compels employers to negotiate in good faith. It strengthens penalties for violating worker’s rights. All things that have been repeatedly undermined in recent years. It is time to again affirm worker’s right to organize, and provide legal mechanisms to ensure that right.

And, given the right to organize, union workers produce economic benefits for the rest of society.

Mohandas Gandhi once warned of the seven deadly social sins. One of those was, “wealth without work.” That has increasingly been the story of our economy in recent years. Rather than a society and an economic system built on the solid rock of productive work, we have built on the sand of speculation in mortgages and other financial instruments. Too many people at the top of the pyramid have gotten far too wealthy without productive work.

That resulted in a rapid and massive increase in American inequality. In 2005, before the current economic collapse, the top 1 percent of households received 70 times as much in average after-tax income as the bottom one-fifth of households, and more than 21 times that of the middle one-fifth of households.<sup>4</sup>

The inequality is even starker in terms of CEOs and workers. “In 1965, U.S. CEOs at major companies made 24 times a worker’s pay-by 2004, CEOs earned 431 times the pay of an average worker. From 1995 to 2005, average CEO pay increased five times faster than that of average workers. While CEO pay continues to increase at rates far exceeding inflation, wages for the vast majority of American workers have failed to keep up with rising prices. In fact, real wages for the 90 percent of Americans who earn under \$92,000 a year have actually fallen since 2001.”<sup>5</sup>

It is now not surprising that the economy has collapsed. We need to return to an economy that is driven by work. An economy where better wages and benefits can help lift low-income workers out of poverty, and sustain them in the middle class. A recent study showed that “unionization raises the wages of the typical low-wage worker (one in the 10th percentile) by 20.6 percent, compared to 13.7 percent for the typical worker (one in the 50th percentile), and 6.1 percent for the typical high-wage worker (one in the 90th percentile).”<sup>6</sup> Therefore unionization is a critical tool in the fight against poverty.

Unions don’t only help the individual worker. A productive workforce with good wages and benefits helps the entire economy by contributing to the common good.

<sup>1</sup> *Economic Justice for All*, National Conference of Catholic Bishops, November 1986, p. v.

<sup>2</sup> *Economic Justice for All*, p. 53.

<sup>3</sup> Union Members Summary, Bureau of Labor Statistics, January 28, 2009, <http://www.bls.gov/news.release/union2.nro.htm>.

<sup>4</sup> *Income Inequality Hits Record Levels*, New Cbo Data Show, Center on Budget and Policy Priorities, December 14, 2007, <http://www.cbpp.org/12-14-07inc.htm>.

<sup>5</sup> *Executive Compensation vs. Workers*, Democratic Staff of the Financial Services Committee, October 24, 2006, <http://financialservices.house.gov/ExecCompvsWorkers.html>.

<sup>6</sup> *The Union Wage Advantage for Low-Wage Workers*, John Schmitt, Center for Economic and Policy Research, May 2008, <http://www.cepr.net/index.php/publications/reports/the-union-wage-advantage-for-low-wage-workers/>.

It leads to more people with health insurance, strengthens the tax base of local communities, allows families to buy their own homes and send their kids to college.

Increasingly the church is uniting against poverty across political and theological differences. This growing consensus emerging across the faith community recognizes that one in eight families living below the poverty line tests our faith and civic values. An estimated 9 million additional Americans could fall into the quicksand of poverty due to the current recession and economic crisis. The Employee Free Choice Act represents a critical way to promote the dignity of work and promote the common good.

Senator HARKIN. Thank you. Thank you. Thank you, Reverend Wallis.

Now we'll close with Dr. Layne-Farrar.  
Dr. Farrar.

**STATEMENT OF ANNE LAYNE-FARRAR, Ph.D., DIRECTOR,  
LECG CONSULTING, CHICAGO, IL**

Ms. LAYNE-FARRAR. First I'd like to thank the committee for having me here today.

My study presents an empirical assessment of how the first two provisions of the Employee Free Choice Act can be expected to affect important economic outcomes in the United States. In particular, the analysis quantifies the likely impact of card checks and mandatory contract arbitration on the U.S. unemployment rate and employment rate.

The study finds that if EFCA were passed today, then, for every 3 percentage points EFCA raised union membership this year, we could expect the unemployment rate to increase by roughly 1 percentage point in the following year. For example, if EFCA produces the kinds of results that some of its proponents have suggested, then it will increase union membership by roughly 5 to 10 percentage points within a year of passing. According to the calculations in my study, this would result in an increase in the unemployment rate of around 1.5 to 3 percentage points. These are sizable effects for the U.S. economy.

To put the impact into perspective, consider this January's labor force of around 153 million people with an unemployment rate of 7.6 percent. From this base, a 1.5 to 3 percentage point increase in the unemployment rate would mean a new higher rate of 9.1 to 10.6 percent, and would translate into roughly 1½ to 3½ million jobs lost by January 2010, not counting any other job losses due to the current recession or other factors.

The study also estimates EFCA's likely impact on the employment rate. The employment rate is measured as the ratio of people employed to the total population. Because some people do not count themselves as part of the labor force, such as those who are retired or stay-at-home parents, the unemployment rate and the employment rate are not mirror images of one another. It can, therefore, be important to look at both measures to get a broader picture of the economy.

My study finds that if EFCA were to increase union membership by the amounts its proponents predict—that is, by the 5 to 10 percentage points within a year of passing—then we can expect the employment rate to fall by roughly 1 to 2 percentage points in the following year. Again, to put these figures into perspective, if we start from January's labor statistics, my estimates predict that

U.S. employment would drop by  $\frac{1}{2}$  to  $2\frac{1}{2}$  million jobs by 2010. Again, not counting any losses due to the recession or other factors.

Let me explain briefly how I arrive at these figures. With most legislative proposals, it can be quite difficult to predict the consequences ahead of time, and especially to quantify them. With EFCA, however, we have the benefit of observing the experience in Canada, a country very close to the United States in both culture and industrial composition. The one key difference between the two nations is that in Canada, for most industries, unionization rules are set at the provincial level and not at the Federal level. Canada, therefore, offers a natural experiment for studying the effects of the changes proposed in EFCA. By looking at what actually happened in Canada over a 22-year time span, when provinces switched between card-check rules and secret ballots and several provinces introduced mandatory contract arbitration, then we can obtain a reliable prediction of what would happen in the United States, were EFCA to pass.

Moreover, my study is consistent with the broader empirical academic literature. In particular, other statistical studies have found that higher unemployment is associated with higher rates of unionization. As proponents of EFCA point out, unions tend to increase their members' wages and benefits. We cannot stop the analysis at that point.

Consider, for example, a newly unionized firm in an industry that is earning above-competitive levels; for example, a monopoly or an oligopoly. In this case, higher labor costs may simply just reduce firm earnings so that labor and management share in the profits. I believe this is the scenario that proponents of EFCA have in mind. This scenario is not a good description for many, if not most, industries in the United States today. When firms face competition, especially at a global level, and are earning no more than a competitive return on their investments, then increased labor costs that come with unions cannot simply come out of profits. In this common setting, just as with any person or entity operating under a budget, firms facing higher labor costs will need to make adjustments elsewhere to compensate.

One likely reaction is that firms will use less union labor as its cost increases. This is a straightforward economic matter. As prices go up, quantity demanded tends to go down. Union firms can reduce their head counts by not filling open positions, by failing to replace workers that leave or retire, or nonunion firms may gain larger shares in the marketplace.

Firms may also need to raise prices to consumers to compensate for their higher costs of production. In turn, consumers that face higher prices can be expected to react, as well. Consumers may either reduce their purchases—as things become more expensive, they simply buy less; or, they may turn to cheaper alternatives and substitutes, particularly those offered by firms that do not face increased labor costs.

To the extent that consumers reduce their purchases of U.S. goods, we can expect that effect to re-inforce the unemployment effects that I was discussing earlier. Firms will cut back in the face of shrinking sales.

To conclude, I believe that the quantitative analysis in my study fits well within the empirical economics literature and makes sense within the broader context of economic incentives. In considering whether to pass EFCA, I would urge that both the potential benefits and the costs be considered. A bill that touches so many aspects of the economy is likely to have far-reaching implications, and my analysis suggests that the costs could very well outweigh the benefits.

Thank you very much.

[The prepared statement of Dr. Layne-Farrar follows:]

PREPARED STATEMENT OF ANNE LAYNE-FARRAR, PH.D.

Thank you for the opportunity to present the findings of my empirical analysis of the Employee Free Choice Act. In this statement, I will summarize the findings presented in detail in my study entitled "An Empirical Assessment of the Employee Free Choice Act: The Economic Implications" (referred to hereinafter as "Economic Implications").<sup>1</sup>

Before turning to the empirical findings in "Economic Implications", consider first the provisions contained in Employee Free Choice Act (EFCA). Renowned law and economics scholar, Professor Richard A. Epstein,<sup>2</sup> describes in detail the two primary provisions of EFCA in his manuscript entitled "The Case Against the Employee Free Choice Act," which is due to be published soon by the Hoover Institution of Stanford University. Specifically, Epstein explains the majority sign-up, or "card check" provision in EFCA as follows:

The first proposal would allow either party the option to substitute a card-check system for the current electoral system. To be sure, the EFCA leaves in place the present NLRA provisions that allow unions to proceed by filing a representation petition supported by 30 percent or more of employees in an appropriate bargaining unit and then holding elections. Nonetheless, it seems clear that in virtually all cases the card check will displace the secret ballot. As a matter of current practice, virtually all major unions choose to file representation petitions only after they have accumulated signed authorization cards from well over 50 percent of unit members. They need that cushion because they know from experience that worker defections will take place during the course of any election campaign in which management can present its own case of the tradeoffs, costs and disadvantages of representation. It follows therefore that no rational union would risk the election if they have in their possession authorization cards from just over 50 percent of the members of the unit they seek to represent. As a practical matter however, the EFCA would wholly displace union elections with the new "card check" procedure. No union is likely to file for an election with over 30 but under 50 percent of signed authorization cards in the hopes of improving its position during a campaign. The conversion to the card check system is likely to prove well-nigh complete.

In regards to the second major provision of EFCA, Epstein writes:

EFCA's second major provision would introduce a system of compulsory interest arbitration that leads to a first "contract" of 2 years duration. The term contract is put in quotation marks because an actual agreement that obtains the assent of both parties is not required during the initial period in question. This mandatory first contract, moreover, is not limited to wage matters, but must cover all the issues that are typically hammered out by agreement under the current system.

Although Epstein does not quantify his findings as I have done in my own study of EFCA, based on his analysis he concludes that:

The legislative adoption of these provisions taken together, would radically alter the balance of power between management and labor. Its impact would extend to virtually all businesses, except for some small businesses that fall below the "interstate commerce" thresholds that the NLRB applies in exercise of its own jurisdiction. Even those exemptions have little relevance to any new

<sup>1</sup>A copy of the study for your reference may be found at [www.donotletevanbayhkilljobs.com/resources/study-anne-layne-farrar.pdf](http://www.donotletevanbayhkilljobs.com/resources/study-anne-layne-farrar.pdf).

<sup>2</sup>Richard A. Epstein is the James Parker Hall Distinguished Professor of Law, The University of Chicago; the Peter and Kirsten Bedford Senior Fellow, The Hoover Institution, and a visiting professor at New York University Law School.

firm that hopes to grow over time. The bottom line therefore is that the passage of the EFCA will create huge dislocations in established ways of doing business that will in turn lead to large losses in productivity.

My findings in “Economic Implications” are consistent with Professor Epstein’s conclusion. “Economic Implications” presents an empirical assessment of how the two primary provisions of ECFA can be expected to affect important economic outcomes in the United States. The study finds that while card checks could be expected to increase union membership as hoped by EFCA proponents, EFCA is unlikely to achieve its primary goal of improving social welfare, which should take into account possible consequences not only for union members but for all individuals. In particular, the statistical analysis quantifies the likely impact of card checks and mandatory contract arbitration on the U.S. unemployment and employment rates.

In terms of U.S. unemployment, the quantitative analysis in “Economic Implications” predicts that if EFCA were passed today, then for every 3 percentage points that EFCA raised in union membership this year, we could expect unemployment to increase by roughly 1 percentage point by the following year. Thus, if EFCA were to produce the kinds of results that some of its proponents have claimed, it could be expected to increase union membership by 5–10 percentage points within a year of passing.<sup>3</sup> According to the calculations in the study, then this would result in an increase in the U.S. unemployment rate of around 1.5 to 3 percentage points.

These are sizable effects for the U.S. economy. To put the potential impact into context, consider this January’s labor force of 153 million people, with an unemployment rate of 7.6 percent. From this base, a 1.5 to 3 percentage point increase in the unemployment rate would mean a new higher rate of 9.1 percent to 10.6 percent, which translates into 1.5 to 3.5 million jobs lost by January 2010, not counting any other job losses due to other factors including the current recession.

“Economic Implications” also presents estimates of EFCA’s likely impact on the employment rate. The employment rate is measured as the ratio of employed people to the total population. Because some people do not count themselves in the labor force—such as those persons who are retired or are stay-at-home parents, for example—the unemployment rate and employment rate can differ from one another. It can therefore be instructive to consider both rates to obtain a more complete picture of the likely impact on the economy.

The statistical analysis in “Economic Implications” suggests that if EFCA were to increase union membership by the amounts its proponents predict, that is by 5 to 10 percentage points within a year of enactment, then we can expect the employment rate to fall by around 0.9 to 2.3 percentage points in the following year. Again, to put these figures into perspective, start from January’s labor statistics. From this base, U.S. employment would drop by 550,000 to 2.6 million jobs by 2010, not counting any losses due to the recession or other factors.

It is quite difficult to predict the economic consequences of most legislative proposals before they are enacted, let alone to quantify them as I have done in the above figures. However, with EFCA we have the benefit of observing the experience in Canada, which has experimented with both secret ballot elections and card checks. Canada is very close in both culture and industrial composition to the United States, as the table below demonstrates.

Table 1.—Full-Time Employment by Industry, 2007

	United States (In percent)	Canada (In percent)	Absolute Difference
Services:	81.8	76.3	5.5
Trade .....	15.2	15.9	0.7
Transportation and warehousing .....	3.3	4.9	1.6
Financial activities and leasing .....	6.1	6.3	0.2
Professional, scientific and technical .....	5.8	6.7	0.9
Business, building and other support .....	7.4	4.2	3.2

<sup>3</sup> For example, Sheldon Friedman, research coordinator for the AFL–CIO, stated that EFCA “could spur an increase in U.S. union density of nearly 5 percentage points and perhaps much more.” (See Sheldon Friedman, *The Limits of NLRB Certification and its Alternatives*, Labor and Employment Relations Association: Proceedings of the 58th Annual Meeting 2006, at 190. Available at <http://www.press.uillinois.edu/journals/lera/proceedings2006/friedman.html>.) Carter and Lotke, in a 2007 paper, estimated that EFCA would increase union density by approximately 10 percent. (See Alex Carter and Eric Lotke, *The Employee Free Choice Act Impact on Health Care and Pension Benefits*, Institute for America’s Future, April 2007. Available at [http://www.ourfuture.org/files/z\\_historic/EFCA/UnitedStatesofAmerica.pdf](http://www.ourfuture.org/files/z_historic/EFCA/UnitedStatesofAmerica.pdf).)

Table 1.—Full-Time Employment by Industry, 2007—Continued

	United States (In percent)	Canada (In percent)	Absolute Difference
Educational services .....	2.1	7.0	4.9
Health care and social assistance .....	11.0	10.9	0.1
Information, culture and recreation .....	3.5	4.6	1.1
Accommodation and food services .....	7.2	6.3	0.9
Public admin. and Gov. enterprises .....	15.5	5.1	10.4
Other services .....	4.6	4.3	0.3
Manufacturing .....	10.5	12.1	1.6
Construction .....	5.8	6.7	0.9
Agriculture, Forestry, Fishing, Mining, Utilities .....	1.9	4.8	2.9

With the exception of public administration and government enterprises, Canada and the United States exhibit a very similar composition of labor. Public administration and government enterprises, accounting for 15.5 percent in the United States and 5.1 percent in Canada, include homeland security expenditures in the United States, which rose dramatically in the wake of 9–11, and is the likely driver of the one meaningful discrepancy.

The other key difference between the United States and Canada is a beneficial one that can be used in statistical analysis. For most industries in Canada, union organizational rules are set at the provincial level, not at the Federal level, as they are in the United States. Throughout the early 1970s, all Canadian provinces employed systems of card checks. Starting in 1976, however, several Canadian provinces began to experiment with regimes that required unions to win secret ballot elections, as is commonly practiced today in the United States. The new union rules coincided with provincial elections and were driven largely by changes in the political party in power in a given province rather than by economic factors. British Columbia alone changed its union certification procedure three times in the period 1976–2008: beginning with card checks from 1976–1984, moving to mandatory elections in 1984–1993, then back to card checks from 1993–2001, and finally settling on a private ballot voting system in 2001. As of 2006, half of the Canadian provinces rely on mandatory voting regimes, accounting for roughly 68 percent of the Canadian labor force, while the remaining half of the provinces covering 32 percent of the labor force continue to rely on card check systems. During this same time period, many of the provinces also introduced mandatory first contract arbitration. Thus, a number of Canadian provinces have experimented with the very changes to union organizing that are proposed in EFCA.

As a result of the provincial level changes made over time, Canada offers a natural experiment for studying and quantifying the effects of the changes proposed in EFCA. By assessing the actual experience in Canada over a 22-year time span as unionization rules changed in a number of provinces, the regression analysis in “Economic Implications” provides a reliable prediction of what would likely happen in the United States if EFCA were to become law. The regressions that provide those predictions were tested extensively, both with different estimation procedures (i.e., Ordinary Least Squares, Fixed Effects, and Random Effects) and with different model specifications (i.e., changing the variables included in the data set). The estimates are remarkably stable and consistently statically significant across the different estimations and specifications.

In addition to being robust, the results presented in “Economic Implications” are also consistent with the broader empirical academic literature. In particular, other statistical studies have found that higher unemployment is associated with higher rates of unionization.

These effects also make sense within a larger framework of economic theory. As the proponents of EFCA have pointed out, unions typically increase their members’ wages and benefits. As union labor becomes more expensive for firms, it is natural that these firms will make changes in their production, just as they would for any other increase in costs.

First consider firms with market power. If a firm in a newly unionized industry is earning a supra-competitive level of profits, as typically would be the case with a monopoly or an oligopoly firm, then the firm may pay for the higher labor costs stemming from unionization out of company profits, without jeopardizing its return on investment. In this case, labor and management will share the profits. This appears to be the scenario that EFCA proponents have in mind.

However, because most U.S. firms face competition from both home and across the globe, and are earning no more than a competitive return on their investments, then any increased labor costs that may come with passage of legislation such as EFCA cannot be paid for by reducing profits; doing so would likely lead to those firms failing to earn an adequate return on their investments. Instead, in a competitive setting, firms facing higher labor costs will need to make adjustments elsewhere to compensate, just as any entity operating under a budget.

Firms facing higher costs have several options. One is to reduce the use of the now more expensive input. Thus, firms will likely use less union labor as its cost increases. This effect is not to be confused with the illegal firing of union employees. Rather, it is a straight forward matter of economics: as prices go up, demand tends to go down. Thus, firms may choose not to fill empty positions, not to replace workers resigning or retiring, and/or not to create new positions or expand production.

Another alternative is to raise prices. In competitive markets, well established economic theory dictates that price (P) equals marginal cost (MC). Wages are clearly a marginal cost. Thus, as marginal production costs go up because union labor is more expensive, firms in competitive industries will likely raise prices to consumers. Higher consumer prices would bring other consequences. Most importantly, consumers can be expected to react to the higher prices, just as the firms did before them. While union members may be earning higher wages, price increases would act to erode union members' pay increases. Moreover, non-union workers are unlikely to be earning higher wages. When faced with higher prices for the goods and services they purchase, many consumers may simply buy less. Goods and services are more expensive, so to stay within their budget constraints consumers may reduce their overall buying. Or, consumers may choose to buy cheaper alternatives offered by firms that do not face increased labor costs, in particular international firms.

To the extent that consumers reduce their purchases of U.S. goods, that reduction will likely re-inforce any unemployment effects. Non-union firms, particularly international firms, will likely gain larger shares in the marketplace at the expense of domestic firms facing higher union labor costs. In the face of shrinking sales, domestic firms can be expected to make further cuts in their headcounts, again increasing unemployment and reducing job creation.

In light of my quantitative analysis and how it fits within the broader context of economic incentives, the costs entailed in the provisions of EFCA appear to be substantial. In considering whether to pass EFCA, I would urge that Congress's analysis not stop with potential benefits to some workers in the form of higher wages and increased benefits promised by unions. As with all legislation, but especially for such an important area as labor relations and management, it is essential that both the potential benefits *and* costs be considered. A bill that touches so many aspects of the economy is sure to have far-reaching repercussions. There is no coherent theoretical argument that explains how higher costs, greater legal uncertainty and expanded government intervention entailed in EFCA would improve social welfare for *all* workers. The analysis presented in "Economic Implications" suggests that the costs of passing the Employee Free Choice Act could very well outweigh the benefits.

Senator HARKIN. Thank you very much, Dr. Layne-Farrar.

And now we'll open for a first round of questions with 5 minutes each.

Dr. Voos, you said something that got my attention, among other things. You said, "A less conflict-driven manner of forming unions is desirable." What was that? "A less conflict-driven manner."

Ms. VOOS. Yes. The current process of forming unions through the National Labor Relations Board, supervised elections, is one that is very time-consuming and often has high costs, in terms of the workplace. An extensive campaign is typical. Workers are called in one-on-one to speak to supervisors about their beliefs. There are speeches by management in which employees hear about why it's a bad idea to form a union. It's a very conflictual process and a very lengthy process, and it tends to get the labor-management relationship off to a rocky start in those situations in which employees do go ahead and vote in a majority for representation.

In fact, in a very recent study in the last issue in the Industrial and Labor Relations Review, it was reported that, of all the work-

ers who start this process by filing for an election, only one in seven situations result in a contract after 1 year. It's really a mine field. And that's important, because economists have found that, where unions and management have a good relationship, they do get major productivity gains. That's partly because labor and management need to work together and need to be constructive. Where they don't have a good relationship, that's not the result. Our current process is extremely conflict-laden, and that's something that I believe of the Employee Free Choice Act, because it promises a much speedier process, because studies of voluntary recognitions under majority sign-up agreements that we have in the United States, both in the public and the private sector, have found that it leads to a much more constructive relationship.

Senator HARKIN. Well, I think that's very profound, I think, the fact that we have to look at a less-conflict-driven manner.

I guess the one thing that just keeps coming to my mind all the time—and I ask this of the panel—is, Why do so many CEOs, managers, owners object so strongly to their workers belonging to a union? I've been many places where management, CEOs, don't dislike the people that work for them, workers don't dislike the people that run the company. Why is it that they're so opposed to people joining a union and bargaining with them collectively? What's behind all this? I have a hard time grappling with this, why so many CEOs and managers are so opposed to workers forming a union. I know a lot of these people, I don't know why they're so opposed to it. What do you think? Why are they so opposed?

Ms. VOOS. Well, Senator, I also have trouble answering that question. My father actually was a small businessman who dealt with a union that his father, my grandfather, voluntarily recognized, and he never had any problems at all. I don't know if it's—how much it's ideological, how much it is a matter of fear-mongering by associations that want to sell their anti-union services to employers by thinking that somehow this is Armageddon and we're going to have terrible consequences.

It seems ludicrous to me.

Senator HARKIN. Which, as we know, is over a \$300-million-a-year business right now.

Mr. Henderson, why is this?

Mr. HENDERSON. Well, Senator, I think you've asked a central question. Let me begin by saying I do not assume that most employers have personal hostility toward their workers.

Senator HARKIN. Right.

Mr. HENDERSON. Certainly, nor do I assume workers view their employers with hostility.

In companies that we have studied at the Leadership Conference in examining the implications of this bill, we have often seen bottom-line financial considerations coming into play that distort the employer-employee relationship in ways that work to the disadvantage of unprotected workers.

I'll give you an example. Senator Alexander mentioned the importance of the secret ballot, and he cited a small community in his own State in which Abraham Lincoln, during the Civil War, would have gotten support. I don't doubt that, by any means. I look at a company like FedEx, and I look at FedEx Ground. They are two

companies with a very different business model. FedEx has workers who are full-time employees. FedEx Ground characterizes workers who do similar functions as independent contractors; and thus, circumvent the full effect of civil rights laws and employment protections. FedEx Ground has been, in fact, cited by the Internal Revenue Service for mischaracterizing workers at FedEx Ground, and, in fact, denying them the protections that the law affords.

With the availability of the Employee Free Choice Act, the ability of workers to assert their rights in meaningful ways would be allowed. It strengthens anti-retaliation efforts that are not available now under the law.

To respond to Senator Harkin's question, I think there are ample examples, in fact, that one can draw on, that doesn't require one to assume mal-motive on the part of employers or workers, but financial considerations come into play that distort the worker-employer relationship in ways that work to the disadvantage of unprotected workers. I think FedEx, for example, is a perfect example of that problem.

Senator HARKIN. My time is up. I want to continue, with Reverend Wallis and Dr. Layne-Farrar, with that same question of, Why do you think there's this opposition? I'll get to it in my next round.

Senator Isakson.

Senator ISAKSON. Well, Senator Harkin, in part, Mr. Henderson, for whom I have the greatest of respect, just answered your question about why companies fear these things. No, with all due respect, sir, I ran a company with 200 employees and 800 independent contractors, and it is not correct that independent contractors are not protected by the laws of the United States of America for discrimination, age discrimination, race discrimination, employment discrimination—all kinds of—it's just categorically an untrue statement.

People who take the risk to run a business and invest their capital or invest debt that they've actually borrowed, put their name on the line, have many decisions to make under the laws of the United States of America on the nature of their business. One of them is whether they're an employee-employer or an independent contractor. There are many things that happen in the United States of America, and many people who have great lives, who would not be able to have them, were it not for the independent-contractor status. And so, we're talking about choice. That is a choice, sir.

I'm not lecturing you, please—I apologize. But, he asked the question. I think it's fair for somebody to give you an exact reason why. Don't make an absolute statement about something that skews the understanding of the issue. That was my only point on that. I'll let you respond, because I was rude to jump on you.

Mr. HENDERSON. No, no, you weren't rude at all, Senator, and I appreciate the opportunity to respond.

I think, if you look at the example that I cited, the example, as between FedEx and FedEx Ground, I didn't cite that FedEx Ground had, in fact, violated the existing law for improperly characterizing its employees as independent contractors; that was the Internal Revenue Service. They, in fact, cited the company for

mischaracterizing individuals who perform the same functions as full-time employees as independent contractors. Now, certainly I would agree that independent contractor status is a respected status under the law that provides some protections for individuals who hold that status legitimately. When the status is used to mischaracterize workers who, in fact, engage in the same full-time employment responsibilities as fully protected workers, then there is a mischaracterization and an improper use of that protection under the law. That's really what I'm citing, sir.

Senator ISAKSON. Well, as one who was visited by the IRS over my independent contractors, I can say that IRS vigilantly, as they should, audits independent contractor operations under their 10-point test to make sure those people who are operating as independent contractors are not ordered as an employee would do—or operate as an employee would do, under an employee-employer relationship.

And, second, it's to the benefit—every time you convert somebody from an independent contractor to an employee, then you've got withholding on FICA and all the other things that go into the system. The government is right to advocate that way, but our laws are right to allow the choice of those entrepreneurs, based on the nature of the business that they're in. The other thing is, I don't think anybody is more or less subject to laws against discrimination, whether they're an employee or whether they're an independent contractor.

Mr. HENDERSON. You admit, sir, that there is a difficulty and an imbalance between employers and employees and their ability to assert their rights in meaningful ways. If, in fact, employees had a level playing field that provided them a full panoply of protection under Title VII of the Civil Rights Act, or under our labor laws, you may, in fact, be correct in characterizing the way in which employees and independent contractors would function in the real world. Because, sir, you were a businessman, I'm sure you can cite ample examples in which employers have used and misused characterization of independent contractors to assert rights which have—or, rather, protections which, in fact, are illegitimate under existing law. That's, I think, what the Federal courts, in addition to the Internal Revenue Service, have found with the operation of FedEx Ground. I simply cite that as one example, sir, not to indict an entire community.

Senator ISAKSON. Therein, you make my case. You cannot indict entrepreneurs, businesses and owners, because it is the competition amongst them that drives compensation for workers. Sometimes some of the remarks today have done exactly that, and I think that's both unfair and I think it's unjust.

My last question, to Dr. Voos, What's the definition of "real wages"?

Ms. VOOS. Real wages are wages that have been corrected for inflation, and usually the Consumer Price Index is used to make that correction.

Senator ISAKSON. It's the wage compensation to the worker. Is that correct?

Ms. VOOS. It is the wage, in terms of what that money will buy. It's used to compare wages over time.

Senator ISAKSON. OK. When you see disparities between productivity and wages, is it not true that part of the difference in that is a combination of two things—first, since 1974 the growth in benefits paid over and above wages, which are not reflected in the definition of real wage, and, second, the advent of the computer, in terms of productivity of American industry?

Ms. VOOS. You're asking two things, so let me—

Senator ISAKSON. OK.

Ms. VOOS [continuing]. Address them separately.

You are correct that total compensation includes not only wages, in terms of money payments, but also the value of fringe benefits and the increasing cost of health insurance, in particular, can be factored in, or could be factored in. It is not, in some time series. Even when that is added in, total compensation has not kept up with increases—in real terms, with increases in productivity.

There are various sources of the increases in productivity. I think you mentioned computers; that is one source.

Senator ISAKSON. Thank you. I'm sorry, I went over, Mr. Chairman.

Senator HARKIN. No, that's all right. Thank you very much, Senator.

Senator Murray.

#### STATEMENT OF SENATOR MURRAY

Senator MURRAY. Mr. Chairman, thank you very much for holding this really important hearing to talk about the importance of a strong middle class in rebuilding this economy. I want to thank all the witnesses who are here with us today.

I think we all know that we're facing a very serious economic challenge, more than we've seen in decades. Last week we learned that we lost more than 4 million jobs since the recession began in late 2007, and those numbers are reaching alarming levels. We have a lot of middle-class families out there who are just struggling to get by and wondering how they're going to keep their home and send their kids to school. Businesses are cutting back, closing their doors. We're just seeing this vicious economic cycle right now, and I don't think we're going to recover until we have the money and the confidence to start spending again. I'm very glad we're holding this hearing.

Now, I think it's important that we find a balance to make sure that our middle-class families can continue to share in the long-term prosperity of this country. There's been a debate recently about the burden of employee pay and benefits on U.S. manufacturing and other industry, and how it affects competitiveness in the market. This recession has obviously impacted those industries quite hard, but the top percentage of earners benefited disproportionately more than the workers who helped create the Nation's wealth. I think it's important to note that in 1965, U.S. CEOs in major companies earned 24 times more than the typical worker, and that number surged to 275 times more in 2007.

I wonder, Dr. Voos, maybe if you could start by saying what role, if any, does a living family wage for American workers play in this current economic downturn.

Ms. VOOS. Thank you for asking that question. It is extremely important that we restore purchasing power, the capacity of people to buy. That's, of course, what our stimulus bill did to try to get the economy going again, because business will invest when they know that they will be able to sell what they produce, the goods and services that they produce. Of course, the middle class needs to be assured that it will have that purchasing power. In fact, that's one of the sources of our problems, and that's one of the macroeconomic reasons why it is so important to raise wages in this country.

Senator MURRAY. OK. While I have you, Dr. Voos, I came in at the end of the comments, but I would like you to respond to Dr. Layne-Farrar's claim that for every 3 percentage points of the Employee Free Choice Act union membership a year, unemployment could be expected to increase by roughly 1 percentage point the following year. If you could respond and tell me if you think that's accurate.

Ms. VOOS. I believe that's implausible, for a number of reasons. There have been numerous studies, some of them by very reputed organizations. For example, the OECD, in its employment outlook in 2006, looked at this very issue of whether having higher unionization led to higher unemployment across a variety of industrial nations, and they found no relationship whatsoever. Professor Richard Freeman has looked at this question using U.S. data rather than Canadian data, and his study has many similarities to her study, except, of course, it has 50 States rather than a small number of provinces. It, similarly, controls for State effects rather than provincial effects. It found a small or no effect, no significant effects across States in terms of unemployment.

I don't really know the details of her study well enough to really understand why she found such a very large effect in Canada in this time period, but I find it just implausible, in terms of its size; that is, it is a huge effect, in terms of what we would expect, given the economic things she was talking about, you know, things like, well, where you have higher wages, business invests more, so you have a slightly smaller number of workers. Yes, that's true, but then the business also becomes more competitive, and it allows employers to save jobs, often, when that takes into effect. I don't know the details of her study.

I do notice that she did not use direct evidence on card check. In fact, if you look at footnote No. 53, you'll notice that she does not use data on whether or not they had first-contract arbitration or whether or not there had—one method of unionization or another—because she was not able to use that data; she used, really, the rate of unionization in the province in the previous year. I don't see that this is a direct test of the Employee Free Choice Act and its provisions.

Senator MURRAY. I appreciate that.

My time is up,

[The prepared statement of Senator Murray follows:]

## PREPARED STATEMENT OF SENATOR MURRAY

Thank you, Mr. Chairman, for calling this important hearing to discuss the importance of a strong middle class in rebuilding our economy. Thank you, too, to the witness for being here today.

Our Nation is facing an unprecedented economic challenge. Last week, we learned that our economy has shed more than 4 million jobs since the recession began in late 2007. The unemployment rate continues to rise, and the number of people filing for unemployment insurance each week has reached alarming levels.

Many working families are struggling to hang on to their middle class status, paying their mortgages, putting food on the table, or keeping the lights on. Many other workers, primarily low-skill and vulnerable workers, don't think they have any opportunity to access the middle class. Everyone is afraid and cutting back on their spending and creating more economic distress as cars go unsold and retail goods stay on the shelves.

Employers in every industry are facing the tough decisions about whether they can keep their doors open. Others question whether they can find the confidence to not only hold on but to create jobs and improve their business when the economic upswing inevitably occurs.

Rebuilding our economy is a big job. We recognize that it will take some time for the additional funding Congress provided under the American Recovery and Reintegration Act to maintain jobs and to create new ones in emerging and viable industries. As we restore and grow jobs, we can improve consumer confidence to spend for the future. It will take all of us to make it happen.

To be successful, our labor market should respond to the needs of both workers and business. Unfortunately, many workers haven't reaped their fair share of the prosperity they help create in the workplaces of America for some time.

While corporate profits grew and the gap between the have and the have not's widened, working families struggled to hang onto the middle class. The middle class has been shrinking, with families headed by workers with post-secondary education and credentials having a better chance of staying in. Those families headed by high school graduates or dropouts likely will fall further behind. (Uhalde and Strohl, "America in the Global Economy", 2006.)

The recent and rapid elimination of jobs linked to business decisions to reduce production or services, make more use of technology, or to outsource work have increased uncertainty for workers and employers alike.

Today, more than ever, we need public policies that support economic growth and practices in an environment of shared responsibility and prosperity. These policies encourage more and better use of skilled workers and lead to a robust middle class. Unions are one of the most effective tools workers have for accessing and staying in the middle class.

Unions provide workers with a collective voice to advocate with their employer. They empower their members to access better benefits and provide a better life for themselves and their families.

Their efforts extend beyond just their members. Union presence helps non-member workers in their industry by creating competitive benefits and better workplaces.

Union wages, at almost 30 percent more than non-union wages, can provide financial stability; they can help rebuild the confidence of workers and families to spend money and rally the Nation's economy.

Progressive employment policies such as the minimum wage, the 8-hour work day, the 40-hour work week, employer-provided health care, and pension plans emerged from the labor movement and have become the standard in today's workplace.

Unfortunately, in too many of today's workplaces, workers who try to exercise their legal rights to join a union are blocked by an unbalanced system that can trap them in unacceptable working conditions.

Some unscrupulous employers silence employees who try to join a union to better their economic situation for their families, and that's not fair.

I've heard concerns from both camps about this situation, and about the bill under consideration by Congress, the Employee Free Choice Act. While I respect these differing views, I think it's clear that current process is unbalanced and doesn't give workers a fair shot at choosing to form a union and how to go about doing so.

It's time to change the way we look at this issue. It's time that our economy, and this process, worked for everyone again. We can't afford to pit workers and employer against one another. To rebuild, we need everyone and every tool at hand. This includes unions.

I look forward to hearing from our witnesses about the shared benefit unions have on our economy and our communities.

Senator HARKIN. Thank you very much.

Senator Alexander.

Senator ALEXANDER. Thank you, Mr. Chairman.

Thanks, to the witnesses, for your testimony, for being here today.

On a couple of occasions, a couple have said that employees would still have a secret ballot. Some would and some wouldn't. I mean, if there were 100 employees, and 51 decided that they wanted to organize by signing a card, and 49 didn't, those 49 wouldn't have had an opportunity to have a secret ballot in the union election. I think it's more accurate to call this the Employee No Choice Act, because those employees would not have a secret ballot. This act also would impose mandatory binding arbitration when employers and unions don't come to an agreement on the first contract within 90 days.

We've heard about studies and disputes about them. Let me offer a real-life example. Dr. Farrar, let me ask you if you would comment in terms of your study, if you think it has any relevance.

All of us are concerned about plants that make cars and trucks in the United States today. We have some teetering on bankruptcy who are based in Detroit. I was Governor of Tennessee in the 1980s when Nissan came to Tennessee with its manufacturing plant. It hired Ford executives from Detroit to run it, and it hired Tennesseans to work at it. There might have been a handful of Japanese among several thousand employees. A few years later, when

General Motors was deciding where to put its Saturn plant, I suggested to the president, Roger Smith, "Why don't you put your plant right next to your Japanese competitor and tell your union and your management, 'if they can do it, you can do it.'"

We have a right-to-work State, so most of the talk here today has been that everything would just be great if we had more unions. In our State, we believe that that's the employee's choice, and it might be better for some, and it might not be better for others. That's their choice.

We've now had a number of years of history since the late 1980s with those two plants, 40 miles apart. No. 1, everyone is a UAW; that's Saturn—and at the Nissan plant the employees have decided not to organize. The Saturn plant's never made a profit, unfortunately. The Saturn I now drive is made in Kansas City, not at the Saturn plant; they make Chevrolets there. And General Motors is teetering on bankruptcy. Forty miles away is the Nissan plant, which a number of times has been named the most productive and efficient plant in North America. Those two plants, together, have drawn to our State thousands of jobs, in our right-to-work State. One-third of our manufacturing jobs are now auto jobs.

Based upon that history, what do you think the impact of the passage of this act would be on the automotive industry in Tennessee?

Let me add one more fact, if I may. During the 1980s, our State, which was the third-poorest State in America, became the fastest-growing State in family incomes, which was our goal—not to have low incomes, but to have higher incomes. The way we did that was by allowing employees to have that sort of choice. We had it, side by side. What do you think would happen to that environment, that source of middle-class incomes, if this law were to pass?

Ms. LAYNE-FARRAR. I would be concerned that that kind of choice would be taken away by passing EFCA, because, thinking about the incentives of union organizers, if they are able to collect a majority through a secret card-check process, there would be very little incentive, then, to risk that outcome—the positive outcome of gaining a union by holding election. It seems to me that choice would, in fact, be reduced and that that would be detrimental.

I think the comparison that you make between the two plants is an important one, because management—at least in my view, it's not about anti-union or holding workers down, but it's about a more cooperative relationship. My concern with secret card-check collection is that that reduces the amount of communication between the two sides. There would be less talk; it would be more a one-sided process. As we heard, I believe, in the beginning statements, if only one side is able to present its case, that is not fair. With a secret card-check collection, where there isn't a dialogue between the union organizers and the management, there would be less communication, and therefore, a more acrimonious environment, less fairness than—and certainly less choice for the workers who do not want to be represented by a worker, but would rather work for—would rather have a choice there, and perhaps work for a more productive, more profitable, more commercially successful firm, as Nissan has been in your State.

Senator ALEXANDER. Thank you.

Thank you, Mr. Chairman.

Senator HARKIN. Thank you, Senator Alexander.

Senator Sanders.

Senator SANDERS. Thank you, Mr. Chairman.

Reverend Wallis, I'm going to direct my questions to the economist. I wanted to thank you very much for the statement that you made. I share with you the belief that growing inequality in this country is not just an economic issue, it is a moral issue. We have to deal with the reality that we have some people on top who have incredible wealth, but, in the last few years, we've seen a growth of billionaires, and, at the same time, we have the highest rate of childhood poverty of any major country on Earth. This is a moral issue that we have got to deal with, and I applaud you very much for making the statement that you have made.

Let me go to Dr. Voos and ask her this. We have heard the statement today that the legislation that we are debating is a "radical act." Isn't it true that dozens of countries around this planet, including major countries, major industrialized countries, like Canada, Denmark, Finland, France, Germany, Ireland, Japan, Spain, Switzerland, Sweden, and many, many others—United Kingdom—have laws on the books which make it much easier than in the case of the United States for workers who want to join a union? Is this, in fact, a radical act, or is it bringing us a little bit closer to what many of our industrial competitors, in fact, have on the books for law?

Ms. VOOS. Senator Sanders, you are correct that it is often, in other nations, easier to join a union or to form a union, and that there is often less employer opposition to that than the United States.

It's also not a radical act, in terms of American history. Before 1947, it was very common for employees to join a union, and then to have the NLRB notice that a majority had indeed joined. You can join a church in this country, you can pull out your credit card and join an organization to represent your interests, you can join many things.

Senator SANDERS. In other words, we've done it before, other countries around the world are doing it, and, really, this is not some kind of new and radical concept.

Ms. VOOS. May I add one thing?

Senator SANDERS. Yes, please.

Ms. VOOS. I work for the State of New Jersey. The State of New Jersey and many other States have recently said that this is a good way to have organizing in the public sector, and they have found that it works very well.

Similarly, interest arbitration has been widely used in the public sector.

Senator SANDERS. Let me jump in and ask Mr. Henderson a question.

Mr. Henderson, today if an employee is engaged in union-organizing efforts, that employee has a one-in-five chance of getting fired. Today, half of all employers threaten to close or relocate their business if workers elect to form a union. Today, when workers become interested in forming unions, 91 percent of private-sector employers force employees to attend closed-door meetings or to hear

anti-union propaganda, 80 percent require supervisors to attend training sessions on attacking unions. We heard earlier about the huge amount of money that these anti-union consultants and lawyers are making. How will EFCA move to change that unfair situation?

Mr. HENDERSON. Senator Sanders, as you correctly note, this imbalance between employers and workers, and the tactics that can be used by employers—not all of whom use these tactics, but certainly many do, in an attempt to avoid the formation of unions—tells us that something more than the existing regime, which has been under-enforced both by the National Labor Relations Board and the combination of ineffective civil rights laws regarding workplace protection, require some additional element to try to level the playing field. When employers use retaliatory efforts either to preempt the formation of unions by literally firing employees who are attempting to assert what we believe should be a fundamental civil and human right, it cries out for some kind of effort by Congress to address the issue without, obviously, disrupting the economy in a way that would work to the detriment of all workers.

No one is suggesting here that we impose burdens on employers that would make them inherently unproductive. Obviously, that's not in the interest of workers, and, as you correctly cited, other countries have shown that you can have a compatible system that respects workers, respects their protection, and nonetheless, still provides an opportunity for economic growth. That's, I think, what we need now.

It's especially problematic for workers who have historically been marginalized, because, as America has moved toward becoming a more perfect union, we have adopted protections in the workplace that have helped to protect African-Americans, women, Latinos and others. That, we think here, is an important step. The anti-retaliation provisions of the Employee Free Choice Act are a significant step in the right direction. Providing a complementary system to the existing NLRB mechanisms for determining a union is, in our view, a reasonable, modest approach to trying to level the playing field.

Senator SANDERS. Thank you very much.

Thank you, Mr. Chairman.

Senator HARKIN. Senator Casey.

Senator CASEY. Thank you, Mr. Chairman. I appreciate you presiding over this hearing. It's an important hearing for the country and for the economy.

I wanted to make one point before I address our panel about the act and about some of the ways that the act has been represented, or the impacts of the act has been represented, in the argument.

About this question of secret ballot. Sounds really good, doesn't it? Really American? When we think of a secret ballot, we think of a democratic process.

Here's the claim. The claim is, secret ballot elections are democratic and should be the only way employees can choose a union. Right? That's the charge. What doesn't get said—and we have to keep saying, and we're going to keep saying it over and over again, until people hear it, and sometimes you have to say it a hundred times—this act does not abolish the secret ballot election process.

That process is still available. The bill gives workers—not employers, workers—the choice whether to use the National Labor Relations Board election process—that’s one choice—or majority sign-up.

Now, let’s talk about the election process. When we use the word “election” in America, it has all kinds of connotations, because it’s part of our history. It may sound democratic when used in this context. An NLRB election is nothing like the public elections that we’re used to in America. So, these terms are very important.

The big difference between the way we elect people in America and this kind of election is that one side has all the power. Let’s think about it logically. Who do you think has the power in this relationship? There’s only one side that controls the workers’ paychecks, controls their livelihood, has unlimited access to workers, and finally, has the potential—and sometimes the potential becomes the reality—not in every case—but the potential to intimidate and coerce workers with impunity. That one side is the employer. That’s what this legislation seeks to do, to restore some of that balance to that equation.

Let me move on to questions. First of all, we want to thank the entire panel for being here today and for your testimony. We have limited—I’ve got about a little more than 2 minutes.

Doctor, I wanted to have you very briefly, if you could, review or summarize again what’s set forth in your testimony, which is the long-run impact on American competitiveness. Because we keep hearing this line that somehow an increase in the ability of workers to organize and form a union is somehow anticompetitive or bad for business or bad for fill-in-the-blank. I wanted to have you address that again.

Ms. VOOS. Thank you for the opportunity.

There’s this general idea that somehow we can be competitive if we have lower wages. Actually, that’s not the basis for American competitiveness in this global economy. We’re never going to be a low-wage economy. We have wages that are actually lower already than many other industrialized economies—17th, according to the Bureau of Labor Statistics. There are 16, mostly Western European but other advanced, economies that have higher wages for their manufacturing workers than we have. Yet, we’re less competitive than they are. They’re economies that also have much higher rates of unionization and much more equal income distributions than ours.

How can we be competitive? Well, we can be competitive with high productivity, high quality, high innovation. In fact, we have high productivity; we’re second, internationally, in terms of productivity, according to our government.

Unions can increase productivity, but they have been found to do so best when they work together with management. That’s why it’s so important that labor and management not start out by fighting, not by having a big, long campaign, which often gets very hostile and difficult, over whether or not a union’s going to be there, but, rather, start out with the notion that, “OK, if the workers want it, fine. Hey, we’re going to negotiate an agreement. If we don’t come to an agreement and really we are encouraging labor and management to come to an agreement—if we don’t, then there’s some other

process.” We don’t have to have a strike to get the first contract, we have another process, one we’ve used in the public sector in the United States for a long time, one that does not involve government bureaucrats, one that involves private arbitrators selected by the parties, with management helping doing the selection so you get someone independent and fair to set that contract for a period of time. Right? I think that possibility would really bring labor and management to an agreement, get everything off to a better start, and make us more competitive.

Senator CASEY. Thank you. I’m over time. I just want to read one sentence, with your indulgence, Mr. Chairman, in Mr. Henderson’s testimony.

“In 2006, median earnings for women in unions was 31 percent higher than for nonunion women, 36 percent greater for unionized African-Americans, 8 percent more for Asian Americans, and 46 percent more for Latinos.”

I appreciate you putting that in your testimony. I wish I could spend more time asking you about it.

Thank you.

Senator HARKIN. Thank you, Senator Casey.

Senator Hagan.

#### STATEMENT OF SENATOR HAGAN

Senator HAGAN. Thank you, Mr. Chairman, for holding this hearing. I want to thank all the witnesses for, certainly, taking your time to be here today. I know that the Employee Free Choice Act is one of the most hotly debated issues facing Congress today, and I really appreciate the fact that you’re spending your time here to help flesh out some of these very important issues.

I think a lot of the questions have been asked, but I did want to ask Dr. Voos—one of the things I hear from people who are concerned about the Employee Free Choice Act is that the increased unionization will cause some businesses to shut their doors. Does it necessarily mean a cost increase for businesses if their employees form a union? How frequent is that, that the formation of a union would be the catalyst for a business to perhaps cease their operations?

Ms. VOOS. There have been economists who have studied this very question, and they have found very few businesses close. There’s no higher rate of business failure among unionized firms than among nonunion firms.

I think this concern is often expressed by small business persons, and I understand that, and I do, in my paper, address the situation of small business.

What we find with small business is that often the employer community can benefit when a union organizes in the area and organizes the various small businesses, because it can provide a source of training, it can provide an institution for providing health insurance, pensions, and other benefits. It can stabilize competition. What’s really important there is that if the unionization happens, it happens across a number of firms so that it’s not just one firm and so that the entire community gradually changes and raises its standards.

Unions typically do not come in and negotiate huge contracts right away. That's a misconception that's common. They commonly come in and work with the business to raise standards slowly over time, because they're concerned that the business survive and provide jobs for the employees.

Senator HAGAN. You addressed this to Senator Casey's question somewhat, but is it possible that increased productivity and decreased turnover could balance out increased cost of paying salaries and wages?

Ms. VOOS. Yes, Senator, that is correct. Most economists have found that there is lower turnover and lower turnover cost and higher productivity, on average, with union employees. It definitely counteracts part of the cost entries. Probably not in entirety.

Senator HAGAN. Mr. Henderson, following up on Senator Casey's last statement when he read that sentence, you've testified about the difference that union membership creates for female workers. I note that the Center for Economic and Policy Research study from last December 2008 showed some similar findings. Why do you think that the union membership is beneficial to women, in particular?

Mr. HENDERSON. Well, I actually think union membership, Senator—and thanks for the question—is really beneficial to all workers, not simply women or workers of color. Essentially, it provides a counterbalance to the imbalance that exists between employers and workers, where employers have many of the advantages and opportunities that can collectively result in intimidating workers to deny them the right, the ability, to assert what should be a fundamental right.

Certainly, women have had to literally fight their way into the workforce in meaningful ways. They've done so through their own tenacity, but also, obviously, with the existence of laws, that have been enacted over the last 40 to 50 years, that have helped to provide a more equal playing field. Yet, even with those laws on the books, we still find a fundamental imbalance between workers—women workers and other workers. Women earn substantially less than male workers—in many instances, even doing the same job.

This Congress recently passed a bill that restored the right of a worker who faced discrimination in the workplace. It was named after Lilly Ledbetter, the great employee of the Goodyear Tire and Rubber Company. Her story is emblematic of how women struggle to assert their rights in the workplace, and why they need the kinds of protections that the Employee Free Choice Act would provide.

Senator HAGAN. It is certainly one of my goals that someday we will not have to talk about disparities in women's pay, and that there won't be any. I think that, with this economic recession that we're in right now, it is imperative that we do what we can to help the middle class in this country.

Thank you, Mr. Chairman.

Senator HARKIN. Thank you, Senator Hagan.

Senator Merkley.

Senator MERKLEY. Thank you, Mr. Chair. I appreciated the chart that you presented at the beginning of your comments that showed the great divergence in terms of rising worker salaries versus pro-

ductivity, and how productivity has increased dramatically during a period in which workers' compensation has been flat.

How important is this act in helping to restore a connection between workers' compensation and productivity in our national economy?

Dr. Voos, I'd invite you to answer, and anyone else who would like to comment.

Ms. VOOS. The title of this hearing is about empowering the middle class. When people form together into a labor organization, they are able to sit down and discuss their wages and their benefits with their employer. Where they're not getting a fair share of the value that they produce, they're able to get a different deal, as they are together, because, as one of my other colleagues stated, that levels the playing field. The individual worker can very rarely have the same kind of weight in those negotiations as a group of employees can. So, I would agree that that will help narrow the gap.

Rev. WALLIS. I'd like to respond to that, as well, and perhaps by answering Senator Harkin's earlier issue about why people resist this.

My father worked for Detroit Edison in Detroit. All of the people in our neighborhood were veterans of World War II. They all came home and got FHA houses, three-bedroom houses. We all lived in the same neighborhood. My father was on the management side at Edison. He was in management, not labor. In fact, he often was given the job of negotiating the contracts because my father was good at producing the cooperative relationship that's been talked about here. He was very good at that. In fact, both sides liked him at the table because he was cooperative. He used to talk to me about this as a kid. He didn't always agree with everything the union asked for, but he would have been incensed at the idea that his CEO should make 431 times what his average worker made, because those workers were in our church. He was also a lay pastor, my dad. We found a way to work together. We were all middle class. We were upper middle class. But, we all found a way to work together.

The issue here is—Senator Casey talks about—we're all for free elections and secret ballots. The issue is, Is there a problem? Is there imbalance? Is there abuse? Is what's going on, on the ground, fair? It's not enough to just say, "Well, we all favor secret ballots." Yes. What's happening on the ground, and what is the result? Do we have a problem here? If we do, how are we going to solve it? This act is trying to redress imbalances, correct abuses, make things more fair.

Now, we're not going to get back to the way things were in my childhood in Detroit, where every kid's dad I knew had a job, that job was enough to pay for a family. One job. They had health insurance. We had an FHA house. If you wanted a job in your dad's company, you got to have it—at Ford, GM, or Chrysler, or Edison. Those days are past. How can the principles, though, of that cooperation be brought forward now?

If we think things are going well and there isn't a problem, we can hide behind words like "secret ballot" and "free election." If things aren't going well and the result is 431 times the pay of average workers, I would say, I think those CEOs ought to be embar-

rassed, quite frankly, and the American people are turning against that kind of inequality. That is the big change in the political climate.

[Applause.]

Senator MERKLEY. Thank you very much, Reverend. You mentioned issues of imbalance. One of the things that has really struck me is the statistic over how often those who are—the workers who are advocating for formation of unions are fired. That certainly does not create a level playing field for preparation, if you will, for an election. How does it come to be that the NLRB, the National Labor Relations Board, has failed to protect workers who are advocating for workers' rights?

Anybody like to tackle that?

Mr. HENDERSON. I mean, Senator, I think you put your finger on a very difficult issue. I'm not a laborer expert, and I can't honestly tell you why the NLRB has not been more effective in asserting or protecting, rather, the rights of workers, but I will say this, if you look at the figures that Senator Casey, rather, Senator Sanders cited about the kinds of abuses that occur, the retaliation that exists—you talk to real workers in jobs who say, simply by trying to assert the right to organize, which is a fundamental right, they are fired, what effect does that have on workers who come behind them who need the jobs that are being provided now by employers, and who are serving at sufferance under a system that obviously is broken? For whatever reason, the evidence would suggest that there is a tremendous problem that requires attention. Now, I hope that the NLRB will be the focus of additional review and analysis. I think, in the interim, the evidence itself suggests that the problem is of sufficient magnitude that something needs to be done to try to level that playing field.

Senator MERKLEY. Thank you.

I'll just close with this comment, which is, as I traveled throughout Oregon last year, everywhere I went workers were frustrated that they were not getting a chance to participate fully in the American dream. They asked me to come here and advocate to change that, to make this Nation work for working Americans again. I think this is an incredibly important bill before us to make that happen.

Thank you.

[Applause.]

Senator HARKIN. Well, thank you all very much. I thank this panel. We'll bring up the second panel. Again, it just seems that we've got to get, as you said, Reverend Wallis, something where we just have more cooperation, let's lower the thermostat on this a little bit. You know, when I read in the paper that the head of the Chamber of Commerce, Mr. Donohue, called this "Armageddon,"—this isn't Armageddon, this is a continuing dialogue about what kind of country we're going to have and how we're going to reach more cooperative agreements. Let's lower the thermostats, the temperature, a little bit on this. Reasonable people, I believe, can come together on this and figure out ways of doing this that will protect the rights of management, but also protect the rights of labor.

I think you put your finger on it. Balance. We need to get the balance back. I don't think we need to use inflammatory type of

language that this is some kind of battle of the ages, and if one side wins something, the other side loses. I don't think this is a zero-sum game whatsoever.

I thank this panel very much. Let's bring up the next panel.

Thank you.

[Applause.]

Senator HARKIN. Deborah Kelly, Kelly Badillo, Sharon Harrison, Larry Getts. I will introduce them while they're coming up.

Deborah Kelly is a lineman's apprentice in Anchorage, AK, a member of the International Brotherhood of Electrical Workers. Ms. Kelly braves the intense weather conditions and rough terrain of Alaska to install and maintain the power lines that keep Anchorage area businesses and households running. Ms. Kelly credits the expert training and safety rules provided by her union with her ability to do a difficult job safely and professionally.

Kelly Badillo, a member of SEIU Local 32BJ, is an elevator operator at the Bank of New York Mellon in Manhattan, working for Contractor American Building Maintenance. Kelly, a Manhattan native born in 1961, grew up in Jersey City, attended St. Mary's Grammar School and Ferris High School. After spending time in Florida, Kelly moved back to New Jersey in the early 1980s to take a job at the World Trade Center and work alongside his father. Kelly was in the lobby of the World Trade Center when the first plane hit on 9/11, but was able to get out alive, unlike 2,750 others. He credits the strong partnership of his union, 32BJ, and his employer, the American Building Maintenance, in helping him get through the months that followed. ABM and 32BJ worked together to provide the displaced workers with grief counseling, financial and health assistance, and positions at other facilities, within months. A proud union member since 1982, he currently serves as a shop steward and lives with his wife in Jersey City with two grown daughters.

Sharon Harrison has worked for AT&T Mobility since 2003. She, her husband, and daughter, live in Pounding Mill, VA, a small community in the southwestern corner of the State. Ms. Harrison was a member of the union bargaining team that just completed negotiations for a new contract covering 20,000 Mobility workers.

Mr. Larry Getts is an employee of the Dana Corporation in Albion, IN.

Welcome. Your statements will all be made a part of the record in their entirety. I'd ask if you could sum it up in 5, 6, or 7 minutes. Ms. Kelly, we'll start with you. Welcome. Please proceed.

**STATEMENT OF DEBORAH KELLY, WORKER, ANCHORAGE, AK**

Ms. KELLY. Mr. Chairman, members of the committee, thank you for the opportunity to testify today on behalf of the 9 million working men and women of the AFL-CIO.

I'm proud to be a member of the International Brotherhood of Electrical Workers. I'm a lineman apprentice currently working for the Chugach Electric Association. We work hard to provide power to Alaska's largest city.

I decided to join the IBEW in high school. What interested me most was the idea of working in a trade, working with my hands, and working to build and create. This interest, coupled with the

possibility of a lifelong career that includes health insurance, a living wage, and the promise of a pension when it comes time to retire, tipped the scales away from a traditional college path.

I graduated high school after 3 years, magna cum laude. My parents pushed me to pursue a more typical path. My older sister had gone to Cal Tech at age 16, and earned an engineering degree. She went on to work at NASA for several years. While I was proud of what she had accomplished, I had already decided this was not for me.

I applied for the IBEW apprenticeship program the day after I turned 18. I fell in love with the challenges of physical work and constant exposure to all types of weather conditions.

The first job I had as an apprentice in the power line program was working 7 days a week, 12 hours a day, sometimes more, building a section of transmission line between Anchorage and the nearby hydroelectric plant. The line stretched across the mountain-side, and the rough terrain presented many additional challenges to what was already heavy and difficult work.

Building a transmission line required heavy equipment, rigging, lifting, and high-tension operations, where any misstep could be fatal. Thanks to my detailed classroom training and the supervision of highly trained and experienced journeymen, we pulled off these operations safely and professionally.

My experiences on the job led me to become a member of my union's safety committee. This allows me the opportunity to give back, influence on-the-job safety, and increase my coworkers' awareness. We're all proud of the skilled work we do under extreme conditions.

Being the only woman in the line trade initially presented its challenges. There was resistance from some employers and a few linemen. None of these issues affected my employment or my ability to do my job, and for this I am in debt to my union. There is always a shop steward or union representative available in case of a major problem. Most importantly, I know I'm never alone. My union provides a safety net to help ensure that I get equal training experience and meaningful—not just on paper—equal opportunity for employment.

I have also benefited greatly from the union-based healthcare plan. Shortly after I turned 18, I was diagnosed with thyroid cancer. I was not yet covered by union insurance and had to rely on my parent's private insurance plan. Unfortunately, their plan was more tilted toward catastrophic coverage. For my necessary surgery, there were large co-pays. I'm grateful that my parents were able and willing to support me financially through the procedure. Since then, though, I've had follow up testing and monitoring, an expense I could not afford if I didn't have the excellent union-provided healthcare.

My union healthcare, for which I was eligible after 4 months of work, covers these follow up tests, which is something most insurance would not have covered, as a pre-existing condition. Without this insurance, I'd be in debt. The yearly tests alone can cost over \$5,000, of which my insurance covers most of the cost. Also, due to the seasonal nature of construction line work, a traditional employer-based system would not have worked.

Thanks to my union, I have a solid career, with a future. I know I can work hard, earn a decent paycheck, and I don't have to worry about an unexpected illness leaving me destitute. I know I will always receive equal pay and equitable treatment from my employers. I know that my pension means that I will not work late into old age to survive, if all else fails. I know I will work with the most highly trained people in the industry, and I will come home safe every night. Because of all these things, I am grateful for the opportunity to be a union member.

Thank you, again, for allowing me to be here today.

[Applause.]

[The prepared statement of Ms. Kelly follows:]

PREPARED STATEMENT OF DEBORAH KELLY

Mr. Chairman, members of the committee, thank you for the opportunity to testify today on behalf of the 9 million working men and women of the AFL-CIO on the important issues facing us every day.

I'm proud to be a member of the International Brotherhood of Electrical Workers (IBEW). I'm an apprentice lineperson for the Chugach Electric Association. We work hard every day to provide power to the Anchorage, AK area.

I made my decision to join the IBEW early in high school. I thought about the traditional options available: a variety of college degrees, resulting in various careers. What intrigued me most was the idea of working in a trade, working with my hands, and working to build and create. This interest, coupled with the possibility of a lifelong career that included health insurance, a living wage, and the promise of a pension when it came time to retire, tipped the scales away from the traditional college path. While in high school, I took a construction electricity class that solidified my focus in the electrical trades. Then, it was on to the tougher stuff: I had to work on convincing my parents that this was the right future for me. I graduated high school after 3 years, magna cum laude. Though I had already told my parents about my plans, and the advantages of a skilled trade, they were still a hard sell. They pushed me to pursue a more typical path like my older sister. She'd gone to Cal Tech at age 16 and earned an engineering degree. She went on to work at NASA for several years. While I was proud of what she had accomplished, I'd already decided that was not for me.

To me, the options looked like this: years of school, a mountain of debt, and an unknown direction; against the choice of challenging work, decent pay, and an occupation that would be rewarding to me.

I applied for the IBEW communications apprenticeship the day after I turned 18, when I finally met the age requirement. I was accepted and worked on construction projects installing data cabling and fiber optic systems. I then worked for the local telephone company on a line crew, maintaining the overhead and underground cables that provide phone and data service to the majority of Anchorage. I fell in love with the challenges of the physical work and constant exposure to all types of weather conditions. After seeing what the high voltage power linemen did through the apprenticeship school, and getting a sense of the nature of their work by observing them on the job, I applied to that apprenticeship program.

The first job I had as an apprentice in the power line program was working 7 days a week, 12 (sometimes more) hours a day building a high voltage transmission line section between Anchorage and a nearby hydroelectric plant. The line stretched across a mountainside, and the rough terrain presented many additional challenges to what was already heavy and difficult work.

By this time, I had already gone through the first segment of lineman training: 7 weeks of school where we learned a great deal about staying safe, through classroom instruction on the specific hazards of line work, and through extensive hands-on work outside, working under supervision of the instructor. Building the transmission line required heavy equipment, rigging, lifting, and high tension operations, where any misstep could be fatal. Thanks to my detailed classroom training and the supervision of highly trained and experienced journeymen, we pulled off these operations safely and professionally.

My experiences on the job led me to become a member of my union's safety committee. This allows me the opportunity to give back, influence on-the-job safety, and increase my coworkers' awareness. We're all proud of the skilled work we do under extreme conditions.

Since my first major project, I have worked a variety of jobs encompassing the scope of my trade. I've worked building electrical substations; putting in underground duct systems, including setting vaults, pulling and terminating cable; performing utility maintenance work, whether it be a routine upgrade, or a power outage caused by storm; and other construction jobs.

I am forever grateful that I had an equal opportunity to join the trade and be a member of my union. Because of this, I had the chance to prove to my coworkers that I am worth my weight, and I can be an asset to my crew and to the industry.

Being the only woman in the line trade initially presented its challenges. There was resistance from some employers and a few linemen. None of these issues affected my employment or my ability to do my job. For this I am in debt to my union. The Joint Apprenticeship Training Committee makes sure every apprentice has a positive experience and the opportunity to work and learn without unfair hindrance. Most importantly, I know I'm never alone—my union provides a safety net to help ensure that I get an equal training experience and meaningful (not just on paper) equal opportunity for employment.

I have also benefited greatly from the union-based health care plan. Shortly after I turned 18, I was diagnosed with thyroid cancer. I was not yet covered by union insurance, and had to rely on my parents' private insurance plan. Unfortunately, their plan was more tilted towards catastrophic coverage. For my necessary surgery there were large co-pays. I am grateful that my parents were able and willing to support me financially through the procedure. Since then, I have had extensive follow up testing and monitoring, an expense I could not afford if I didn't have the excellent union provided health care. My union health care—for which I was eligible after 4 months of apprenticeship—even helps cover these follow-up thyroid tests, which is something most insurers wouldn't have covered as a pre-existing condition. Without this insurance, I'd be in a lot more debt (the yearly tests alone can cost \$5,000, of which my insurance covers most of the cost).

Thanks to my union, I have a solid career with a future. I know I can work hard, earn a decent paycheck, and I don't have to worry about an unexpected illness leaving me destitute. I know I will always receive equal pay and equitable treatment from my employers. I know that my pension means I will not have to work late into old age to survive, if all else fails. I know I will work with the most highly trained people in the industry and I will come home safe every night. Because of all these things, I am grateful for the opportunity to be a union member.

Thank you again for the opportunity to be here today.

Senator HARKIN. Mr. Badillo.

**STATEMENT OF KELLY BADILLO, WORKER, JERSEY CITY, NJ**

Mr. BADILLO. Good morning. Good morning, Senator.

Thank you for allowing me to tell my story. My name is Kelly Badillo, and I have been an SEIU 32BJ member for more than 28 years.

My family is a union family. I remember going to the strikes and walking the picket lines when I was 10 years old. My brother and I joined my father in the union and worked alongside him at the World Trade Center.

My union has always been there for me, my wife, and my two beautiful daughters. I am here to tell you my union supported me and my coworkers after the terrorist attacks on 9/11.

That morning, I was in the lobby of the North Tower, waiting to relieve a coworker from the elevator I operated, when the plane hit. The noise and the trembling was so loud, I thought that someone was filming a movie. Then a woman ran into the building on fire. I realized that something horrible was happening. As we rushed to put the fire out, chaos broke out. People were running everywhere, trying to escape the building, but outside there was debris falling everywhere.

I didn't really know what was happening until the fire department arrived and we evacuated. I walked about a block away before I turned around and saw what was happening. I remember

speaking to a police officer, looking up at the building, realizing that my brother worked on the 76th floor. I was trying to get back into the building when the second plane hit the South Tower. Everyone started running, getting as far as we could before they came down.

After the buildings fell, I remember hearing the silence, and all I remember feeling was the dust. I was covered up to my knees in debris, and unable to see anything. Luckily, I had a flashlight that I carried with me on the job. I was afraid to walk down the street, because of holes on the ground caused by falling debris, so I stayed still.

Eventually, I saw a couple of my fellow 32BJ coworkers walk down the street toward me. One, Eddie, told me his mother-in-law lived on Cherry Street, and once we got there, we could be safe. As soon as we got there, I called my wife to let her know I was OK, and was relieved to learn my brother was alive, thanks to an especially tough commute that made him late to work that morning. My wife told me to go near her office, where they were sending out ferries to New Jersey, where we lived. I remember being on the ferry, looking back at Manhattan, and that's when it hit me I no longer had a job.

Two-thousand, seven hundred and fifty people lost their lives, including forty-seven SEIU members. Many more thousands lost their jobs. More than 1,232 BJ members—cleaners, security officers, building maintenance, window-washers, and elevator operators, like me—were suddenly trying to live on unemployment.

A week later, I got a call from my union. They asked me to come over to the union hall and meet with my employer, American Building Maintenance. There were more than 800 other members there when I arrived. Working together, my union and my employer agreed to \$130 per week as supplemental unemployment, continued health insurance for us and our families, we kept our pensions, and the Green Cross was in our unit hall every day to help us deal with our loss and psychological effects of 9/11.

In January 2002, they called us back. This time they had found a way to get us back to work. They created a priority hiring list so when positions in other buildings came open, we would get those jobs. Through an early retirement plan, they helped us open additional spots, as well. 32BJ was able to work side by side with ABM to find work for people like me. I went to work at the Bank of New York Mellon the next month as an elevator operator.

My story is a rare one, because of certain circumstances involved, but my story exemplifies that businesses and unions can work together for the benefit of hardworking Americans like me.

My daughters are grown and have jobs of their own, but I can only hope they can enjoy a strong voice in the workplace, like I have had. In today's economy, it helps to know that working together with my union and my employer will make sure the whole team gets through it. It takes leadership to sit down and work together, but everyone has it in them.

Thank you for your time. God bless you, and God bless your work.

[Applause.]

Senator HARKIN. We'll turn to Ms. Harrison.

**STATEMENT OF SHARON HARRISON, WORKER, LEBANON, VA**

Ms. HARRISON. Good morning, Mr. Chairman, members of the Senate Committee on Health, Education, Labor, and Pensions.

I'm a customer service representative for AT&T Mobility and work at a call center in Lebanon, VA. I want to thank the members of this committee for giving me this opportunity to talk to you about the real benefits that union representation has brought to my coworkers, my company, and my community.

My coworkers and I are members of the Communication Workers of America (CWA), and that has made a big difference in bringing and keeping quality jobs with quality benefits in our area. I'm also glad to have the opportunity to talk to you about majority sign-up, or card check, and exactly how it really works. Being able to have a union voice at AT&T Mobility, and knowing that our company respects us and considers us a real partner in the business, makes all the difference in our workplace.

I've worked at AT&T Mobility since August 2003. We didn't always have a union, and we didn't always have management that respected workers' rights or wanted to work with us. In those days, before we had a union, favoritism was a big problem. Raises didn't depend upon your job performance but whether or not managers liked you. The same was true for job security. Even when someone was a top performer, he or she could be told, like I was, that, "I can get rid of you at any time, for any reason, for anything." That all changed in 2005, when Cingular Wireless took over.

Cingular had agreed with communication workers to remain neutral in an organizing campaign to let workers across the company make up their own minds and to recognize the union if a majority signed up and indicated that we wanted a union. Because of that agreement, we weren't afraid anymore that managers would retaliate against us for trying to organize a union. We were able to talk to our coworkers—before the call center opened, lunches, after shifts—about the benefits of a union. In fact, the head of Cingular at that time, Stan Sigman, came to our call center when we were signing up for union representation and made it clear that, under his management, there would be full respect for workers' rights.

Mr. Chairman, more than a majority of workers signed up for CWA representation at the Lebanon Call Center. I can honestly say that all of us, the company and our community included, are better for it. For us workers, the benefits are real. We have better pay, better benefits, lower healthcare costs, a real grievance procedure, and we have fairness. We do have new opportunities for careers throughout the company, and we know we're providing the quality service that makes our company a leader in the wireless telecommunications industry. We know that AT&T Mobility respects us and respects our contributions to the company. We're in a real partnership now, one that started at the very top of the company and worked its way through every level.

For AT&T Mobility, there are real benefits, as well, and I think that management would be the first one to tell you so. With union representation, there's now a framework to solve problems on the job. We didn't have that before.

There's a way to address critical issues, like turnover, training, and new technology. There's a clear path to improving our jobs and

our work, and that's important to AT&T Mobility, and it's very important to us.

Having an employer like AT&T Mobility in my part of Virginia also is very important. We are at the very tip end of southwestern Virginia, and even in the good times, good jobs are very hard to come by. We need more quality jobs, like AT&T Mobility, that provide good jobs, good benefits, and the kind of jobs that enable you to support your family and be a contributing part of the community. In an industry where companies compete based on customer service, AT&T Mobility recognizes that a quality workforce gives it a real competitive edge, and we're going to do everything we can to keep it that way.

Mr. Chairman, we're proud of AT&T Mobility and the work we do. We're proud that we do provide top-quality customer service and that AT&T Mobility is adding millions more customers every year. We want AT&T Mobility to continue to be successful, and we will do our very best to make it happen. We're very proud that we work for a company that respects us, listens to us, and considers us to be a real partner in the business.

Now, that doesn't mean that we've always agreed with AT&T management. In fact, we just finished bargaining a new contract with AT&T Mobility that does cover 21,000 workers, including my call center. As a member of the bargaining committee, I can tell you firsthand that we do have a lot of differences with management, but because this company does respect workers' rights and respected our right to collective bargaining, we were able to work out a new contract that our workers will be voting on very soon.

The Employee Free Choice Act is so important, because all workers deserve to have the same chance as I did to join a union if that's what they choose to do. I know firsthand what a big difference it makes when you don't have to be afraid to stand up for your rights anymore at work. I also know firsthand how bargaining rights can restore the quality jobs, the quality benefits that working families and our communities need today more than ever in these bad economic times.

Thank you for this opportunity to talk to you today.

[Applause.]

Senator HARKIN. Thank you very much, Ms. Harrison.

Now, Mr. Getts, welcome to the committee. Please proceed.

#### **STATEMENT OF LARRY GETTS, WORKER, ALBION, IN**

Mr. GETTS. OK. I'll try to keep my comments brief.

I know other things are going on today.

Mr. Chairman and members of the Senate Committee on Health, Education, Labor, and Pensions, thank you for the opportunity to speak to you today regarding my experience as an employee involved in the card-check organizing drive. I'd also like to let Senator Kennedy know that I'm glad to hear he's back, and my family continues to pray for his full, healthy recovery.

First, I'd like to say that I believe that these card-check drives put the interests of the union and their officials ahead of those of the workers. While the bill has been officially named the Employee Free Choice Act by its proponents and organized labor and their al-

lies in Congress, my own personal experience shows a more appropriate name might be the Worker Coercion Act.

My story begins in October 2007, when Dana Corporation, the owner of our small distribution plant in Albion, IN, which packs and ships auto parts, informed us of their neutrality agreement with the UAW. This meant that the UAW could come in and organize us by means of a card-check drive without any interference from the company.

We were going to get one side of the story, and it was going to be the UAW's.

It was rough going for the first UAW official who came in to drive the organizing drive. He was 15 minutes late for his first meeting because he couldn't find the local town's library where the meeting was held. He cursed and used rough language, which didn't go over very well at all with the women, who are about 80 percent of our shop. I got the distinct impression that he felt this meeting was a mere formality, as the matter had already been decided, and my views and the views of my coworkers were almost irrelevant.

Needless to say, this attempt failed, and the UAW changed their strategy and sent in a whole new crew to do the card-check drive. At that point, it was clear that the UAW was going to do whatever was necessary to get the required number of signatures. The organizers put out propaganda, waited for us in our break areas, sat at our lunch tables, and waited for us when we went out to our vehicles at the end of the day. The entire time, they were constantly badgering us to sign their cards.

One of the things UAW officials promised us was a paid weekend off between Christmas and New Year's if we would hurry up and get the required number of signatures signed. Another promise that they began negotiating for the contract as soon as they were in. One official even told me that we would get the same pay and benefits as the much larger Dana Corporation located in Fort Wayne, IN. Now, this didn't seem plausible, since this would mean our average pay would just about double, and also the fact that Dana was in the process of bankruptcy at the time.

I refused to sign the card every time I was asked—my coworkers shared my sentiment—but, none of that mattered to the UAW, because the pressure did not let up. In fact, one day the official approached me again, claiming that over 50 percent of the plant had signed, so now I was going to have to sign, also, a card so I could get my information into the system.

I signed the card because I thought I had to. I didn't learn, until later, Indiana is a closed State, where if the union is involved, you have to be part of that union to be employed there. I learned later that I should not have even been forced to sign the card then.

In the end, the UAW did succeed, and they're organizing our plant through the card-check method, but I felt it was because of their confrontational tactics, not because the majority of our plant really wanted the representation. Immediately after the union was recognized, we started our decertification effort. The only reason we were able to fight back was because another Dana plant, in Ohio, had appealed the National Labor Relations Board after an aggressive organizing drive by the UAW there, and the NLRB decided

that, in the future, workers should be allowed to seek decertification by secret ballot.

Of course, the UAW responded to our effort by increasing the pressure, particularly as the decertification vote got closer. They even resorted to phone calls and home visits. Despite their intimidation, my coworkers and I voted to decertify the UAW by secret ballot election 45 days after their successful card-check drive. I believe the results of the secret ballot election show the true free choice of my coworkers regarding UAW representation. We didn't really want the representation that was forced on us through a card check, but we could only show this—our true desires through secret ballot election.

At the end of the day, the voice of the worker needs to be considered. Union officials say they speak for the workers and that passage of this card-check bill is necessary to give workers free choice. In reality, they only want to make it easier for workers like us in Albion to join their unions to increase their membership numbers, their financial coffers, and their political power.

That is why I hope that you will vote to defeat this misnamed Employee Free Choice Act. In fact, hopefully, I can encourage the Senators to, please, don't enact any legislation—in fact, I'm begging you—don't enact any legislation that in any way takes away American workers' right to free choice and free secret ballot election.

Thank you.

[The prepared statement of Mr. Getts follows:]

PREPARED STATEMENT OF LARRY GETTS

Mr. Chairman, members of the Senate Committee on Health, Education, Labor, and Pensions, thank you for the opportunity to speak to you today regarding my experience as an employee in a so-called "Card Check" organizing drive.

Before I begin, I'd like to say that, as many workers have learned first hand, I believe "Card Check" organizing drives put the interests of union officials ahead of those of workers.

While the bill has been officially named the "Employee Free Choice Act" by its proponents in Organized Labor and their allies in Congress, my own personal experience shows a more appropriate name would be the "Worker Coercion Act."

My story begins in 2006, when I was hired to work in a small plant in Fort Wayne, IN, owned by Dana Corporation that packed and shipped auto parts.

Of course, after taking the job at Dana Corporation, I had been told by other employees that there had never been any push to form a union in our plant in anyone's memory.

All that changed in October 2007 when a number of meetings were called for all employees.

At the second meeting, after I and my coworkers waited patiently for about 15 minutes, an official from the United Auto Workers (UAW) finally arrived.

He spent several minutes explaining to us that he had cards for us to sign that would unionize our plant, and then spent a few more minutes explaining why he thought we should sign the cards.

Of course, at that time, none of my coworkers knew that our company, Dana Corporation, had signed a so-called "neutrality agreement," which meant that not only was the UAW given workers' personal information without our consent, but that we were only going to hear one side of the story throughout the organizing drive—the UAW's.

Looking back on how that first meeting was handled, I believe the UAW official viewed the meeting as a simple formality—as if the matter had already been decided between the UAW and Dana Corporation, and that my views and the views of my coworkers were almost irrelevant.

In fact, it was easy to see from the get-go that the UAW representative was hardly concerned at all with how he came off to our group and thought he could railroad us all into the union.

The UAW official was even so bold as to curse constantly throughout the presentation, which appalled the elderly women who made up about 80 percent of our plant.

After this first attempt to organize our shop failed, the UAW changed tactics and sent in a whole new crew.

At that point, it became clear to all of us that the UAW was going to do whatever was necessary to get the required number of signatures.

Union organizers waited for us in the break room, sat with us at lunch whether we wanted them to or not, and walked us to our cars at the end of the day.

The entire time they were constantly badgering us to sign the cards.

One of the things the UAW officials would say is that they would start negotiating the moment the cards were signed.

One official told me that our small shop would make the same as the workers in the other—much larger—Fort Wayne plant.

Of course, to many of us, that didn't seem plausible because we were making \$12 an hour, and in Fort Wayne they were making \$21 an hour.

I refused to sign the card every time they asked, and I know many others shared my sentiment.

None of that mattered to the UAW, because the pressure did not let up.

In fact, one day, an official approached me again claiming 50 percent of the plant had signed—so now I was going to have to sign the card to “get my information in the system.”

I signed the card then because I thought I had to.

I didn't learn until later that even then, I should not have been forced to sign the card.

In the end, the UAW did succeed in organizing our plant, but I thought they succeeded only because of their confrontational tactics and not because the majority of our workers wanted UAW representation.

Immediately after the union came in, I began a decertification effort.

The only reason I was able to fight back was because other Dana Corporation employees in Ohio appealed to the National Labor Relations Board after facing aggression from the UAW, and the NLRB decided that workers should be allowed to seek decertification.

Of course, the UAW responded to my effort by increasing the pressure, and even started visiting my coworkers at home.

Despite their intimidation, my coworkers and I voted to decertify the UAW 45 days after the Card Check drive ended in a secret ballot election.

I believe the results of the secret ballot election showed the true “free choice” of my coworkers regarding UAW representation.

We didn't want the UAW representation that was foisted on us through “Card Check.”

At the end of the day, the voice of the worker needs to be considered. Union officials say they speak for workers, and they say passage of the Card Check Bill is needed to “give workers a free choice.”

In reality, they only want the power to harass workers like me into joining their union, paying dues and increasing the union bosses' power.

That's why I hope you'll vote to defeat the mis-named Employee Free Choice Act.

Senator HARKIN. Thank you very much, Mr. Getts.

You know, it just seems that, listening to at least the first three of you, that you all have pretty decent relationships with your employer. Mr. Badillo, you talked about how your employer came to your aid and assistance and worked things out. Ms. Kelly, I don't know who your employer is, but you seem to have a decent relationship with your employer in Alaska; Ms. Harrison, with AT&T Mobility.

I'm always kind of—I don't know if “confused” is the right word or not, but why is it that some companies have such decent, good relationships with their unions, and others don't?

Rather than asking a question—it just reminded me of a story of a good friend of mine in Iowa, a guy by the name of Duane McAninch—I'll say it for the record—Duane McAninch. Now, I've known Duane and his family since we were kids. He was from really kind of a poor family. We all were in that small community. But,

his dad had a Caterpillar, and his dad did Caterpillar work. Now, this was back in the forties, early fifties. He had one Caterpillar, a small little one. Then Duane went through high school. Actually, he was a little bit ahead of me, he was in my brother's class in high school. Then he decided to start moving earth himself.

He grew and expanded, and, as you said, he borrowed money, went into debt, took chances. Today, Duane McAninch is the largest earth-moving contractor in the entire Midwest, one of the largest in the entire United States, employs thousands of people. He has more Caterpillars and earth-moving equipment than you can imagine. Big. I mean, this guy is really big and has done a lot of interesting things in the whole area of earth-moving, engineering-wise, and has advanced the art of that.

Well, I tell you all that because, interestingly enough, to this day, and since the day he started out he'll only hire union labor.

Now, I've talked to other contractors in Iowa that belong to different organizations. They come in, and they're always kind of going at me about, perhaps, my support for labor and my support for unions. I always wonder, "How can Duane McAninch make it? He's bigger than all of you guys put together, and he made it with union labor."

I asked Duane about that once, and he said, "Well, when I hire union labor, first of all, I know that, the first time they do the job, they'll do it right, because they're trained. That training—and then, they're responsible, and the union makes them responsible for what they do. I've just always had a very open and decent relationship with the shop stewards and union people" that run all this big equipment for him. And he said, "I've found the bottom line is, they're more productive. Therefore, my bottom line—I want to make money and I want to get bigger. I hire union labor because they make more money for me."

There are examples like this all around. I know conflict between labor and management goes back a long ways, and there were times when fights and stuff were common. My father was a coal miner. He quit mining in the coals by the time I was born, but I remember all of his stories about what happened to them in the coal mines when they tried to organize. We've had those conflicts. I would hope, in this day and age, that we would take a lesson from all of your employers, how you work together and how you are able to bargain collectively for your wages, hours, and conditions of employment.

Mr. Getts, there's always going to be examples, I suppose, of instances where someone maybe doesn't do the right things, maybe skews things one way or the other. There's always going to be examples of that. I mean, we've got examples of that on the management side. You gave an example, perhaps, on the union side. I don't know all the details of it. Somehow those have got to be resolved in a more amicable manner, and again, still giving people the right to organize.

I see the Employee Free Choice Act as, a balancing thing. I mean, right now, if I understand it correctly—and I can be corrected if I'm wrong—right now management can decide whether or not you have to have a secret ballot or have card check. Management can decide that. They can say, "OK, I want to have a secret

ballot,” or, “No, we’ll have a card check.” And some do. Some management does that. I’ve got examples of some who have said, “Just use a card check. If you get 51 percent signed up, we’ll recognize your union.” Management can do that. They have the choice. Why shouldn’t labor have that choice? Why should it just be on the one side? That’s what I’m trying to think about. How do you get back to a balance on this so that not just one side has that power, but both sides have it?

That’s what I’m looking for, how you balance this thing and how—again, I say, how we can stop couching this in terms of Armageddon and worlds colliding and things like that, but just sit down and work these things out, respecting management’s right to make business decisions on where to invest and how to grow. That’s management’s decision; they do all that. Respecting workers’ rights to have a union, to bargain collectively, rather than each individual trying to work for himself or herself, and recognizing the union’s right to bargain collectively for wages, hours, and conditions of employment.

Well, that’s it. I didn’t have a question. I just gave my little talk. I recognize Senator Isakson.

Senator ISAKSON. Thank you, Senator Harkin.

Mr. Getts, you have a good relationship with your employer, don’t you?

Mr. GETTS. Yes, I do.

Senator ISAKSON. Because I think, when the Senator said “three out of four,” think all four of—

Mr. GETTS. Yes. Yes.

Senator ISAKSON. Yes, they all four did. I want to commend all four of you. It’s tough to sit out there with a bunch of Ph.D.s and listen for an hour and a half and then come on stage, but you guys were terrific and your stories were terrific.

Ms. Harrison, before—Cingular took over in 2005?

Ms. HARRISON. Yes.

Senator ISAKSON. You went to work for AT&T in 2003?

Ms. HARRISON. OK, at that time, I was—

Senator ISAKSON. Turn your microphone on.

Ms. HARRISON. I’m sorry. At that time, I went to work for AT&T Wireless.

Senator ISAKSON. In 2003.

Ms. HARRISON. Yes.

Senator ISAKSON. And they were not unionized?

Ms. HARRISON. They were a nonunion company at that time.

Senator ISAKSON. In the 2 years prior to the Cingular takeover, did you try and have an election?

Ms. HARRISON. Yes, we did. Well, that didn’t go over, there, because, actually the union was not even allowed on the grounds. But, no, that was tried in 2004.

Senator ISAKSON. But, you tried to have an election.

Ms. HARRISON. Well, we tried to organize, and that, like I said, didn’t happen. That wasn’t allowed.

Senator ISAKSON. Was that because there weren’t enough people that wanted to do it, or was that because something somebody did egregious to keep it from happening?

Ms. HARRISON. Because AT&T Wireless wouldn't allow the union to come on the grounds to try to organize.

Senator ISAKSON. OK, thank you.

Ms. Kelly, you did great. How's your thyroid?

Ms. KELLY. I don't have one anymore.

[Laughter.]

Senator ISAKSON. Well, how is the place where your thyroid used to be?

[Laughter.]

Ms. KELLY. It's doing pretty well.

Senator ISAKSON. Well, you were terrific. You did a great job. Is that an electric cooperative that you work for in Alaska?

Ms. KELLY. Yes. Right now I'm working for Chugach Electric Association. I've only been working for them for approximately 2 months.

Senator ISAKSON. Did the IBEW place you there when they got a contract?

Ms. KELLY. Yes, they did. We have a referral system, similar to how the journeymen are referred to work. It's first-come-first-serve for jobs as they come available.

Senator ISAKSON. Mr. Badillo, the way I read your testimony, you work for a maintenance company that is a member of the union, but when you lost your job because the building was destroyed, they placed you at another building. Are you employed by the union and do they place you when the job opportunities come available?

Mr. BADILLO. Yes, Senator. The union placed me in another building with the company. The company is a subcontractor for the bank, so they placed me there.

Senator ISAKSON. How competitive is that placement—that's in New York?

Mr. BADILLO. It's very competitive. It's—well, competitive?

Senator ISAKSON. Are there multiple unions that do the maintenance placement, or is it—some maintenance companies are unionized and some aren't?

Mr. BADILLO. Well, some are and some aren't, but most of New York is all unionized, most of them. New Jersey is not all unionized. But, New York basically is all union.

Senator ISAKSON. OK.

Mr. Getts, you work for Dana Corporation?

Mr. GETTS. Yes, sir.

Senator ISAKSON. What does Dana do?

Mr. GETTS. Dana Corporation is a manufacturing plant that makes drive-train products.

Senator ISAKSON. They supply the auto industry?

Mr. GETTS. Correct.

Senator ISAKSON. So, that's why you were dealing with UAW?

Mr. GETTS. Correct. They make axles and gears and pinions and just about everything.

Senator ISAKSON. They got 51—50 percent plus 1 in cards.

Mr. GETTS. So they said, sir.

Senator ISAKSON. So they said. And then came in to start to organize, and then the workers, yourself among others, challenged that and it was withdrawn. Is that correct?

Mr. GETTS. Correct.

Senator ISAKSON. How did that happen? Did you do cards again, or did you have a secret ballot.

Mr. GETTS. No, sir, it was a secret ballot election after that.

Senator ISAKSON. OK.

Mr. GETTS. We had a certain amount of time that we had to get enough signatures to do a decertification vote.

Senator ISAKSON. The reason I wanted to make that point is—and referenced—I don't think that, by nature, businesses and their employees have inherent adversarial relationships across the board; I think what we've, in fact, learned in the testimony today is there are bad actors on both sides of the ledger. Both of them are in the minority.

We must remember, when the secret ballot came about, it came about because organized labor wanted to make sure that the workers could express themselves outside of intimidation from the company, and the secret ballot protected that.

Further, as you remember when we confirmed Ms. Solis, who I voted for, she and I differ on card check, but, even when she was in the Assembly in California and they passed a comp-time law to allow them to substitute comp time for overtime, in the legislation, she wrote in to an insistence that the workers had to vote in a secret ballot, even if that got negotiated, to show the power of the secret ballot to protect the worker, to see to it they are not unduly infringed.

There are good arguments on that side, and I just wanted to thank Mr. Getts for his being here, Ms. Harrison, Mr. Badillo, Ms. Kelly. We appreciate all of you coming today, and thank you for your testimony.

Senator HARKIN. Well, thank you all very much. I don't have anything to add.

You know, am I for a secret ballot? You bet I'm for secret ballots. Certain things have to be in place before the secret ballot is truly a free secret ballot, things like equal access to the workers, which doesn't happen. Management has a lot of access, unions don't. The freedom from coercion, and that can be on both sides. Finance. Who finances these, on both sides? And how much money is put into them? Timely implementation. There's a lot of different things that go into making sure that a secret ballot is truly a fair election.

Imagine an election where the incumbent President or Governor or mayor, or whatever, could, No. 1, force voters to attend his campaign rallies. Management can do that. Threaten to fire his opponent's supporters or deny them raises. Management does that. Prevent the opponent from campaigning in the daytime. I mean, you can campaign at night, someplace out there, but not in the daytime, where the people are, where they're working. You can't do that. Then, if you win, then you can engage in numerous delays so that person can never take office. We've seen that happen, time and time again.

So, yeah, if you can have a secret ballot, and you can balance those things out, that's fine.

I come back to the same place where I was, though. Under the laws today, management can decide: secret ballot, card check. Well, if they can decide that, why shouldn't the workers have the same

equal, balanced right: card check or secret ballot? I'm still going to try to find an answer to that question of what's wrong with that. Again, with protections to protect against coercion, to make sure everyone's informed. I mean, there's all these things, I think, that we're going to have to examine as this legislation comes through.

Senator ISAKSON. I just wanted to add that if you—in listening—I've been thinking about what you've been saying up here; I've really been paying attention. Mr. Getts just gave you a good example of how the secret ballot protects the worker, because, in that particular case, they were using card check to organize, and, according to his testimony, there was some less-than-good behavior that got the cards, so they had the right to force a secret ballot.

If a company decided, "Well, we're going to do card check," and then they went and intimidated people to not sign it, but wanted to demonstrate they didn't want to unionize, then that worker can still call for that—the secret ballot is the ultimate protection for the worker, just like it protects the minority politically in the United States of America every 4 years. We all get to go vote in secret. There is an inherent advantage to that.

Senator HARKIN. Well, yes, if we do away with the Electoral College.

[Laughter.]

We don't want to get started on that.

Senator ISAKSON. I'm not going to debate that.

Senator HARKIN. Don't want to get started on that.

Mr. Getts, just how many workers were in your plant at that time?

Mr. GETTS. We only have 31 in the plant. It was a very, very small plant.

Senator HARKIN. So, it's 31.

Mr. GETTS. Correct.

Senator HARKIN. As I understand it, the card check succeeded by just one or two votes?

Mr. GETTS. Correct.

Senator HARKIN. One vote. Then, the decertification won by two votes.

Mr. GETTS. Yes.

Senator HARKIN. Sounds like the U.S. Senate.

[Laughter.]

It was a very close call, both on the card check and on the decertification. My information told me that, between the card check and the decertification, a couple of people had left the plant, or something like that. Is that true? Two people?

Mr. GETTS. I'm not sure about that.

Senator HARKIN. Two people?

Mr. GETTS. Maybe two, yes.

Senator HARKIN. Two had left who had been in favor of the card check. That swung the election the other way. So, a very close call.

Mr. GETTS. Yes.

Senator HARKIN. A very, very close call. What's that thing in the law that close cases make bad law or something like that? I don't know.

Senator ISAKSON. I'm not a lawyer.

Senator HARKIN. These are the kind of close things that are very hard to deal with, especially when you have a small plant like that, when you have 31 people like that. It's very tough.

That's where we have to have protections, and protections both for the workers against coercion from the management, and protection so they don't get coerced by union organizers. That's where the National Labor Relations Board should come in and provide that kind of protection so that we truly can discern what the workers really want to do, one way or the other.

Mr. GETTS. Sir, if I could clarify, just one second. I am not anti-union. Right now I'm against their tactics. I work for a union. In fact, I was a union steward for two terms, but I was elected by secret ballot election. We had strike votes by secret ballot elections. We had contract negotiations that were voted on by secret ballot election. Getting rid of the secret ballot election is what I'm against.

Senator HARKIN. Well, again, what about on the management side? I mean, management could decide, right now, whether it's secret or whether they can have a card check. Are you against management having the right to be able to say that you could have a card check?

Mr. GETTS. Yes, sir.

Senator HARKIN. You're against that, too?

Mr. GETTS. Yes, sir.

Senator HARKIN. Well, that's an interesting proposal.

Mr. GETTS. I'm against—

Senator ISAKSON. The workers having the secret ballot is the protection against the company electing for card check and then using coercive techniques to force a majority to vote against it. So, it's the inherent insurance policy.

Senator HARKIN. Well—

Senator ISAKSON. The secret ballot is.

Senator HARKIN [continuing]. If you have equal access and all that kind of stuff that protects, really, what that secret ballot is. That's what the problem is, in that, when you have union organizing, the management holds all the cards, basically, and the union organizers don't have many cards at all to play. And that's the problem. It's that huge imbalance. Because, like I say, whenever management speaks to labor, whenever—if there's an organizing drive, and management can talk to workers into the lunchroom or something like that, they ought to provide equal time to the union to do the same thing, same place. Make it fair. Give them all equal access.

All of these tactics that are being used to delay and prolong things should be counteracted giving workers more of an ability to contest, rapidly, their firings.

I've had examples, a friend of mine once in Iowa got fired for organizing. Now, he was a single man, he didn't have a wife and family, so he took it all the way up to the NLRB, he took it to court, finally won. He won a good chunk of money. Took him about 8 years, but he won. How many people can do that? He said, "If I was married and had kids, I couldn't have done it. I'd have had to go off and get a job someplace." But, he won.

If you could collapse that down and make it meaningful and make it real, yes, there's a lot of things like that, that would protect workers in a secret ballot situation. Those things don't exist today. That's what I'm looking for, how you put that balance in there.

Thank you all very much. The committee will stand adjourned.  
[Additional material follows.]

## ADDITIONAL MATERIAL

## PREPARED STATEMENT OF SENATOR KENNEDY

We face a severe economic crisis, the likes of which we have not seen since the Great Depression. The causes of this crisis are not a mystery. Year after year, we accepted an economy that sent stock prices soaring, but left ordinary working families behind. Our productivity grew, but workers never saw the benefits. Their paychecks stopped rising and, eventually, started falling. Their benefits began to disappear. Large numbers of families couldn't keep up with the rising cost of daily necessities.

These unsustainable patterns brought on this economic crisis. The housing market collapsed, the stock market plummeted, and things went from bad to worse, and then to much, much worse. Working families who were already living on the edge of financial disaster have been hit hard, and they have nothing left to fall back on. Their faith in the American Dream has been replaced by fear for their family and their future.

We've taken some much-needed actions to help get our country back on track. These near-term efforts to jump start the economy are essential, but they are only the first steps. We can't fully recover until we have restored real security for working families. Americans need to know that if they work hard, they can earn a fair wage to feed their families. They need to know that at the end of the day they'll get a paycheck, not a pink slip. They need to know that a lifetime of effort will bring a secure retirement and a better future for their children.

It's time for a new economic agenda centered on security for working families and the vitality of the middle class. This new agenda begins with better treatment for American workers. The men and women who are the backbone of our economy are not highly overpaid CEOs with corporate jets and golden parachutes. They are the people who work in our factories, build our roads, teach our children, and care for the sick in our hospitals and nursing homes. They work hard every day to keep America strong, and they deserve a fair share of the benefits produced by their hard work.

The best way to ensure that these hardworking men and women receive the fair treatment they deserve is by protecting their right to join a union. Unions were fundamental in building America's middle class, and they have a vital role today in restoring the American dream.

First and foremost, unions help workers earn a fair day's pay for a fair day's work. Union wages are 30 percent higher than non-union wages. Eighty percent of union workers have health insurance, compared to only 49 percent of non-union workers, and are four times more likely to have a secure, guaranteed pension.

Equally important in these turbulent times, unions provide security and a promise of fair treatment. At a time when workers who lose their jobs can remain unemployed for a year or more, workers who are represented by a union have better job security, and the assurance of knowing they'll have a voice at the table when tough decisions are made.

Unions don't just benefit individual workers and families—they benefit our Nation as a whole. History shows that strong unions mean a strong economy for everyone. At the height of the union movement, from the 1940s to the 1960s, Americans benefited together as the economy grew. We lived in a nation of shared prosperity where the vast majority of Americans not only worked hard and expanded the economy, but reaped the benefits as well.

The fundamental difference between then and now was that workers had a voice. They used that voice to make our country a better place.

In recent years the voice of workers has too often been silenced. They still have a fundamental right to join a union, but the laws are so weak that this right is often meaningless. Too many workers who attempt to form a union are fired or intimidated. The few who get a union often never see the benefits of a union contract. Many employers break the law with impunity, because the penalties for violating workers' rights are laughably low.

To restore fairness and security to working families and rebuild the foundations of our economy, we have to restore the voice of the American worker. Our people understand how important this voice can be, especially in difficult times. That's why more than half of all workers—nearly 60 million people—say they would join a union today if they could.

Some companies share that view, and have allowed their workers to organize a union, without threats or dirty tricks. They have formed strong partnerships with their employees, and they have prospered. We will hear today from several of those employees whose lives were fundamentally changed as a result.

These positive examples are all too rare—certainly not enough to level the playing field and guarantee workers a fair chance to join a union. Too many workers still face threats and intimidation when they try to do so. According to a recent study, workers are illegally fired in more than a quarter of all organizing campaigns.

We need to deal with this major problem. We need to stop the lawbreaking anti-union tactics that have become alarmingly common, and provide genuine protection for this fundamental right of our workers.

That's why we need the Employee Free Choice Act. This major legislation will ensure that American workers have real freedom to choose a union, without fear of threats or intimidation by employers. It will help them obtain the real, tangible benefits of union membership that will make a difference in their lives and the lives of their families.

This economic crisis has been devastating, but all is not lost. As President Obama recently said, “[w]e’ve experienced great trials before. With every test, each generation has found the capacity to not only endure, but to prosper—to discover great opportunity in the midst of great crisis.”

We have one of those great opportunities today. By restoring fairness to the American workplace and strengthening the voice of workers, we can renew America as a land of opportunity—a land with good jobs and fair wages and other benefits that can support a family. We can revitalize the American middle class and restore the American dream.

I urge all of my colleagues to support this important legislation, and to put our country and its working families back on the path to prosperity.

PREPARED STATEMENT OF SENATOR ENZI

Good Morning. Thank you for chairing this hearing in the absence of Chairman Kennedy. The topics we will discuss here today are of enormous importance and will have a direct impact in the lives of many working Americans.

Economic security is what most people have strived for since the dawn of mankind, and tremendous strides were made in the last century in large part due to technological innovation. The worldwide backsliding of the past year has harmed many and frightened all of us. Though we have Federal, State and community-based safety nets in place now, the title of this hearing asks the right question. How can we “empower” workers to achieve their goals? It is an answer I have been pursuing for years. One of the best answers I’ve found is job training and lifelong learning. One of the worst I have heard is card check. The data supports my conclusions.

Increased education and training yields higher incomes, greater job satisfaction and greater economic mobility. Be it a Masters degree, an apprenticeship, or a long distance learning certificate, access to learning opportunities is a key part of becoming and remaining economically secure. In 1950, 80 percent of the jobs people held were categorized as unskilled. Today, over 80 percent of all jobs are categorized as skilled. The result is that in this decade 40 percent of the job growth will be in jobs requiring some post-secondary education.

Since I came to the Senate, one of my priorities has been improving the Nation’s job training system that was created by the Workforce Investment Act through its reauthorization. This program helps American workers get the skills they need to better compete and obtain economic security in this globally competitive economy. The bipartisan bill that I negotiated along with many of my colleagues will start an estimated 900,000 people a year on a better career path. It will focus on training for high growth, high wage, high demand jobs, better connect local training to local jobs, and allow communities to target resources to populations in highest need of services and training. Although it has twice passed the Senate and been unanimously approved by this committee, WIA is now 6 years overdue for reauthorization.

Unfortunately, job training is not the subject of this hearing. In fact, HELP did not hold one full committee hearing on job training in the 2 years of the last Congress. Instead, the majority would like to focus on unionization as the answer to “restore the middle class.” Already in this Congress, we have witnessed how pet projects, pork and political paybacks that have little to do with economic recovery can be transformed and spun through some modern-day alchemy to be the answers to our current economic problems. Sadly, whoever made the cynical political calculation that the current economic crisis is simply too good an opportunity to pass up may have had it right. A few weeks ago it was items in the Stimulus legislation like \$650 million for digital TV coupons, \$600 million for new cars for

the Federal Government, \$6 billion for colleges/universities—many which already have billion dollar endowments, \$50 million in funding for the National Endowment of the Arts, and \$44 million for repairs to U.S. Department of Agriculture headquarters that were all “justified” by the economic situation; today it is card check. My own view is that the American public is getting fed up with this kind of smoke and mirrors. They know a political payback when they see one, and trying to dress it up as part of the economic recovery, or something for the totally undefined “middle class” isn’t fooling anyone any more. If by “middle class” you mean any one of the millions and millions of non-union hourly workers in this country whose most fundamental democratic rights in the workplace would be thrown in the trash under card check, I think a reality check is in order. This is not about the economy, this is not about restoring the middle class—this is all about giving a gift to labor bosses *at the expense* of both the economy and the middle class. The claim to non-union workers that: “we want to help you by taking away your rights” certainly gets high marks for audacity.

The transparent motives behind this legislation are pretty clear when you consider that unions already win well over half of the secret ballot certification elections in which they participate. In fact, in the first half of last year, unions won 66.8 percent of NLRB conducted secret ballot elections—the highest win rate ever recorded. Yet proponents of this legislation claim that record high win rates are not enough. Instead, they not only want this Congress to weight the scales completely in favor of unions, and against individual workers, they want to throw out the scales entirely. The so-called Employee Free Choice Act would actually take away employees opportunity to vote on whether or not to unionize through a secret ballot election. It would also create an unworkable system of mandatory binding interest arbitration that would give government bureaucrats almost total control over individual workplaces.

We’ve had a few debates over this anti-democratic proposal in the last Congress and my colleagues know how strongly I oppose the bill. This morning I will focus my remarks on the subject of the hearing. Will forced unionization restore the middle class and deliver economic security for all? The experience of our neighbor to the North shows us that no, it will not.

In Canada, labor law is not federalized and several provinces have experimented with card check systems. One of today’s witnesses, Dr. Anne Layne-Farrar, recently released an empirical study of Canada’s experience under card check and binding interest arbitration. She found that the increased unionization that existed under those systems consistently resulted in higher unemployment. Her study found that for every 3 percentage points gained in union membership through card checks the following year’s unemployment rate will increase 1 percentage point and job creation will fall by approx. 1.5 million jobs. To extrapolate, if the prediction of one union boss is correct and card check resulted in a 3% increase in unionization, then unemployment a year from now would rise by 1.5 million, to 10.4 million.

What is actually happening behind this math is something we’ve seen illustrated quite starkly in Detroit, as well as here today. As past history demonstrates, labor unions have made some positive

contributions, but all too often they have become more concerned with self preservation; and, consequently, resist common sense business improvements that could make their company competitive. Put yourselves in the shoes of the small business owner I once was—you have five employees and over the weekend, three sign cards. Two employees have no idea what happened but immediately you, the employer, have an obligation to negotiate a contract. You need to hire labor lawyers, you need to determine your business plan for the next 2 to 3 years and negotiate to accommodate that model—and heaven forbid you want to change that model over the 2-year period! If you are not able to reach a collective bargaining agreement with the union within 90 days, you will wind up in an arbitration controlled by an unknown Federal bureaucrat will impose a contract on your business. That contract will dictate the wages you must pay, the benefits you must provide, and the rules governing every single conceivable work rule, term and condition of employment. In the face of this total upheaval of your business, who wouldn't consider closing? Relocating? Retiring early or entering another field? When the workplace playing field is shifted to unfairly favor unions, companies falter, relocate and fail.

In the scenario I just laid out, two employees did not sign a card. They had no say in what happened to their workplace and their salaries will now be docked for union dues. Even the three that did sign did not have any opportunity to hear their employer's side of the story, and any one of them could have been misled or pressured by the professional union organizer who was paid to get their signature, or even by a well-intentioned but misinformed co-worker. Under a card check regime, many employees lose all say over their workplace for any one of these reasons. Someone who has been in these shoes is on the second panel of witnesses today—Mr. Larry Getts. Mr. Getts worked for a company that took a neutral position to organization attempts. They allowed the union to come into the breakroom every day and persuade employees to sign cards. Mr. Getts did not sign a card, but he knew that some of his coworkers had signed them against their true will. So he initiated a decertification of the union and, under a NLRB-run secret ballot election, a majority of employees voted against the union. I look forward to hearing more about his experience.

There is no doubt that some of the witnesses we will hear from today have been greatly aided by their unions and I wholeheartedly support their right to organize as they have under the same law for 60+ years. There should also be no doubt that union intimidation does take place, and the card check system would increase the risk of this intimidation in order to create more dues-paying union members, willing or not. Many of those advocating the Employee Free Choice Act dismiss this intimidation as a red herring—it is not. Here are some examples:

- In 2004, physical threatening became so bad that the NLRB ordered a union to post a notice to members providing, in part: “WE WILL NOT threaten employees of ValleyCrest if they do not sign authorization cards for the Laborers.”—*Valley Crest Landscape Development, Inc.*, 2004 WL 2138583 (NLRB Div. of Judges).
- In 2000 the SEIU was ordered to post a notice to those it was trying to organize saying “WE WILL NOT restrain or coerce you

by threatening that employees have no choice but to go with us, or by implying or stating that the efforts of employees to look into or explore the possibilities of representation by other labor organizations is not possible or permitted, or by offering to waive initiation fees if all employees sign authorization cards for it by a date certain, or by any like or related manner.”—*Gulf Caribe Maritime, Inc.*, 330 NLRB 766 (2000)—Union coercion in soliciting cards violated section 8(b)(1)(A).

- In 1996, after a pro-union employee threatened other employees with discharge if they did not sign union authorization cards and intimidated employees by telling them they were the only ones who had not signed cards, the SEIU was ordered to post a notice to members stating, in part: “WE WILL NOT threaten employees employed by GMG Janitorial, Inc., with discharge or other reprisals if they do not sign . . . authorization cards.”—*Service Employees (GMG Janitorial)*, 322 NLRB 402 (1996)—Union coercion in soliciting cards violated section 8(b)(1)(A)

- In 1996, intimidation between two unions competing to represent the same workplace became so bad, that the signs the NLRB ordered posted tell the whole story:

- WE WILL NOT threaten employees that those employees who signed cards for Local 424 would have no medical insurance and possibly no job.
- WE WILL NOT threaten employees with physical harm, by telling employees that we are “into breaking legs” or “we’ll break your legs.”
- WE WILL NOT threaten employees that we would find out who signed cards for Local 424 and would “get even” with employees.
- WE WILL NOT threaten to sue employees if they join, support, or assist Local 424.
- WE WILL NOT threaten employees with unspecified reprisals by stating that “the Union has their ways.”—*Service Employees Local 144 (Sands Point Nursing Home)*, 321 NLRB 399 (1996).

In addition to threats of violence and retaliation, employees have faced deceit and peer pressure in card check organizing drives. For example, union organizers tell an employee that everyone has already signed a card [*Roney Plaza Apartments v. NLRB*, 597 F.2d 1046 (5th Cir. 1979)]. They have been told that signing a card would merely enable the union to keep in touch with the employees and that it did not mean that the employee wanted a union. [*Bookland, Inc.*, 221 NLRB 35, 35–36 (1975)].

In the face of these facts, no Senator should dismiss the existence of union intimidation, just as none of us dismiss the power of the employers’ position. This is precisely why the law provides for a secret ballot election—something that unions themselves advocated when the law was written. Union membership has fallen, but weighting the scales and essentially forcing unionization on employees and employers is not the answer for American workers or our economy.

## RESPONSE TO QUESTIONS OF SENATOR KENNEDY BY PAULA VOOS, PH.D.

*Question 1.* Many opponents of the Employee Free Choice Act argue that now is not the time to pass this legislation because American businesses cannot afford increased unionization during a severe economic recession. They point to the problems that some large manufacturers in our country are enduring. Do you agree that the Employee Free Choice Act would have a negative impact on our economy? Do you believe that unions are responsible for the problems in manufacturing?

*Answer 1.* Let me take these questions in reverse order.

*The problems of American manufacturing:* All over the world, manufacturers are having problems because of the downturn in demand for their products driven by the global recession. As I indicated in my original testimony, American manufacturers are having problems for two additional reasons.

First, because the dollar serves in a special role as a reserve currency for the world, it rose in value when the economic crisis induced a “flight to safety” on the part of many private investors and governments. The high value of the dollar has some benefits for the United States but it also means that our manufactured products are artificially more expensive than the manufactured products of other nations. This has become a significant artificial drag on our manufacturing sector.

Second, large American manufacturers are burdened by a health insurance system in which they are responsible for a significant portion of the costs of health insurance for their active employees, and sometimes also for their retirees. In other advanced industrial nations, these health insurance costs are spread more widely across the entire population through national health insurance systems. This is a significant disadvantage to our manufacturers.

The problems of American manufacturers are not due to high rates of unionization. In fact, the unionization of U.S. manufacturers is lower than the rates of unionization in most other advanced industrial nations; and U.S. production worker wage rates are not high compared to wage rates in other advanced industrial nations either. It is silly to blame the problems of U.S. manufacturing on either unions or high worker wages.

*Impact of the Employee Free Choice Act on our Economy:* As President Obama has explained, the challenge today is simultaneously to promote economic revival and to reshape our fundamental economic institutions so that we do not re-create another “economic bubble” based on cheap credit alone, but instead build a foundation for lasting economic prosperity. Insofar as the Employee Free Choice Act allows employees to gain union representation if they so desire, it is likely to result in a slow, but steady, increase in the percent union in the United States. In the short run, this will add to consumer purchasing power, which is beneficial in the context of recession. It may also add slightly to employer costs.

However, the immediate economic effects of EFCA are likely to be small; it takes time to organize and bargain initial contracts. Unions are conscious of the business context of employer—they often take it into account, particularly in negotiating initial agreements. EFCA will not provide a huge immediate economic boost to our economy. On the other hand, it is also unlikely to have large immediate negative effects either.

EFCA is better understood as something that will benefit the economy in the longer term, by rebuilding the middle class, as is discussed at length in my original testimony. In that regard, it is like the other attempts to reform our fundamental economic institutions at this moment in history.

*Question 2.* There is growing recognition that business innovation will play an important role in reversing the current economic downturn. President Obama, for example, included substantial funding for new green industries in the stimulus bill to encourage such innovation. History also supports this view, as some of our most successfully innovative businesses—such as Burger King, FedEx, Microsoft, Wikipedia and G.E.—were started during recessions. What do you see as the role of unions in contributing to innovation in American business? How important is this role in light of the economic crisis?

*Answer 2.* Innovation comes in two forms: the initiation of entirely new enterprises and innovation by existing businesses. New firms are born non-union in the United States and they may or may not be unionized after some period of time. Obviously, a major determinant of that is whether or not they treat their employees in a fashion that leads those employees to desire union representation. EFCA would have no effect, positive or negative, on innovation stemming from entirely new enterprises. It would encourage entrepreneurs to treat their employees well.

Existing firms also engage in innovation in terms of products and processes. Those that have unionized employees are stimulated to invest in additional capital

equipment and to experiment with new production processes in order to reduce labor costs. This type of change tends to be incremental but nonetheless it is a source of demand for innovative products in the capital goods market.

Employees in organized firms are less likely to quit, giving union employers incentives to provide additional training and to utilize human resource management strategies that are sometimes termed “high commitment” approaches. These strategies provide employees with a means of being involved in decisionmaking in the enterprise and to contribute their ideas for gradual improvement (innovation).

Again, however, I would not see large immediate effects from EFCA in the area of innovation during the current economic crisis; any effects in this area are likely to be ones that are longer term.

*Question 3.* Workers represented by a union are almost twice as likely to have employer-sponsored health benefits and four times more likely to have secure, defined-benefit pension plans than their non-union counterparts. Can you explain the role that secure health care and retirement benefits play in providing stability for the economy? What would be the impact on the economy if a higher percentage of workers had these benefits?

*Answer 3.* This is an area in which increased unionization in the United States could have a large positive impact. All studies have found that organized employers are both more likely to provide benefits and to provide better quality benefits, particularly in the area of health insurance and pensions. Unions not only increase total compensation, but also unions increase benefits as a proportion of total compensation.

High medical costs for individuals who either lack health insurance or have inadequate health insurance is a common trigger for bankruptcy in the United States. The consequence is that government ends up picking up many of the costs of such individuals’ care after a medical bankruptcy. That care has sadly become more expensive because these individuals postponed care for financial reasons when their medical problems were more amenable to low-cost treatment. In this respect, union negotiation of health insurance and better quality insurance can provide a significant benefit to our economy.

Pensions stabilize consumer purchasing power for retired individuals; defined benefit pensions, in particular, are an “automatic stabilizer” in macro-economic terms. Unlike defined contribution pensions, they are not subject to the extreme ups and downs of the investment markets. The trend in the United States in the recent past has been negative for macro-economic stability, insofar as 401K’s have replaced defined benefit pensions, and fewer employees have any pension whatsoever. These trends have been, of course, partly due to decreased unionization and partly due to reduced bargaining power on the part of unions (itself in part reflecting reduced unionization). EFCA would help reverse both trends.

RESPONSE TO QUESTIONS OF SENATOR KENNEDY BY DR. LAYNE-FARRAR, PH.D.

*Question 1.* In your study, you argue that giving more workers the right to choose a union would increase unemployment. As I’m sure you know, union density was highest in the United States between the mid-1930s and the mid-1950s. During that time period, the unemployment rate averaged a relatively low 4.5 percent. Since those years, union density has fallen sharply—by at least 20 percentage points. Yet—while your model would predict we should be experiencing negative unemployment as a result of this change—we have not seen any noticeable decrease in our long-term average unemployment rate. This data, based on our country’s own historical experience, runs directly contrary to the findings of your study. How do you explain this difference?

*Answer 1.* I believe the primary difference lies in the realities of the economy, which were quite different in the 1930s through the 1950s than they are today. During that earlier time, there was no global economy in the sense that there is now. For example, Americans bought and drove American cars—there were no Asian imports. As a result, unionization efforts tended to affect whole industries and all of the relevant competitors, not just a subset of the firms relevant for American consumers. Moreover, and related to the lack of global competition, during the 1930s and 1940s, many of the key industries for the U.S. economy were characterized by oligopoly market structures. Again, the auto industry is a good example. The big three car makers represented all of the options available to American consumers. With limited competition, those firms were able to earn a supra-competitive return on their production investments—profits that could be shared with the workers who made the cars.

In contrast, my analysis is based on data from a modern economy. In particular, my empirical analysis relies on Canadian data spanning 1976–1997, a 22-year period during which Canadian provinces experimented with card check vs. secret ballot elections and mandatory first contract arbitration. Both of these facts—the modern time period and the legislative changes that were the driving force behind the ups and downs in the union density figures—make the dataset I employ far more relevant for an assessment of the impact of EFCA on the current U.S. economy than data from 60 to 80 years ago when the economy was quite different and when unionization rules were not changing. Today, many industries important for the U.S. economy are characterized by competition, often global competition. The high tech industries, for instance, that have been crucial for the so-called “knowledge economy” face competition from firms based in India and Ireland for software programming and from Asia for semiconductor manufacture. While many service industries do not have off-shoring options, they nonetheless face considerable international competition—just look at the numerous multinational hotel chains represented in Washington, DC to understand this point.

In competitive markets, firms do not earn supra-competitive profits. Thus, if production costs increase because wages rise while worker productivity does not, it is not a simple matter of sharing “excess” profits with workers. Rather, firms must find other means to maintain a competitive return on their investment or they will move that investment elsewhere. One of the options for maintaining a competitive return is to reduce overall labor costs by reducing headcounts—by failing to replace workers that retire or quit, or by scaling back expansion plans. This comports entirely with the fundamental economic theory: as the price of an input goes up, to the extent possible less of that input will be used in production.

With an understanding of the economic realities behind for-profit company decisions and the constraints that such firms face in competitive markets it is easy to see how both widespread unionization could be beneficial in the 1930s through the 1950s, but also how unionization rules such as card check could lead to increased unemployment in many important industries today.

*Question 2.* The Organisation for Economic Co-operation and Development—one of the world’s largest and most reliable sources of economic data—did a comprehensive analysis of the determinants of unemployment in 2006. You cite an earlier OECD study in your report, but not this more recent study that reassessed the earlier findings and concludes that unionization does not cause higher unemployment. Specifically, the 2006 study concluded that “the impact of . . . union density on unemployment [is] statistically insignificant.” How do you reconcile your findings with theirs?

Answer 2. OECD data is the basis for many studies, three of which I cite in my paper. Because OECD data covers so many disparate countries it is important to look closely at the variables used in each statistical analysis. The 2006 OECD study, in fact, highlights the difficulty of capturing any effects of unionization in such a diverse group as OECD countries. Specifically, the authors of the OECD 2006 study caution that:

“Union density might poorly capture the actual bargaining power of workers. Indeed, in some countries, the coverage of collective agreements largely exceeds the number of trade union members—this reflects, *inter alia*, legal procedures and practices to extend collective contracts to unaffiliated workers, including those employed in non-signatory firms.”

As I explain in my paper,

“A far clearer picture emerges from the literature that considers bargaining coverage—defined as the proportion of workers covered by collective bargaining agreements—instead of union density—the proportion of workers that actually belong to a union.”

Unlike the United States and Canada, in many other OECD countries, especially in Europe, union bargaining coverage is considerably higher than union density. Germany, for example, reported union membership of 29 percent of all workers in 1994, but union coverage that same year was 92 percent. German workers, like most European workers, do not have to belong to a union in order to be bound by union contracts; it is enough that their employer or kind of work is covered by a local union.

Given the considerable discrepancies of the two union variables, studies that include European countries are likely to find very different effects for union membership/density versus union coverage. This is, indeed, the case. For example, an OECD study published in 1997 using data from 1980–1994 finds a positive but statistically insignificant relationship between *union density* and unemployment, but reports a

highly statistically significant and positive relationship between *bargaining coverage* and unemployment rates.<sup>1</sup> The 2006 OECD study, however, does not directly consider the effects of union coverage on unemployment, but instead focuses on union density because the coverage data was unavailable for the full time period studied. The lack of findings in the 2006 OECD study is therefore entirely consistent with, but in an important aspect less complete than, those presented in the 1997 OECD study.<sup>2</sup>

*Question 3.* On page 13 of your study, you discuss the existing peer-reviewed literature about the effects of unions on employment, and the range of conclusions that emerge from this literature. At one end, you cite Freeman (1988), which shows no statistically significant effect of unions on employment. At the other end of the spectrum, you cite Scarpetta (1996) and Nickell and Layard (1999), which show that a 1 percentage point increase in unionization leads to a 0.10 to 0.13 percentage point increase in the unemployment rate. Your study finds that a 1 percentage-point increase in union density would raise the unemployment rate by 0.33 percentage points, which is 2–3 times higher than your own reading of the high-end estimate in the literature. How do you explain the fact that your results are far out of the range of the existing peer-reviewed literature on the subject?

*Answer 3.* While Freeman (1988) concludes that there is no statistically significant effect, he reports that “there is a clear negative correlation between employment changes and real wage changes across the 19 OECD countries.”<sup>3</sup> As noted above, the lack of statistical significance in his analysis could be due to the use of data for OECD countries. The studies that come a decade later, in the late 1990s, do find statistically significant results. Scarpetta’s primary finding is that a 1 percentage point increase in unionization leads to a 0.10 to 0.13 percentage point increase in the unemployment rate, but he also finds an effect as high as 0.33 for youth unemployment (see Table 2).

The discrepancy between my findings and the overall results in Scarpetta (1996) and Nickell and Layard (1999) could stem from a number of factors. First, the various OECD-based studies analyze trends over time, which tend to show slow, although often steady, changes in unionization. In contrast, the Canadian data that I rely on is not capturing incremental trends over time but is instead capturing structural shifts resulting from changes in unionization rules. It seems reasonable to expect a larger effect for the sharper changes stemming from a switch between card checks and secret ballot elections than from an incremental time trend that involves no structural change.

Second, the diversity of countries in the OECD-based studies is bound to be a factor. Different countries have different political and social institutions that will undoubtedly have an impact on employment, regardless of the unionization rules. That many factors can affect unemployment is one key reason why such relationships should be studied with regression analysis, rather than with simple comparisons. The institutional differences across countries also point to one of the benefits of studying Canadian data to gain an understanding of what would likely happen in the United States were EFCA to pass. The United States and Canada are not carbon copies of one another, but the countries do share a great many important features, as I explain in my paper. The United States has far less in common, however, with the European and Asian countries in the OECD data, as the discrepancies in union density as compared to union coverage attest.

It is also important to bear in mind the consistent direction of the findings. There is consensus in the literature on the direction of the effect of unionization on unemployment, even if the studies differ in terms of statistical significance and the magnitude of the impact. In contrast, when there is truly no statistical relationship to be found in the data, multiple studies in the literature tend to report different signs for the estimates (positive and negative) in addition to different statistical significance and magnitudes. My analysis, which includes a great many robustness checks and variations in model specification, all of which yield consistent results, is in line with the overall finding in the literature of a negative relationship between unionization and employment. Finally, even if one believes the estimates that my analysis produces are overstated, cutting those estimates in half still indicates a sizable effect on unemployment.

<sup>1</sup> OECD, *EMPLOYMENT OUTLOOK 1997* at 76.

<sup>2</sup> The 2006 OECD study covered a longer time horizon for which union coverage statistics were not available. The narrower time horizon of the 1997 study allowed for more detailed and relevant variables to be included in the analysis.

<sup>3</sup> Robert Freeman, *Labour Market Institutions and Economic Performance*, 3 *ECON. POLY* 64 (1988).

*Question 4.* It is also difficult to reconcile the results of your study with the experiences of other countries. As the chart below illustrates, many countries have far more workers covered by collective bargaining agreements than in the United States, but have comparable or lower levels of unemployment. How do you explain these differences?

Country	Unemployment Rate <sup>4</sup>	Collective Bargaining Coverage <sup>5</sup>
United States .....	4.6	14
Australia .....	4.4	80
Austria .....	3.8	95
Denmark .....	3.8	80
Ireland .....	4.6	38
Netherlands .....	3.2	80
New Zealand .....	3.6	25
Norway .....	2.6	70
Switzerland .....	3.6	40

*Answer 4.* As the table above illustrates, many countries exhibit a combination of relatively low unemployment with relatively high collective bargaining coverage. It is also true that many more countries exhibit a combination of relatively high unemployment with relatively high collective bargaining coverage, as the table below illustrates (based on identical sources to those used in the table above). Anecdotes in either direction are therefore easy to find. The important point to note is that attempting to draw a relationship from a simple comparison of these two figures is inappropriate. Many factors can potentially affect a country's unemployment rate, which means that regression analysis, controlling for as many of the relevant factors as the available data allows, is the most appropriate method for assessing the impact of changing unionization on unemployment.

Country	Unemployment Rate (2007) <sup>6</sup>	Collective Bargaining Coverage <sup>7</sup> (2000)
United States .....	4.6	14.0
Belgium .....	7.5	92.5
Czech Republic .....	5.3	27.5
Finland .....	6.8	92.5
France .....	8.3	92.5
Germany .....	8.4	68.0
Hungary .....	7.3	32.5
Italy .....	6.1	82.5
Poland .....	9.6	42.5
Slovak Republic .....	11.2	52.5
Spain .....	8.3	82.5
Sweden .....	6.2	92.5
United Kingdom .....	5.3	32.5
Canada .....	6.0	32.0

As a more general point, note that the changes in union density in the Canadian data that I employed for my study were not the slow and steady trends over time that have occurred within the United States over the last several decades, but were rather more sharp changes driven by modifications to the unionization rules. Changes in the political party in leadership within a given Canadian province lead to changes in unionization rules, which in turn affected union density and impacted

<sup>4</sup> OECD Harmonized Unemployment Rates. Paris, 9 February 2009. <http://www.oecd.org/dataoecd/32/24/42134775.pdf>.

<sup>5</sup> Collective Bargaining Coverage/membership, Table 3.3. [http://www.oecd.org/document/62/0,3343,en\\_2649\\_33927\\_31935102\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/62/0,3343,en_2649_33927_31935102_1_1_1_1,00.html).

<sup>6</sup> OECD Harmonized Unemployment Rates. Paris, 9 February 2009, page 2. Data are for 2007. <http://www.oecd.org/dataoecd/32/24/42134775.pdf>.

unemployment. The nature of the Canadian dataset therefore captures the very dynamics that one would like to observe in order to predict the effects of passing EFCA in the United States. Abstracting from the circumstances underlying the data and attempting to apply the study's results to all countries and all time periods, regardless of the presence of structural changes in the unionization rules, is therefore inappropriate.

RESPONSE TO QUESTION OF SENATOR ENZI BY WADE HENDERSON

*Question.* As you know, the Employee Free Choice Act effectively eliminates use of the government-supervised, secret ballot as the means by which workers decide whether or not they wish to be represented by a labor union. Although proponents misleadingly claim that the legislation would still provide the option of a secret ballot, every objective expert that has reviewed the legislation has concluded that, if enacted, virtually all new union certifications would take place without employees being able to make their choice by a secret ballot vote. Indeed, many workers would be completely shut out of the process and have no voice at all.

For decades, both you, and your organization, have led the fight for voting rights and been among the most effective voices in the struggle to protect individuals from disenfranchisement. Do you see any inconsistency in your support for EFCA, and your long support for guaranteeing and protecting voting rights?

Answer. Answer was submitted in the letter below.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS (LCCR),  
APRIL 17, 2009.

Hon. MICHAEL B. ENZI, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Re: Written Question for the Record, Following Testimony at March 10 Hearing,  
"Rebuilding Economic Security: Empowering Workers to Restore the Middle  
Class"

DEAR SENATOR ENZI: Thank you for your question and for your gracious comment regarding the Leadership Conference on Civil Rights' work to protect individuals from voting disenfranchisement. You asked whether I saw any inconsistency between the Leadership Conference's support for the Employee Free Choice Act and our long support for guaranteeing and protecting voting rights in political elections. Let me begin by stating that, as many objective observers have noted, the Employee Free Choice Act does not eliminate the secret ballot, but merely provides workers the option to form unions through majority sign-up. When workers do choose majority sign-up as the means to express their desire to form a union, this process is perfectly consistent with the fundamental goal of the National Labor Relations Act (NLRA)—a goal that is echoed in international human rights standards as well—to protect workers' right to form a union.

Under the tenets of our labor law, workers are entitled to freely exercise their choice of whether they wish to be represented by a union. In the context of union representation, an election has never been the exclusive method used by the National Labor Relations Board (NLRB) to ascertain whether workers choose to have union representation. In fact, the NLRB has always recognized the validity of majority sign-up as a means of determining the choice of workers. (At one time, employers were required to bargain with unions that showed majority status using majority sign-up; today an employer is allowed to veto the choice expressed by its workers through majority sign-up and insist on an election.) Moreover there are safeguards in our labor law to ensure that the process accurately reflects workers' free choice about unionization.

The Leadership Conference supports making majority sign-up available to workers because the current NLRB election process is so deeply flawed that it denies many workers the ability to exercise free choice about union representation. There is ample documentation of the pervasiveness of extreme anti-union conduct by employers during organizing campaigns. Employers have constant access to workers and are able to use this access to campaign heavily against the union. Moreover, in addition to bombarding workers with anti-union messages at the workplace, employers sometimes cross the line and engage in unlawful tactics, such as firing pro-

<sup>7</sup>Trade Union Members and Union Density, Table 3.4 [http://www.oecd.org/document/12/0,3343,en\\_2649\\_33927\\_31781132\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/12/0,3343,en_2649_33927_31781132_1_1_1_1,00.html).

union workers or making unlawful threats against them. The remedies for this misconduct rarely restore a coercion-free environment for workers to express their choice at the ballot box regarding union representation.

There is simply no way to compare the current NLRB election process to the process by which we elect government officials, because the NLRB process is ripe for abuses that do not occur in the context of political elections. Obviously, one candidate or political party does not command daily access to voters during which that party can inundate those voters with campaign propaganda. Political parties and candidates cannot affect the livelihood of voters by causing them to lose their jobs.

While it may be true that under majority sign-up—unlike in political elections—some individuals do not get to cast a vote, the majority sign-up process does require that a majority of workers express their desire for union representation and thus ensures that the desire of a majority of workers is effectuated.

Because majority sign-up is a long-standing means for workers to select a union that allows them to express that choice freely, and because of the proven weaknesses of the secret ballot process in the context of NLRB elections, majority sign-up is the best way to secure the right of workers to form a union. The selection of our political representatives is very different, and the right to cast a ballot is of unique significance in this context.

Therefore, I see no inconsistency between the Leadership Conference's support for access to the ballot box in the political context and for majority sign-up in the context of selecting union representation. What is important to us is making sure that fundamental rights are protected. The Employee Free Choice Act protects the right to form a union and makes that right meaningful. Our support for the Employee Free Choice Act is thus not only consistent, but compelled.

Sincerely,

WADE HENDERSON,  
*President & CEO.*

RICHARD A. EPSTEIN,  
CHICAGO, IL 60615,  
*March 23, 2009.*

Hon. EDWARD M. KENNEDY, *Chairman,*  
*Committee on Health, Education, Labor, and Pensions,*  
*644 Senate Dirksen Office Building,*  
*Washington, DC 20510.*

Hon. MICHAEL B. ENZI, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*835 Hart Senate Office Building,*  
*Washington, DC 20510.*

Re: The Employee Free Choice Act

DEAR CHAIRMAN KENNEDY AND RANKING MEMBER ENZI: I write this letter on behalf of the Alliance to Save Main Street Jobs, which has funded my research for a monograph. My conclusions about EFCA are outlined in my monograph, *The Case Against the Employee Free Choice Act*, which will be published by the Hoover Institution of Stanford University very soon. In my book, I note that EFCA's effect on the overall economy and on the workplace would be clearly negative and that the legislation should not be passed in anything like its present form. I cannot here review all the arguments, and thus have provided you with a copy of my study. Allow me to state my conclusions as succinctly as possible.

- The decline in union representation in the private sector appears to be largely attributable to the major changes in the operation of the American and global economy over the past 50 years. The rise of free trade across national borders and the more rapid turnover of workers has led to a decline in unionization rates in the United States which parallels those which are experienced in other industrialized nations—despite the fact that these other nations operate under very different legal regimes.<sup>1</sup> There have been no significant changes in legal rules or NLRB behavior that accounts for the shift. Nor is there any evidence of an increased incidence of illegal actions of employers that can account for the shift. The largest source of union decline is the massive attrition in “old line” unionized firms in such industries

<sup>1</sup>Jelle Vissor, Union Membership Statistics in 24 Countries, 129 Monthly Lab. Rev. 38 (January 2006).

as automobiles and steel, whose rigid union contracts have made it difficult for firms to respond to changes in competitive conditions.

- There is no theoretical explanation or empirical evidence which suggests that unions are able to increase productivity in the workplace. To be sure, unions are able to extract for their members in the short run a premium on wages in the neighborhood of 17 percent,<sup>2</sup> but these gains are not sustainable in the face of competition from nonunion firms. To combat these nonunion firms, unions seek to hamper competition in the marketplace by encouraging, for example, local governments to impose zoning restrictions on the entry of nonunion firms, even in impoverished neighborhoods. In addition, the CEOs of unionized firms have no choice but to speak out in favor of unions, for one way for them to overcome their competitive disadvantage is to support the unionization of rival firms, even at the cost of higher prices and fewer choices in the relevant consumer markets.

- EFCA will introduce massive uncertainty into labor relations if adopted in the present form. Secret card check campaigns can impose unions on both dissident employees and employers under circumstances in which neither is able to voice their position before the union is recognized. The removal of the secret ballot opens up the field to risks of coercion and misrepresentation, for which EFCA provides no remedy at all. Once unionized, firms unable to negotiate acceptable terms within the narrow window provided by EFCA will be required to enter into mandatory interest arbitration before an arbitral panel under rules that are nowhere set out in the act and which will be adopted by the head of the Federal Mediation and Conciliation Service, a political appointment, from whose decision EFCA allows no right to appeal. The short deadlines that are contemplated under the act and the inability of employers to have any clear say in the choice of arbitrators could result in ruinous contracts for which there is no relief except bankruptcy. The likely consequence of this draconian regime is to forestall the formation of new businesses that are such instrumental catalysts in job creation.

In the course of my work, I have relied in part on a careful empirical study that Dr. Anne Layne-Farrar, a director at the Law and Economics Consulting Group, has prepared in order to determine the potential impact of EFCA's card check and compulsory arbitration scheme on overall levels of unemployment.<sup>3</sup> Her conclusion under a variety of model specifications is that for every increase of 3 percentage points of union workers in the economy brought about by EFCA, we can expect to see about a 1 percentage point increase in unemployment. To put those numbers in perspective, the current workforce is about 150 million workers, so an increase in union representation of about 4.5 million workers would lead to a 1.5 million increase in unemployment levels.

Recently, the supporters of EFCA have come forward with two documents that are designed to bolster the case for EFCA. The first is a short letter that was signed by 38 economists who urge Congress to pass EFCA in order to improve the operation of labor markets. The second is a recent study called "Organizing Prosperity: Union Effects on Job Quality, Community Betterment, and Industry Standards," written by Dr. Matt Vidal, a recent graduate from the University of Wisconsin-Madison, assisted by David Kusnet, a former speech writer in President Clinton's administration. Vidal did his research at the UCLA Institute on Labor and Employment, an organization with strong pro-union ties. The link that joins these two documents together is that both have been published under the aegis of the Economic Policy Institute, which has long championed labor causes.

Both of these documents are deeply flawed. I begin with a detailed analysis of the short economist letter, before making some general observations about the Vidal/Kusnet study.

#### STATEMENT FROM ECONOMISTS

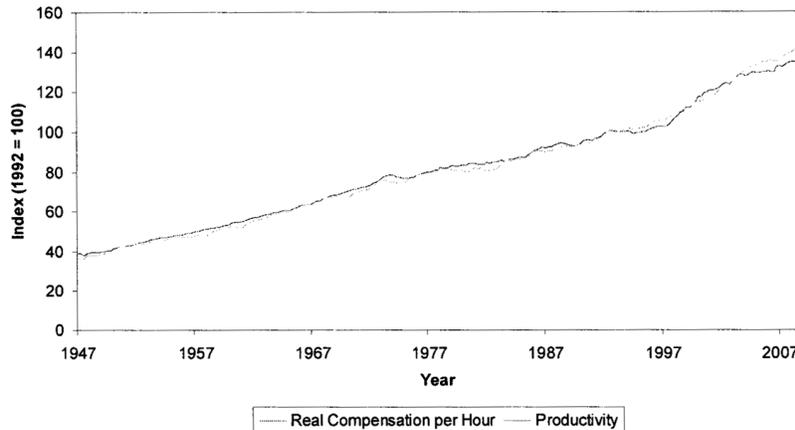
The initial point in the economist letter is the claim that hourly compensation for American workers has stagnated while their productivity has soared. The claim, however, fails on two grounds. First, the letter offers no evidence whatsoever to support the proposition. Indeed the available evidence points in the opposite direction. Below is a graph that tracks the relationship between the two, based on Bureau of

<sup>2</sup>David G Blanchflower and Alex Bryson, "What Effect Do Unions Have on Wages Now and Would Freeman and Medoff Be Surprised?", *Journal of Labor Research*, Vol. XXV, No. 3, Summer 2004.

<sup>3</sup>Anne Layne-Farrar, "An Empirical Assessment of The Employee Free Choice Act: The Economic Implications", available online at Social Science Research Network, <http://ssrn.com/abstract=1353305>.

Labor Statistics and Bureau of Economic Analysis data, which shows the close correlation.

Figure 1: Productivity and Compensation Grows, 1947-2007



Second, the Economist Letter offers no explanation as to why any persistent gap between compensation and productivity should arise. The historical relationship between wages and productivity is consistent with general economic theory. Whenever wages rise more rapidly than productivity, it will lead to firm failure and thus be self-correcting. Whenever wages rise more slowly than firm productivity, new firms will enter the market to bid up wage levels to the point where wages and productivity are again in harmony.

To be sure, unions do exert monopoly power when they organize workers to bargain under single representation. The effect of those negotiations, at least for the unions that succeed, is to raise the wages of their members, but that private increase for covered workers does *not* translate into wage increases for workers as a whole. The increase in union wages necessarily reduces the number of employees who work at these high pay levels. It also creates wage losses due to job interruptions such as strikes, slowdowns, and layoffs. In addition, some displaced workers would be forced into other occupations where wage levels are relatively lower. The additional entry into these nonunionized markets increases the supply of labor, which in turn lowers the wages for workers who were already in that market niche. The arrival of the new workers pushes the supply curve to the right, so that in equilibrium there are more workers at lower wages. It is an empirical matter as to the size of these various effects, but there can be no dispute about the existence of these forces. Unionization can only raise overall wage levels if it increases productivity. And if it did that, unions would be welcomed by all employers, which is clearly not the case today.

In fact, unfettered unionization creates some social costs that are not borne by firms, but by the public at-large. The current labor relations require the heavy involvement of the NLRB, which is funded by taxpayer dollars. It imposes costs of firms and unions to comply with its complex strictures. These expenditures consume wealth, but they do not create it. These social costs facilitate unionization that can reduce productivity by imposing work rules that make a workforce less flexible than they would otherwise be in their absence. The detailed rigidity, for example, of the United Automobile Workers' labor contracts with Chrysler, Ford, and General Motors have played a large role in the downfall of these companies, which has imposed billions of dollars of social costs that are not taken into account as an incident of unionization in the economist letter.

The second paragraph in the economist letter is likewise off the mark. The key statistic cited in the letter is, "From 2000–2007, the income of the median working-age household fell by \$2,000—an unprecedented decline." The sentence however, is crafted in a form to create the illusion that it bears some relationship to fortunes of workers, both in and out of organized labor. However, the statistics to which the letter refers are "the median working-age household." The key word in this sentence is *age*. The economist letter does *not* refer to the wage levels in these households,

for the \$2,000 figure covers all households in that age group, including those in which there are *no* working individuals at all. To properly gauge the situation, however, it is best to look at systematic evidence that hones in on wages.

Table 1.—Households by Number of Earners by Mean and Median Income, All Races: 2000 and 2007<sup>4</sup>

No. of earners and year	No. in thousands	Median income		Mean income	
		Current dollars	2007 dollars	Current dollars	2007 dollars
<b>All Households:</b>					
2007 .....	116,783	50,233	50,233	67,609	67,609
2000 .....	108,209	41,990	50,557	57,135	68,792
Difference .....			-324		
<b>No Earners:</b>					
2007 .....	24,541	17,492	17,492	25,700	25,700
2000 .....	21,755	15,231	18,339	21,652	26,070
Difference .....			-847		
<b>One Earner:</b>					
2007 .....	43,318	40,710	40,710	55,752	55,752
2000 .....	37,857	33,619	40,478	46,506	55,995
Difference .....			+232		
<b>Two Earners:</b>					
2007 .....	39,093	77,758	77,758	94,964	94,964
2000 .....	38,066	62,222	74,917	77,961	93,868
Difference .....			+2,841		
<b>Three Earners:</b>					
2007 .....	7,352	95,026	95,026	110,065	110,065
2000 .....	7,758	75,854	91,331	89,295	107,514
Difference .....			+3,695		
<b>Four Earners or More:</b>					
2007 .....	2,480	100,000	100,000	132,352	132,352
2000 .....	2,773	92,316	111,152	104,729	126,097
Difference .....			-11,152		

At this point, it is clear that over the past 8 years there has been essentially no change in either medians or means. The \$2,000 decline referenced in the economist letter seems to relate solely to those households who are heads of household and under 65 years old.<sup>5</sup> There is much that can be said about the source of that decline, but it cannot be attributed to the absence or presence of labor unions, except to the extent that strong unions reduce the number of job opportunities relative to those in a competitive market.

In addition, even if the entire \$2,000 decline in median household income were attributable to change in real wages, it is still not possible to attribute it to any changes in the levels of unionization. During the 2000–2007 period referenced in the economist letter, the percentage of union workers in the economy was virtually constant at about 16 percent of the overall labor force. The only changes were the slight increase in public sector unions and the slight decline in private sector unions, to the point where in 2007 both were about equal in numbers at around 8 percent, whereas private unions were larger than public unions in the year 2000 by about 2 percentage points. There is nothing in those constant data that could explain the decline in median household income. What does matter, however, is the mix of union workers. The loss of jobs through attrition in the automotive, tire, steel and other old line industries did result in the loss of high paid union wages that were insupportable in the face of intense global competition. Those numbers should serve as a warning to anyone who thinks that observed union premiums in various industries can survive over time. To be sure, this is more likely to happen in service-intensive industries that are more shielded from competition than it is in global markets in goods. The union market power comes at the price of high costs for services

<sup>4</sup>Households as of March of the following year. Income in current and 2007 CPI-U-RS adjusted dollars. U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplements, available at <http://www.census.gov/hhes/www/income/histinc/inchhtoc.html>.

<sup>5</sup>See for the probable source of the quotation, Arloc Sherman, Robert Greenstein & Sharon Parrott, Poverty and Share of Americans Without Health Insurance Were Higher in 2007—and Median Income for Working-Age Households Was Lower—than at the Bottom of Last Recession, Center on Budget and Policy Priorities, <http://www.cbpp.org/8-26-08pov.htm>.

to consumers, who will either have to cut back on their own consumption or switch to less expensive alternatives, especially in times of economic privation.

The next assertion in the economist letter states broadly that “virtually all the Nation’s economic growth went to a small number of wealthy Americans.” This proposition is wrong on both empirical and theoretical grounds. On the former, here is the census data on the distribution of income by wealth for 2000–2007.

Table 2.—Share of Aggregate Income Received by Each Fifth, Top 5 Percent and Middle 60 Percent of Households, All Races: 2000 and 2007<sup>6</sup>

Year	No. (In thou- sands)	Share of aggregate income						
		Lowest fifth	Second fifth	Third fifth	Fourth fifth	Highest fifth	Top 5 percent	Middle 60 percent
2007 .....	116,783	3.4	8.7	14.8	23.4	49.7	21.2	46.9
2000 .....	108,209	3.6	8.9	14.8	23.0	49.8	22.1	46.7

The data on these census tables indicate no substantial change in the relative fortunes of any relevant group. The explanation for the relatively small rate of growth may implicate a wide range of socio-economic factors from education levels to changes in regulatory policies in the education, health and business sector. There is no evidence whatsoever to support the general statement that the wealthiest are gaining at other workers’ expense. What is true is that over the past 20 years or so, there have been larger gaps in income for graduates of universities relative to high school graduates and individuals without a high school diploma. Any explanation for these shifts is likely to implicate the rise of jobs in an information economy which gives far greater rewards to individuals with the ability to manipulate abstract concepts and symbols, both verbal and mathematical, and who have facility with technical tools and Internet skills that are so important in the modern economy.

At this point, the economist letter shifts to the empirical claim that workers wish to form unions to gain a “fair share” of the economy. The letter claims that this is borne out by empirical studies, none of which is mentioned. This empirical claim is incorrect as well. It is simply not true that workers receive only a small share of the wealth they create. In fact, the relatively stable trend in the share on national income going to workers (slightly up in the long run) has occurred as the rate of unionization has declined. Further, the argument that unions are needed to make sure that low-wage and middle-class workers receive their “fair share” of the Nation’s income that goes to workers does not hold up when one compares the recent income trends for full-time, year-round workers and the continuing decline in unionization. For example, since 1994 the three important income fairness measures for men who work full-time, year-round—the 90th percentile/10th percentile income ratio; the 50th percentile/10th percentile income ratio; and the Gini Index—have remained fairly stable as the unionization rate for men has fallen. To the extent that income shares of households have become more unequal since 1979, it has more to do with increasing returns to education, the change in the occupational mix of the economy, the increasing number of single-parent families, global and regional competition, and high levels of immigration, than declining unionization rates.

The low rate of unionization in 2007, which resulted in only 60,000 workers winning union status through election, has a clear implication that the economist letter does not acknowledge. Workers, when given the choice through secret ballot, on average vote more often not to join a union. The most telling figure in this regard is that unions have reduced the number of elections called from about 2,800 in 2000 to about 1,400 8 years later, with little if any increase in overall success rates. Instead, unions have often resorted to campaigns to force neutrality agreements from employers, by which they agree not to oppose unionization or to engage in demonstrations and other tactics that can make it difficult for the firm to operate in its normal manner. Yet none of these tactics are acknowledged, let alone discussed in the economist letter.

The economist letter is also wrong on its factual assertion that union elections take too long. The data actually cuts the other way. General Counsel Ronald Meisburg of the NLRB made these findings in his 2007 report of NLRB activity: “Initial elections in union representation elections were conducted in a median of 39 days from the filing of the petition” . . . “93.9 percent of all initial representation

<sup>6</sup>Supra note 4.

elections were conducted within 56 days of the filing of the petition in fiscal year 2007, compared to 94.1 percent in fiscal year 2006, and above our target of 90 percent.”<sup>7</sup> The economist letter is correct that these elections are often marked by acrimony on both sides, given the enormous stakes. It would be wrong to attribute this breakdown in relations to one side or the other. The current framework encourages these struggles by conferring monopoly power on the union as the sole bargaining representative. It is surely incorrect to claim that “union sympathizers are routinely threatened or even fired,” for which the economist letter cites no data. The most common study typically cited for this proposition contains serious methodological mistakes that deprive it of any probative force.<sup>8</sup> For its conclusion, the letter relies on the testimony of union organizers, and not on any independent data. It does not distinguish between legal and illegal employer campaign tactics, but condemns all employer tactics, even legal ones, simply because they are persuasive.

Nor does the economist letter explain why any effort to fire union sympathizers makes sense from an employer’s point of view. In addition to the legal remedies of reinstatement and back pay, any firing of these workers is likely to backfire on the firm as the key union organizers, who are often not employees of the firm, can use the dismissal to rally remaining workers.

The description of EFCA is every bit as troublesome. There is nothing simple or established about card checks as devices that are imposed on employers without their knowledge. Nor is there any provision in the proposed statute that provides methods for the authentication of cards before neutral observers or to withdraw suspect cards before an election. The letter simply misstates the effect of the arbitration provision, which it claims “creates a process to ensure that newly unionized employees have a fair shot at obtaining a first contract by calling for arbitration after 120 days of unsuccessful bargaining.” EFCA does not give newly unionized workers a “fair shot at obtaining a first contract.” The hint that an agreement might not be reached is false. EFCA imposes that contract as a matter of law by forcing employers *and* unions to accept a contract that is imposed by a panel of arbitrators chosen under unspecified procedures that will be designed by the head of the Federal Mediation and Conciliation Service. The arbitration in this instance is “interest” arbitration, not grievance arbitration. The arbitrator thus can impose all the terms of a complex collective bargaining agreement on any employer and group of workers. Yet the act gives the employer and those workers no right of appeal to any independent party that is outside the influence of the Secretary of Labor, a clear political position in the Cabinet.

The economist letter makes the bald and unsupportable assertion that the coercive process entailed in EFCA will somehow reflect workers’ preferences when many of them will have no say in the organization of the union and no say in the acceptance of any particular contract. Nor does it explain how this coercive procedure imposed on large and small firms alike could possibly improve relationships between a firm and its workers. The economist letter is right to say that a rising tide raises all boats, but they should have added that a falling tide lowers all boats. There is no evidence of any efficiency advantage that comes from the imposition of EFCA. The one clear and sober conclusion is that the Congress is asking for massive social dislocations in a time of economic turmoil by enacting an ill-conceived statutory plan that contains no details of its implementation.

#### ORGANIZING PROSPERITY

The Vidal/Kusnet study takes a very different tack from the economist letter. It offers a set of vignettes about the success stories that it has identified in management-labor relationships. The letter contains no explicit discussion of any of the provisions of EFCA and thus has nothing to say about whether or how it will improve the overall situation in labor markets in the United States. Indeed one way to read the study is as an endorsement of the status quo on the grounds that it has facilitated the management-labor relationships that it describes in glowing terms.

Nonetheless, I think that the study is defective in any larger effort to explain how or why labor unions improve the overall efficiency of the labor markets. First, the study does not attempt to answer the economic objections that relate to the social costs that are created by the legal monopoly created under the National Labor Relations Act. Indeed, the word “monopoly” appears nowhere in the study. This

<sup>7</sup>Memorandum GC 08-01, December 5, 2007, Summary of Operations (Fiscal Year 2007), at 1. [http://www.nlr.gov/shared\\_files/GC\\_Memo/2008/GC08-01\\_Summary\\_of\\_Operations\\_FY\\_07.pdf](http://www.nlr.gov/shared_files/GC_Memo/2008/GC08-01_Summary_of_Operations_FY_07.pdf).

<sup>8</sup>Kate L. Bronfenbrenner, Employer Behavior in Certification Elections and First-Contract Campaigns: Implications for Labor Law Reform, in *Restoring the Promise of American Labor Law 75* (Sheldon Friedman, et al., eds. 1994).

celebratory study does point to several ostensible advantages of unions, but offers no explanation as to why these features of labor markets are in fact desirable. For example, the authors cite the work of Richard Freeman and James Medoff<sup>9</sup> to the effect that unions reduce firm turnover, but they offer no explanation as to why reduced turnover is a sign of efficiency in a plant, as opposed to stagnation in the workplace brought about by nonproductive union seniority systems.

At other points, the authors note that some mass merchants pay lower wages to its workers, but they do not note the explosive growth in the number of workers the firm has hired, the long-list of applicants whenever a new store opens, and the lower prices that consumers benefit from by shopping at these stores. Vidal and Kushnet's only concern is the competitive advantage that Wal-Mart had against "Albertsons, Kroger's, Ralph's, and Safeway's Vons and Pavilions."<sup>10</sup> Yet the authors make little of their reference to "the longest strike in the history of the [grocery] industry," which imposed costs on the striking workers, the nonstriking workers, and the customers and suppliers of the firm in question. The other vignettes studied all suffer from the same hopefulness that refuses to even consider the costs of unionization in addition to its benefits. There is no question that some unions have better relationships with their employers than do others. Those that work together successfully should be able to compete with nonunion firms if they are as efficient as Vidal and Kusnet insist—without the added club of EFCA.

The inability of union firms to compete is further illustrated by Vidal and Kushnet's slanted account of union failures in both the meat packing and trucking industries. In the former, it is clear that Iowa Beef Packers did become a dominant firm, but the authors offer no evidence that it "recreated the conditions exposed in *The Jungle* a century earlier."<sup>11</sup> Likewise, it was clear that once the protectionist regulation under the Interstate Commerce Act broke down, unionized firms could not viably compete against more efficient providers. In both cases the expanded labor market did what would be expected: it reduced both wages to drivers and costs to consumers. Deregulation, however, does not explain which way the two effects net out. The study notes that average load per dispatch has dropped, but never asks, for example, whether the shift results from the ability of haulers to use smaller trucks more efficiently.

Similarly, Vidal and Kushnet's description of the titanic organization struggles in Las Vegas is far less rosy when the full account is given. Unfortunately, their study does not mention the picketing and other tactics that the union brought to bear on Las Vegas casinos, and its unwillingness to call for any election so that it could continue to turn the pressure on the firm.<sup>12</sup> Nor did they mention that even with the neutrality agreement, the union was only able to command 52 percent of the workers on the card check, or that the wages paid prior to the unionization efforts were as high as those in nonunion establishments. It is easy to see how the union benefited from this drive, but much more difficult to see how the workers benefited.

The basic objection to this study is this: any full and fair analysis of the overall situation has to look at the dislocations and the failures as well as the successes. Yet there is no mention of the breakdown in relations that brought these major firms to an impasse with the large industrial unions, which lost membership through attrition. In all these cases, the unions took the position that they would never enter agreements that would bankrupt the firms on which their success depends. There is nonetheless a real conflict in the level of risk of bankruptcy that unions and employers are prepared to take. Think only of the work rule restrictions in the automobile industry and the job bank program that was terminated only recently after the need for public bailout money became imperative. These contract provisions had nothing whatsoever to do with increasing efficiency or productivity. The same is true of the two-tier labor contracts that existed in the automotive industry, which reflected the greater power of workers with seniority than those without it. This part of the story is not told in Vidal and Kushnet's study.

Instead the entire effort is a transparent effort at argument through carefully selected anecdotes that support the optimistic conclusion about the social effects of unionization. There is no effort to get a random sample of workers or union campaigns to see whether the results hold across the board. It is a wholly improper social science technique to praise the "accomplishments" of organizing campaigns without looking at the associated costs. It is entirely misleading to operate as though workers always act in concert when in fact they are often deeply divided on

<sup>9</sup>Richard B. Freeman & James L. Medoff, *What Do Unions Do?* (Basic Books 1984).

<sup>10</sup>Matt Vidal & David Kusnet, *Organizing Prosperity: Union Effects on Job Quality, Community Betterment, and Industry Standards*, 23 (EPI Books 2009).

<sup>11</sup>*Id.* at 2.

<sup>12</sup>*See*, MGM Grand, 329 NLRB 464 (1999).

the desirability of unions in their own workplaces. The overall effects of unionization on the economy cannot be understood through storytelling, but instead requires the use of systematic theory and evidence. The social case for a change in the law governing unions is not made by showing that some unions benefit their members some times. Even if they did in every case, the question would still remain whether those gains are offset by greater costs elsewhere. There is no reason to think that any overall improvement in wages or income could flow from the adoption of the Employee Free Choice Act, whose flawed institutional design mean that it cannot live up to the praise heaped upon it by its supporters.

Sincerely yours,

RICHARD A. EPSTEIN.

[Whereupon, at 12:50 p.m., the hearing was adjourned.]

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