

things: Social Security, Medicare, Medicaid, and part of the interest on the debt.

This budget was certainly not something to be proud of. It includes more money than what the President asked for and doesn't eliminate a single wasteful Government program. It adds to our Nation's debt, and it raises taxes on middle-class families.

To date, this Congress, under the new majority, has failed to send any meaningful legislation to the President's desk for signature. Instead, the majority leader pulled the immigration bill from the floor, delayed consideration of an energy bill, ultimately passing a bill that will fix none of the current problems, and pursued political resolutions aimed at weakening the President, at the expense of strengthening our Nation.

Only one of the "six for '06" initiatives that our Democrat colleagues heralded when they got elected to the majority have become law, due in part to their lack of bipartisanship and cooperation.

Their agenda so far has included passing a budget with the largest tax increase in American history; increasing spending on wasteful programs; they have sought to micromanage the war rather than to give our commanders and soldiers, sailors, airmen, and marines on the ground the opportunity to actually succeed; they forced our troops to shoulder pork barrel projects and made them wait 117 days to get a bill to the President that he would sign—an emergency spending bill that would get necessary relief to our troops in a time of war; they sought to raise the minimum wage without protections for small businesses; they have hampered the 9/11 Commission recommendations with paybacks to unions; they forced taxpayers to fund embryonic stem cell research under circumstances that many Americans would find crosses a moral line, by taking life in order to conduct scientific research; they have undermined a successful Medicare prescription drug plan in favor of a Government-run health care plan, and opposed market-based solutions.

My friends across the aisle have had a rough go of it during their first 6 months in the majority. They would have you believe, and the majority leader would have you believe, from his comments earlier today, that they have not been able to accomplish anything because of their narrow majority here.

In truth, however, the blame lies with the incredibly partisan way in which the majority has conducted themselves. They have refused to cooperate with this side of the aisle to accomplish many good things for the American people, instead filing a record number of cloture motions and bringing this body to a halt—40 times so far this Congress, compared with 13 during the same period of time in the 109th Congress, 9 in the 108th, and only 2 in the 107th Congress.

I am here to urge our colleagues in the majority to discard the approach they have attempted so far, which is to ram legislation through a closely divided body without compromise. This has not worked for them so far, and it will not work for them in the future. Even more important, it will not work to solve the problems of the American people.

In order to do the job the American people sent us here to do, we have to work together. As my Democrat colleagues have pointed out many times in the past, we are not the House. We must continue to look at all issues that are vital to the American people. We must compromise on those issues in good faith to do our very best, and we must put an end to the time we are wasting on such divisive, partisan issues, such as frivolous votes of no confidence against the current administration and payback to big labor for November favors.

I yield the floor.

The PRESIDING OFFICER (Mr. BINGAMAN). The Senator from Utah is recognized.

Mr. HATCH. I ask unanimous consent that I be given enough time to make this speech, as long as I finish before 2 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### EMPLOYEE FREE CHOICE ACT

Mr. HATCH. Mr. President, I rise in fierce opposition to the horribly misnamed Employee Free Choice Act.

When I first came to the Senate, I thought the 1977-1978 labor law reform bill we turned back was bad public policy. The bill we are considering moving to the floor, H.R. 800, is far worse.

Where is the free choice for employees in this horribly misnamed Employee Free Choice Act? In all my years in the Senate, I have to say that the title of this bill is the most misleading of any I can recall. This bill doesn't give rights to employees; it takes away the rights of employees and replaces them with the rights of union bosses.

Back in 1977 and 1978, when we fought the labor law reform bill, there were 62 Democrats in the Senate and only 38 Republicans. But we were able to defeat that bill by one vote. Thank goodness we did because this would be a far different country today.

This bill would more aptly be named the Union Bosses Free Ride Act because it would allow union organizers to skip the efforts of having to convince employees to vote for union representation in secret ballot elections to gain certification as the exclusive bargaining representative. Then it would allow union negotiators to skip the efforts of bargaining for a first contract. Instead, unions need only make a pretense of collective bargaining for an initial union contract before turning to the Federal Government, which can for 2 years impose the wages, benefits, and

other terms and conditions of employment binding on employees, without employees' ratification or approval—binding on the employer as well, without the employer's ratification or approval.

Is this what my colleagues want to support—eliminating secret ballot elections and mandating Government certification of a union based on union-solicited authorization cards? Is this what my colleagues want to support—the Federal Government writing the binding contract terms for private sector wages, benefits, and other terms and conditions of employment? That is what this bill does.

Apparently, it is not what the American public want us to support. According to a January 2007 poll by McLaughlin and Associates, 79 percent of the public opposes this bill, including 80 percent of union households, 80 percent of Republicans, and 78 percent of Democrats.

When asked: "Would you be more or less likely to vote for a Member of Congress who supported this bill?" the response was 70 percent less likely.

Recent polls also suggest that 87 percent of voters, almost 9 out of 10, agree that every worker should continue to have the right to a federally supervised, private-ballot election when deciding whether to organize a union. The same survey found that 79 percent, that is 4 out of 5 voters, oppose efforts to replace the current private-ballot system with one that would simply require a majority of workers to sign a card to authorize organizing a union. There was virtually no variation in reply among Republicans, Democrats, or Independents in this survey; this sentiment rings true across the board.

Likewise, in a 2004 Zogby International survey of union workers, it was found that the majority of union members agree that the fairest way to decide on a union is for the government to hold a private-ballot election and keep the workers' decisions private. In the same survey, 71 percent of union members agreed that the current private-ballot process is fair. The survey also found that 84 percent of union workers stated that workers should have the right to vote on whether or not they wish to belong to a union.

It is hard to believe that we are seriously considering a bill to deny workers a secret ballot vote so soon after the national elections, and our own elections, given our Nation's history in promoting secret ballot elections for the disenfranchised members of society through the suffragette and civil rights movements. This is especially true since we are fighting for the opportunity of individuals around the world to have the democratic right to a secret ballot election.

Apparently, even congressional cosponsors of the bill acknowledge that it would be bad policy to take away secret ballot union representation elections, at least for workers in Mexico. In a 2001 letter to Mexican Government

officials, the House sponsor of H.R. 800, 16 Members of the House of Representatives including one then-member who now serves in this body, wrote:

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

If private ballot elections are absolutely necessary for workers in Mexico, why aren't they necessary here? That is what you have to ask.

The answer is simple. Union bosses are more successful under card check. Recently, according to official NLRB statistics, unions have won over 60 percent of NLRB-supervised secret ballot union representation elections. In other words, they are winning the vast majority of elections on secret ballot. They want to win all of them, and that is why they support this card-check approach. At least by political election standards, that 60 percent is a high mark. But not for union bosses. Statistics show that under a card check, unions win approximately 80 percent of the time, and an even higher percentage when the employer remains neutral and does not communicate with workers, as employers are permitted to do under the section 8(c) free speech provision of the National Labor Relations Act.

In effect, forced employer neutrality would be the result of card check under H.R. 800, since union organizers would control the timing of the election by quietly securing a majority of signatures—50 percent plus 1—among a group of employees, large or small, determined by the union organizer, and then springing the demand for certification upon the employer and the NLRB. The result would, in effect, silence the employer and thus deny employees the right to be fully informed about the particular union seeking their support.

Under this bill, the role of the NLRB, which has such a proud history of conducting secret ballot union representation elections, would be reduced to that of handwriting analysts checking to make sure that employees' signatures were not forged, and determining whether the group of employees designated by the union constitutes an appropriate unit. Remember, under NLRB law, the unit petitioned for does not have to be the appropriate unit, or the most appropriate unit, but only an appropriate unit for bargaining where the employees share a community of interest. Thus, in effect, the union organizer can select a group of employees that are most easily organized by means of card check, force NLRB certification by designating "an" appropriate unit, and then force a government-imposed first contract, the terms of which could incorporate employer obligations affecting the employer's entire operations, such as contract provisions barring subcontracting of work.

In effect, H. R. 800 is push-button unionism.

Under this bill, to force union representation, union organizers only have to get employees to sign union authorization cards, which the Supreme Court has an "inherently unreliable" indicator of true employee support due to peer pressures, intimidation and coercion.

Would the unions like the employers to have the same right, to be able to go privately and intimidate employees as the union organizers will do and get 50 percent plus 1 to throw the union out? Not on your life.

In fact, as one court stated with regard to card check authorization, "It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a card check unless it were an employer's request for an open show of hands. The one is no more reliable than the other." *NLRB v. Logan Packing Co.*, Fourth Circuit Court of Appeals.

Some supporters of the bill have asserted that the bill does not eliminate secret ballot elections. But if they simply read the bill, it provides just the opposite. Just so we are clear, quoting from the bill:

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

How can one say with a straight face that card check for union representation is any more protective than a private ballot election where employees may be solicited, intimidated, and coerced, subtly or not so subtly, to sign union authorization cards by fellow employees during nonwork hours and nonwork areas at the workplace, or by outside union organizers at the employees' homes or at the union hall or simply on the street or at the plant gates.

How is card check more of a free choice than the long-established and hard-won employee protections of a private ballot election, which is supervised, monitored, and shielded by Government officials of the National Labor Relations Board, who are present at the voting booth to prevent improper electioneering and misconduct by representatives of either labor or management?

The compulsory, first contract, interest arbitration is even a greater departure from sound national labor policy because it destroys free collective bargaining.

Under this bill, to force an initial union contract, union negotiators only have to make a pretense of bargaining for 90 days before calling on federal mediation for 30 days. If not resolved, the contract then must go to a federally appointed arbitrator who will write the employment terms binding on the employees and the employer for 2 years. That is long enough to sour employees on the federally imposed terms of employment, and long enough to bankrupt an employer or make it so noncompetitive that it decides to close operations and do business elsewhere—perhaps and probably overseas.

How can one say with a straight face that it is an employee's free choice to have the Federal Government write the terms of employment through compulsory interest arbitration by a federally appointed arbitrator? Under this bill, the arbitrator has unfettered authority to impose the wages, benefits, terms and conditions of employment of an initial union contract, which is then binding on employees and their employers for two years, without the employees even being able to approve or ratify those terms as they can under current law? How is that employee free choice? How is that open collective bargaining?

And how is it an employee's free choice then, by operation of the current contract bar doctrine, to prevent those employees from challenging the union's continuing majority support by an NLRB supervised secret ballot election?

This bill is not about employee free choice. It is about union leaders calling in their political chits in order to increase membership, and being able to deny workers the protections of an NLRB-supervised secret ballot election.

It is about union leaders then being able to get the Federal Government to impose wages, benefits, terms and conditions of employment and deny workers the right to ratify or approve the first union contract that will govern their employment for 2 years.

This is a huge and radical change in national labor policy, which the bill's sponsors are trying to foist on American workers and employers without even the benefit of a committee markup. Imagine, with only one day of committee hearings, completely rewriting and reversing over 70 years of national labor policy by injecting the Government into private sector collective bargaining through compulsory arbitration. The Federal Government steps in, not where the parties voluntarily agree to such intervention, but by congressional mandate, by operation of law, whether the parties agree or not.

That is not the way national labor policy is designed to work. This is not how it worked when the original Wagner Act was enacted in 1935, and in all subsequent amendments including the 1947 Taft-Hartley Act. Consistent with the decisions of every NLRB in Democratic as well as Republican administrations—and enforced by every federal

court including the Supreme Court, it has been bedrock national labor policy that the Federal Government must not set the terms of the private employment contract. The role of the Federal Government through the NLRB and the courts has been to establish the rules for good faith bargaining. And the law does not require agreement, nor does it require a contract, so long as the parties bargain in good faith. Those sound national labor policies are destroyed under H.R. 800, which ignores whether the parties are bargaining in good faith and mandates a first contract binding on both sides.

This bill does not require a finding by the NLRB or the courts that the parties have failed to engage in good faith bargaining. Although misguided and bad policy, at least the 1977–1978 labor law reform bill addressed union complaints about the difficulty of reaching agreement on first contracts by first requiring a finding by the NLRB that the employer was guilty of bad faith bargaining. Then, the so-called make whole remedy proposed was to pay wages equivalent to a BLS index of average hourly manufacturing wages for the period of the employer's refusal to bargain. That, in my opinion, is not something Congress should endorse.

But to show you how truly extreme the current bill is, under H.R. 800 there is no requirement of a finding that the employer had violated the National Labor Relations Act by failing to bargain in good faith on an initial contract. The employer may have negotiated completely in good faith, and the parties need not have even reached an impasse in negotiations, to trigger the supreme sanction of having the Government step in and write the contract. The only trigger is when the parties have been unable to agree on a contract after 90 days of negotiations and 30 days of federal mediation. In effect, we are legislating that it is an unfair labor practice for an employer not to reach agreement on a first contract within 90 days of bargaining and 30 days of mediation, and that unless you agree to the union's terms the penalty is that the Federal Government will appoint an outside, third party to impose a contract on you for 2 years. Now that is not American.

Think of the effect of all this on the Nation's small business community. Informed of union certification because of card check, suddenly dragged to the bargaining table within 10 days of the union's demand, and most likely never having engaged in collective bargaining before, the small business owner will be confronted with professional union negotiators insisting on wages, benefits, terms, and conditions perhaps beyond the small business owner's ability to accept and remain competitive. But unless the small business owner agrees, the Federal Government, through a federally appointed arbitrator, will step in and write the contract.

Do we want the Federal Government writing private sector contracts? I

don't think so. I cannot stress enough my concern about the bill's provision for first contract compulsory interest arbitration, especially as it would affect small business. That is even worse than the card check scheme to begin with, but without the card check scheme, you can't get to this.

It is close to socialism to mandate that the Federal Government, through federally appointed arbitrators, should dictate private sector wages, benefits, and other terms and conditions of employment. These are not simply my words and my concerns. Let me quote from the Nation's leading basic textbook on arbitration, Elkouri & Elkouri, "How Arbitration Works," the sixth edition, 2003, which is published by the American Bar Association's section of labor and employment law with editors representing labor and management.

The Elkouri text states:

Compulsory arbitration is the antithesis of free collective bargaining.

The text then lists several reasons against compulsory arbitration.

Broadly stated, that: First, it is incompatible with free collective bargaining; second, it will not produce satisfactory solutions to disputes; third, it may involve great enforcement problems; and fourth, it will have damaging effects on economic structure.

The text continues.

Compulsory arbitration is a dictatorial and imitative process rather than a democratic and creative one.

Summarizing the arguments against compulsory arbitration, the text concludes:

Compulsory arbitration means governmental—politically influenced—determination of wages and will inevitably lead to governmental regulation of prices, production, and profits; it threatens not only free collective bargaining, but also the free market and enterprise system."

Can you imagine being a small business owner, especially the owner of a family business, confronted with the choice of capitulating to a skilled union negotiator's unreasonable demands after 90 days of bargaining? Imagine the business being, in effect, turned over to a Federal arbitrator to impose whatever wages, benefits, terms, and conditions of employment the arbitrator chose to impose, as Elkouri states, "affected by the arbitrator's own economic or social theories, often without the benefit or understanding of practical, competitive economic forces"?

Is that what we want to do to our small business community, much less to larger businesses, whose issues for bargaining are even more complex? Since there are no limits on what an arbitrator may impose through interest arbitration, it is conceivable that the terms could include participation in an industry's underfunded multiemployer pension plan, for example, something which could eventually force an employer into insolvency.

Lost in what little debate we have had on this bill is the unfairness of its

provisions for anti-employer punitive sanctions. Once again, these provisions in the bill are a radical departure from the balance of traditional national labor policy which for over 70 years has confined the act to "make whole" remedies, and, at least since the 1947 Taft-Hartley Act, has tried to maintain a balance of the remedies for union unfair labor practices and employer unfair labor practices.

H.R. 800 provides, for the first time, punitive rather than remedial sanctions under the National Labor Relations Act and contains only anti-employer sanctions. That is, H.R. 800 contains revolutionary punitive sanctions only against employers. Regardless of how corrupt the union may be, there are no sanctions possible against the union.

It provides for increased damages against employers in the form of back pay and liquidated damages equal to two times that amount for anti-union discrimination from the initiation of a union organizing campaign and until the first collective bargaining. These increased damages are clearly punitive, not remedial and not designed to make whole an employee for anti-union discrimination. Nowhere in H.R. 800 does the law provide for such punitive sanctions against union unfair labor practices.

In addition to back pay, the bill provides civil penalties against employers of \$20,000 for each violation. Since each unfair labor practice charge filed against employers or unions often contains allegations of multiple violations, the \$20,000 civil penalty could multiply several times for a single charge. Of course, under the bill, the \$20,000 simple penalty applies only against employers. How fair is that? Nowhere does H.R. 800 provide civil monetary damages against unions where they commit unfair labor practices against employees.

Finally, the bill provides for a mandatory injunction against employers' alleged acts of anti-union discrimination, including—and I am reading from H.R. 800—allegations that the employer:

(1) discharged or otherwise discriminated against an employee; (2) threatened to discharge or to otherwise discriminate against an employee; or (3) engaged in any other unfair labor practice that significantly interferes with, restrains, or coerces employees in the exercise of their rights guaranteed in section 7.

This is, in other words, the right to organize, bargain collectively, and engage in concerted activities such as strikes.

Supporters of the bill argue this provision mirrors the act's section 10(I) injunction against unions which is mandatory when unions engage in secondary boycotts affecting neutral parties. Of course, therein lies the reason for the injunction. By current definition a section 10(I) injunction applies only where a neutral third party is involved and the injunction is designed

to prevent harm to the public where labor disputes are expanded to those employers not directly involved in such disputes.

That is not the type of unfair labor practice against an employee during the course of a union organizing campaign, where a make-whole remedy of reinstatement with full back pay is available.

Mandatory injunctions are extraordinary penalties, especially involving small businesses, since they involve expensive Federal court litigation. As such, the threat of a mandatory injunction—which, for example, would mandate the employer reinstate the employee during the investigation and prosecution of the injunction—could operate to silence the employer from communicating its views regarding unionization. This is the employer's right under section 8(c) of the National Labor Relations Act.

There has been much said recently by supporters of H.R. 800 about employer misconduct during union organizing campaigns and collective bargaining for a first contract. This has been used to justify the radical provisions of H.R. 800 denying workers of private ballot union elections, increasing anti-employer sanctions, as well as compelling interest arbitration of first contracts.

Unfortunately, much of what has been said is simply untrue or exaggerated and based on flawed information and studies of dubious quality. I cite as an example one fatally flawed study conducted by Cornell Law School Professor Kate Bronfenbrenner. It is frequently cited regarding the firing of union organizers in over one-quarter of union organizing campaigns. The study is based on a survey of union organizers for their opinion as to how often organizers are fired during a union organizing campaign. That hardly constitutes an objective, unbiased sample, and such anecdotal opinions hardly constitute the type of factual, statistical information we have the right to expect before radically changing over 70 years of national labor policy.

Also, supporters of H.R. 800 claim from an NLRB report that over 31,000 employees received back pay annually and thus presumably were fired during union organizing campaigns, which represent one worker fired every 17 minutes. That figure grossly misapplies the report and its basis. In fact, that number includes a very high percentage of workers who were already represented by unions, some for many years, who were being paid back pay because their employer took some unilateral action, such as contracting out work, without consulting their union. Therefore, a high percentage of such back pay had absolutely nothing to do with union organizing campaigns, and supporters of H.R. 800, who must know better, are simply using this statistic to exaggerate their claims. Also, supporters of H.R. 800 ignore the more accurate number that according to the NLRB's most recent annual statistics

only 2,000 employees were ordered reinstated by the Board.

As we debate over whether or not to deny private ballots to workers deciding whether or not to unionize, it is my hope that we will be able to at least hold fast and true to the facts. And there should be full debate on these facts, not simply a cursory one-day hearing, bypassed markup and we move straight to the floor. We must not rely on slogans, anecdotal stories, and questionable secretly-commissioned and selective statistics about alleged unfair labor practices.

In conclusion, those on the other side of this debate have advanced—with fervor—several misleading arguments about the so-called Employee Free Choice Act. I look forward to a debate on the facts of this legislation. We should debate. Let each side be passionate. And of course we will disagree; but let us be respectful. Most importantly, let's make sure that this is an honest debate.

As we enter this debate we should not be fooled by the misinformation from supporters of the bill:

They claim that employers coerce employees to vote no on unionization. The truth is that in less than 2 percent of cases it is found that an employer has inappropriately interfered in a union organizing election.

They claim that under the current system unions are not able to win. The truth is that unions won 62 percent of the National Labor Relations Board elections in 2005—the last year where a complete set of statistics exists.

They claim that the use of a card-check system is the best, most reliable and fair way of judging employees' true intentions of unionizing. The truth is that the use of a card-check system is an inherently unreliable indicator of an employee's true sentiments which lead me to a few other truths on their misleading reliability claim. The truth is that the card acquisition process is unregulated, meaning there is no check on potential undue influence when gathering cards; the truth is that we have found that intimidation, coercion, and pressure tactics can be—and usually are—used to obtain signatures; the truth is that often, bounties and financial incentives are paid to union organizers to obtain signatures on cards; the truth is that intentional deception and misrepresentation are often used by unions when obtaining cards; and the truth is that employees are often induced to sign cards by promises of higher pay, better benefits, and waivers of fees—of course the same employees are not made aware of the potential risks and costs of unionization. And finally, they claim that American workers want to form unions using a card check system.

The truth is that according to a recent poll 79 percent of Americans oppose the elimination of private ballots when voting in union organizing elections.

Senators should be aware this is not a free vote! The bill is not passed this

year, or is passed but vetoed, it will put those of us who voted for it on record as supporting a radical change in national labor law and labor policy. It will put us in support of a system which denies workers a secret ballot election, which has been the bedrock underpinning of national labor policy—the crown jewel of the National Labor Relations Board.

A vote for this bill, or for cloture, will put us on record as against free collective bargaining on first contracts and in support of a political, government-dictated system of compulsory interest arbitration where a federally-appointed arbitrator will dictate the wages, benefits, terms and conditions of employment binding on employees without their even having a vote to approve those terms.

And it will put us on record as supporting an unbalanced system of remedies where employers are subject to punitive sanctions, rather than remedial make whole remedies while ignoring sanctions for union unfair labor practices.

In the end, H.R. 800 will hurt workers and will take away rights they currently have under federal labor law.

In the end, it will hurt employers, leading some to look elsewhere to do business and foreign investment to turn elsewhere rather than the United States.

We will be on record, and we will be reminded of our vote today in future congresses. We must vote no on cloture, just as we should vote no on the bill.

Mr. President, I hope my statement reflects why this is such a horribly misnamed and bad bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

#### WELCOME TO WYOMING'S NEW SENATOR

Mr. ENZI. Mr. President, minutes ago a new Senator for the State of Wyoming was officially appointed by the Governor of Wyoming, and I want to welcome Dr. JOHN BARRASSO, now Senator BARRASSO, and introduce him to the Senate.

John is an extremely capable person who has gone through a selection process that involved 30 people who were interested in serving as Senator. He went through an interview process and a selection process and was one of three people given to the Governor from whom to select. The Governor gave each of the people a list of 42 issues of critical interest to the State of Wyoming and interviewed each of them and made a selection on that basis. Dr. JOHN BARRASSO was the selection.

I am very excited about this. I am excited about having a full roster from Wyoming. I have known JOHN for many years. I was pleased that he ran for the State Senate. He worked on a lot of conservative issues there. He was a