STRENGTHENING AMERICA'S MIDDLE CLASS THROUGH THE EMPLOYEE FREE CHOICE ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH,
EMPLOYMENT, LABOR AND PENSIONS

COMMITTEE ON
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C O N T E N T S

STRENGTHENING AMERICA'S MIDDLE CLASS THROUGH THE EMPLOYEE FREE CHOICE ACT

Thursday, February 8, 2007
U.S. House of Representatives
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and Labor
Washington, DC

The subcommittee met, pursuant to call, at 10:30 a.m., in room 2175, Rayburn House Office Building, Hon. Robert Andrews [chairman of the subcommittee] presiding.

Present: Representatives Andrews, Miller, Kildee, McCarthy, Tierney, Wu, Holt, Sánchez, Sestak, Loebsack, Hare, Clarke, Courtney, Kline, McKeon, Marchant, Boustany, Hoekstra, McMorris Rodgers, Foxx, and Walberg.

Staff present: Tylease Alli, Hearing Clerk; Jordan Barab; Jody Calemine, Labor Policy Deputy Director; Carlos Fenwick, Policy Advisor for Subcommittee on Health, Employment, Labor and Pensions; Michael Gaffin, Staff Assistant, Labor; David Hartzler, Systems Administrator; Brian Kennedy, General Counsel; Thomas Kiley, Communications Director; Danielle Lee, Press/Outreach Assistant; Joe Novotny, Chief Clerk; Megan O'Reilly, Labor Policy Advisor; Rachel Racusen, Deputy Communications Director; Mark Zuckerman, Staff Director; Robert Borden, General Counsel; Steve Forde, Communications Director; Rob Gregg, Legislative Assistant; Jessica Gross, Deputy Press Secretary; Taylor Hansen, Legislative Assistant; Victor Klatt, Staff Director; Lindsey Mask, Director of Outreach; Jim Paretti, Workforce Policy Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Linda Stevens, Chief Clerk/Assistant to the General Counsel; and Loren Sweatt, Professional Staff Member.

Chairman ANDREWS [presiding]. Please take your seats. I would ask if we could have the doors closed in the back of the room.

Good morning, ladies and gentlemen. Today the subcommittee will consider the topic of the Employee Free Choice Act and the issues surrounding it.

It is self-evident to me that being a middle-class person in this country is an increasingly difficult thing to do. Middle-class people feel like they are on a treadmill where the speed has been increased and increased and increased and they are struggling hard to stay in the same place.

People who are fortunate enough to have a job, have health insurance and get a raise very often find out that any raise that they

got was more than consumed by the increase in their out-of-pocket health-care costs. The cost of educating a son or a daughter or oneself or one's spouse continues to go up with very little relief in sight. Whether it is your fuel bills, your property taxes, your auto insurance, your mortgage, it is very difficult to make ends meet.

Many of us believe that one of the antidotes to the middle-class squeeze is the power of collective bargaining, the ability to bargain collectively with your peers at work in order to achieve a better result. The record would indicate that union workers make about 30 percent more than their brothers and sisters who are not in a union, that virtually the odds of having health insurance if you are in a union are remarkably higher than the odds if you are not. Same is true of a pension.

Having said all of that, the purpose of the Employee Free Choice Act is not to encourage more membership in unions. The purpose of the Employee Free Choice Act is to give every working person in the country a free and uncoerced choice as to whether or not to join a union.

The centerpiece of the Employee Free Choice Act, the lead sponsor of whom is the chairman of our full committee, Mr. Miller, and of which I am proud to be a cosponsor—the centerpiece of the legislation is the idea that, through majority sign-up, if a majority of employees of a given bargaining unit wish to be represented in collective bargaining, they have the right to do so.

This is, by no means, a new idea under the labor statutes of this country. In fact, the idea of majority sign-up has been in the law for over 6 decades.

The major change that the Employee Free Choice Act makes in majority sign-up is that, unlike the present situation where, if you have a majority sign-up for representation, the employer has a veto power and can force that decision into an election, under the bill that Mr. Miller has proposed if a majority of employees express their will, if there is a finding by the National Labor Relations Board that these are valid signatures, meaning that they are uncoerced and they are voluntarily given, if there is such a finding, then the union is recognized and there is prompt and expeditious progress toward the negotiation of the first contract.

So there is nothing new about this.

Now, certainly you are going to hear concerns raised today about the importance of secret ballots in choosing whether or not to have a union represent workers. This is an issue on which there is significant disagreement among our friends here on the subcommittee and in the full committee and, I would assume, in the full Congress as well.

I would indicate today, the record will show that there is no secret that there is a long and negative history of coercion in the conduct of union elections under the existing law of the status quo. The notion that somehow a process that concludes with a secret ballot is presumptively fair and uncoerced is a false notion.

And, in fact, you will hear a record of testimony today that indicates, in many occasions, how there is a presumptively coercive environment that takes place in the representation election context.

Now, this is an issue on which there are strong feelings on both sides. And I am certain that those strong feelings will be vigorously expressed today. We welcome that.

It is both my hope and my intention that, in our vigorous pursuit of the points of view that we advocate, that we will do so respectfully toward each of the witnesses, obviously toward each other as colleagues on the committee, and where we disagree, we will disagree agreeably.

We are going to proceed with the hearing this morning. And what I would like to do at this point is to yield to my friend and colleague, the ranking member of the subcommittee, Mr. Kline.

Mr. KLINE. Thank you, Mr. Chairman.

And good morning to everyone.

As the chairman said, we had agreed at the onset of this Congress that there could be times when we would disagree, but we would do that without being disagreeable. And this is certainly going to be one of those days, because, from the very outset, I couldn't disagree more with what this bill is proposing to do.

The fundamental premise is to examine a bill that is cleverly called the Employee Free Choice Act. And I would argue that this is anything but free choice.

It would replace a system today in which workers are empowered to cast their vote on whether or not to unionize in a thoroughly monitored, federally supervised, private ballot election. It would replace this with an unregulated, unmonitored card-check process, in which everyone—everyone: a worker's employer, his coworkers, the union—knows how he or she votes.

My colleagues know that I am not prone to hyperbole—maybe sometimes—or to be overly dramatic. So let me be blunt. As I see it, this bill strips away the federally protected right to a secret ballot from American workers. That is not choice, and it is certainly not free choice, for our nation's employees.

I would agree entirely with the chairman's opening comments that this hearing and this discussion is not about whether or not employees are better off in a union or not. That is an interesting debate and one which we may engage in someday, but this hearing is not about whether or not unions are better than non-unions. It is about how workers choose whether or not they want to be in a union.

And I hope that we will be able to focus the discussion and the debate all morning on that issue, and not flip to a discussion of whether or not unions provide more benefits than non-unions.

We have a number of witnesses with us today, and we have workers from around the country who have submitted testimony for the record to tell us their story, which, Mr. Chairman, I ask unanimous consent to include in the record of this hearing.

Chairman ANDREWS. Without objection.

[The information follows:]

[The statement of Mr. Marchant follows:]

Prepared Statement of Hon. Kenny Marchant, a Representative in Congress From the State of Texas

Despite the true purpose and scope of today's hearings, it is clear that the "Employee Free Choice Act" does nothing more than roll back federally protected secret ballot elections. To join a union is a personal decision and under current law it is

accomplished through either a confidential vote that remains private or a "card check" system. The secret-ballot process is overseen by the National Labor Relations Board. The bill we are discussing today would mandate revealing a worker's anonymous vote to employers, union organizers, and coworkers. The process proposed would take away a clear right to free and confidential voting that is held so dear in this country and is as American as Apple Pie. This bill leaves open the door for misguided peer pressure or coercion from unions and employers. Taking away free, private elections just to expedite unionization is a serious and misguided policy. The stories you will hear today of abuse in the process will be nothing more than scare tactics. We as Americans support and foster free elections through our representation here in the Nation's Capitol and also through voting at the state and local levels. Why would we take that right away from Americans in the workplace? This is an issue that I hope the public will notice and demand we preserve the right to free and confidential elections for the American worker.

Thank you Mr. Chairman.

Prepared Statement of Mike Ivey, Materials Handler, Freightliner Custom Chassis Corporation

My name is Mike Ivey, and I appreciate the opportunity to share with the committee my experiences under an abusive card check organizing drive which is still ongoing after four and a half years.

Freightliner Custom Chassis Corporation (FCCC) in Gaffney, South Carolina, has employed me for approximately seven years. We are a non-union facility and more than the majority of employees are extremely proud of that fact. The problems we have started in the fall of 2002.

During contract negotiations for their union facilities, the UAW and Daimler Chrysler Corporation reached a card check agreement to allow the UAW to try to organize their non-union facilities. This agreement prevents FCCC from doing anything positive for their employees, or discussing the situation with the employees. This agreement also allows the union to recruit and pay FCCC employees at this facility to handle their card check system.

The card check system consists of coercing employees to sign a card for the union. If enough cards are signed, 50% + 1, then the facility is considered to be a union facility. In this process of obtaining the needed signatures, there are a lot of untruths told.

Early on, the employees for a non-union FCCC signed and submitted a petition which clearly states that they want no union representation at this facility. More than seventy percent of all employees signed this petition. The UAW and Daimler Chrysler Corporation received these petitions with no response, nor any halt in the card check drive.

In April of 2003, the CEO of Daimler Chrysler promised the employees of FCCC a wage increase at a plant wide meeting. In August of 2003, when the time came to make good on that promise the union threatened a lawsuit against Daimler Chrysler if the wage increase was implemented. They feared that if employees got the wage increase they had long been promised, it would reduce support for the union. We obtained free legal aid from the National Right to Work Legal Defense Foundation, and only after we filed charges at the National Labor Relations Board, did the union allow the pay increase.

Employees are told at off-site meetings that signing a card only certifies that they attended the meeting. Employees are also offered a free t-shirt if they sign a card. What they are not told is that these cards are a legally binding document, which states that the employee is pro union—thus placing the union one step closer to their goal of complete control of the employees' workplace life without the employee even realizing it.

In the work place, the employees running the organizing campaign for the UAW are relentless in trying to get the employees to sign union cards. This has created a hostile work environment, with employees who once were friends who are now at odds with each other.

The employees who are not in support of the Union should have the right to go to work and not be harassed every day. This harassment has been going on more than 4 years with no end in sight. Faced with this never-ending onslaught, we employees feel that the UAW is holding our heads under water until we drown.

In April 2005, the UAW obtained the personal information of each employee. It wasn't enough that employees were being harassed at work, but now they are receiving phone calls at home. The UAW also had Union employees from other facilities actually visit these employees at their homes. The union's organizers refuse to

take "no" for an answer. If you told one group of organizers that you were not interested, the next time they would send someone else. Some employees have had 5 or more harassing visits from these union organizers. The only way, it seems, to stop the badgering and pressure is to sign the card.

Moreover, in many instances, employees who signed cards under pressure or false pretenses later attempted to retrieve or void this card. The union would not allow this to happen, telling them that they could not do so.

After four and a half years of trying to organize our facility, the majority of employees are still against the Union by roughly a 3 to 1 ratio.

We feel that the aggressive behavior of UAW organizers will only escalate in 2007. All the union Freightliner facilities are facing major layoffs in the coming months. We expect the UAW to turn up the heat at our Gaffney facility to make up for the dues revenue shortfalls at the union facilities.

I understand that some members of Congress would like to mandate this abusive card check process for selecting a union so that employees everywhere will go through what we continue to experience. Rather than increasing this coercive practice, Congress should ban it.

Everyone in public office is elected by secret ballot vote. Please give us a chance in our work place to make the decision on representation in the same manner.

Prepared Statement of Karen M. Mayhew, Employee of Kaiser Permanente

My name is Karen M. Mayhew and I work for one of the nation's largest Health Maintenance Organizations, Kaiser Permanente, in Portland, Oregon. I write today to express my concern over the ironically named "Employee Free Choice Act." This legislation, if passed, will strip from American workers the right to say whether or not they want to have their working lives forever altered. I would like to share my personal experience under "card check" and explain why it is a terrible idea.

Back in the spring of 2005, a local of the Service Employees International Union (SEIU) descended upon my small office of approximately 65 professional employees and launched into an organizing campaign. This union had already signed what they called a "neutrality agreement" with my employer which silenced my employer and made it impossible for my employer to speak truthfully to us about the meaning of the union's activities.

One of the first meetings with the union after the launch of the "card check" campaign was a Q & A session with a local organizer and SEIU organizing director at a large reception hall at one of our Portland campuses. At that meeting, union authorization cards were placed purposely in front of each chair. Some of us, myself included, spoke to our colleagues before the meeting about those cards, and questioned their meaning and purpose. At the meeting, employees asked the union agents questions about the purpose of the cards. The union agents responded by telling us that signing the card only meant that the employee was expressing an interest in receiving more information about the union, or to have an election to decide whether or not to bring the union in.

It was made clear to all of us there in attendance that those authorization cards did NOT constitute a vote right there and then for exclusive representation by SEIU. We were told by the union agents that if 30% of us signed those cards, we would be allowed an election to vote on exclusive representation by the SEIU. Indeed, a collective bargaining agreement between Kaiser and the SEIU specifically provided that there would be a secret ballot election.

For the next 7 months, a union organizer had open and free access to us and our facility in her quest to secure what we thought were cards to get an election. She would incessantly approach us on our breaks, our lunch hours, even in the hall on our way to the restroom. Due to our employer's "neutrality agreement," this union agent was free to do this on our work time.

On October 17, 2005, my department was brought to a meeting with our senior management and told that as of that date, we were officially represented by SEIU. There was never an election and no further information was available to us. About a week later, we had a joint meeting with the regional director of Human Resources and the union organizer. The first questions at that meeting were not about what it meant to be in the union. Instead, many incensed employees complained that we were not given our promised election.

When we were told that 50% + 1 had signed the union's authorization cards, and that no election would be held, it did not take long for many employees to announce that they would not have signed the cards if they had known that there would be no election. Knowing that the union had just a one-person majority in our department at the time of Kaiser's recognition, I filed Unfair Labor Practice charges

against Kaiser and the SEIU union with the National Labor Relations Board (NLRB), based in part on the realization that some in our department had signed cards solely due to the union's misrepresentations. Those unfair labor practice charges were docketed as NLRB Case No. 36-CA-9844 and 36-CB-2607.

My charges were filed with assistance from the National Right to Work Foundation, without whom I would have been at a loss as to how to proceed to protect my legal rights. My charges specifically addressed the union's misrepresentations, and the violation of the employer and union's "collective bargaining agreement" to hold an election when the union provided a 30% showing of interest.

In addition, I filed for decertification of the union when I submitted to the NLRB a petition with signatures constituting more than 30% of the bargaining unit. That decertification Petition was docketed as NLRB Case No. 36-RD-1673. Along with three other Kaiser employees from my department, I gave a sworn statement to an agent of the NLRB detailing the events leading up to the "card check" and the unlawful recognition of the SEIU based upon that "card check." In February of 2006, the local office of the NLRB sent my case to the NLRB's Division of Advice in Washington D.C.

The charges remained at the NLRB's Division of Advice until July, 2006. It is my understanding that the Division of Advice found merit to our charges of unfair labor practices, and authorized the issuance of a formal complaint. That is when the union and Kaiser decided to settle the charges. The terms of the settlement included revoking the voluntary recognition of SEIU by Kaiser, and the promise that if SEIU ever desired to represent my department for the next several years, it would have to obtain such status through a National Labor Relations Board-supervised secret ballot election. I accepted this settlement offer because the unlawful recognition was rescinded, and my story made headlines in the local newspaper, The Oregonian.

Within two months of the settlement, the same SEIU union, at the same employer, gained exclusive recognition rights over employees in another department without any election. The employees in that department also filed an Unfair Labor Practice charge with the NLRB. The end result of that charge was another settlement in which Kaiser and SEIU terminated their voluntary recognition, and agreed to only use NLRB-supervised secret ballot elections if the union wishes to return before December 31, 2008.

Throughout this whole ordeal, my colleagues and I were subjected to badgering and immense peer pressure. Some of us even received phone calls at home. While I let my feelings toward this union be known early on, I still was attacked verbally and in e-mail by my pro-union colleagues. I believe this abuse directed towards me was at the request of the union in an effort to intimidate me and have me back down. Union supporters upset with me and my actions were talking about me in language that could only have come from the union. You could easily assume they were reading from union talking points. Different people all expressing the same sentiment. I exercised my free choice not to be in the union and my work life became miserable because of it.

In sum, I respectfully submit that "card checks" are not the preferred method of union recognition, and that the cases outlined above, filled with union abuses of a wide variety, are the rule in "card check" campaigns, not the exception.

To deny workers the right to choose union representation in secret, without coercion, intimidation, social ostracizing, and misrepresentations, is to deny a fundamental American right. As a worker who was abused under a "card check" process, and had to wage a costly battle to protect my rights, I urge you to reject this ill-conceived special-interest legislation.

Prepared Statement of Ricardo Torres, Former Union Organizer for the United Steelworkers

My name is Ricardo Torres, and I appreciate the opportunity to share with the Congress some of my experiences working as a union organizer for the United Steelworkers (USWA) from 1996 until 2002. I left this line of work because I became revolted by the ugly methods that we were encouraged to use to pressure employees into union ranks.

I worked across the country in many states, either directing or working on approximately 500 union organizing campaigns, including many that involved card check, rather than elections. I was in charge of the campaign strategies, organizers, and tactics used. I also worked on national organizing campaigns such as in glass, meat packing, mini mills, and the Metaldyne card check drive. I was the person on the ground working the merger with the California Nurses Association. I have also taught classes regarding union organizing for the Latinos in Labor Studies program

at University of Michigan and at Linden Hall for the USWA in Dawson, PA. I was also part of the Wayne State University's union speaker circuit where I spoke on organizing immigrant workers.

I ultimately quit this line of work when a senior Steelworkers union official asked me to threaten migrant workers by telling them they would be reported to federal immigration officials if they refused to sign check-off cards during a Tennessee organizing drive. This was the last in a long list of abuses I had observed as a union organizer.

First, I think it is important to understand that the most important department in unions is the organizing department. Union officials know that unless dues-paying membership grows, they will have to cut back on salaries and perks they have grown accustomed to. There is always pressure put on coordinators/organizers about how many people were organized and at what cost. The average cost of union organizing in 2002 was several thousand dollars per worker, according to the data that was presented to me at that time. Union organizers understand that they need to be successful in organizing workers or they will be looking for another job.

The principal directive from the higher ups in the union hierarchy was this: win organizing campaigns by any means necessary.

From the first moment contact was made with workers at a company, the deceit began. We gave the workers a twisted version of the National Labor Relations Act to make them think that they had more rights under the law then they did.

Pro-union employees were encouraged to isolate their coworkers into groups that might favor the union and those who they thought might not favor the union. They were encouraged to take from the workplace any information that might be useful to the campaign like workers' names, addresses, wages, personnel files, internal memos, CD ROMs. They were even asked to go as far as bringing us the garbage from the offices so that union organizers could sift through it to find any dirt on someone in management or the company that could be used to discredit them at a later date.

To the extent possible, the internal committee of pro-union employees was formed in secret so that management would not take steps to secure their internal data or intervene to stop the pressure tactics on employees. We took steps to develop detailed bios on every worker and used this information in pressuring them into supporting the union. Union organizers tried to learn as much personal information about the targeted workers as possible, such as their friends, hobbies, and habits.

Calling OSHA was another tactic used to target the company, as well as overstating and hyping any reports to make the case that the targeted employer has an unsafe work environment. Another tactic is bringing community pressure and/or economic pressure.

Smear campaigns were common, as in the case of hospitals and health care.

Categorizing employees into groups of supporters and non-supporters brought the harassment of anyone that spoke against the union or did not sign an authorization card. Workers were also encouraged to harass management and to try to hijack any company meetings about the organizing drive. The goal was to create a hostile environment and maybe even get a good employee fired in order to anger the rest of the workforce and cause more issues in the workplace. The objective was to hurt the company and non- supporting employees in any way possible.

Visits to the homes of employees who didn't support the union were used to frustrate them and put them in fear of what might happen to them, their family, or homes if they didn't change their minds about the union. In most cases, constant pressure at work and home was enough to make workers break and at least stop talking against the union—neutralizing them, so to speak.

From the first conversation in a newly targeted workplace to the ultimate recognition of the union, the goal is to create an "us against them" environment, to anger the work force into thinking the union is the only solution to their problems, real or made up.

Harassing and misleading workers is the base of all organizing campaigns. The job of a good union organizer is to create issues that disrupt the workplace and cost both the employer and the non-supporting employees money and time. Whether it be in organizing campaigns—or in the case of strikes such as the Detroit Newspaper strike that started in 1995 and lasted years before a contract was signed—the goal was to cause the company harm and use this leverage at the bargaining table. One of the many tactics used at the strike in Detroit was to take 100 to 200 people to protest in front of the house of any worker who exercised his right to continue working. This was done to humiliate them and to put fear into any striker that the same would happen to them if they crossed the picket line. We called this tactic "get to know your neighbor day."

Union officials do not like secret ballot elections because they give employees the ability to use all the information given to them in the course of the election process to make an informed, uncoerced decision. Ultimately, they get to decide what is right for both them and their family in the privacy of the voting booth.

Card check organizing drives give the union more power over the employees. It can be awfully hard to dissent when the union knows how you voted. I believe that card check can be easily exploited to effectively take away employees' right in Section 7 of the Act to refrain from union activity. We knew how to make the pressure so great that most workers would feel powerless to refuse to sign the card.

Looking back on my long experience as a union organizer, I believe the only way to keep the election process fair is to let people make up their minds and to voice their feelings in the only forum they can without fear of reprisal. The secret ballot election is the cornerstone of that right.

Prepared Statement of Mark Mix, President of the National Right to Work Committee

To most Americans, the term "card check" means nothing.

But to union officials, this term potentially means billions of extra dollars collected in forced union dues, above and beyond the $8 billion in forced dues and "fees" that unions already report collecting each year on forms filed with the U.S. Labor Department.

To understand what "card checks" and "card check organizing" are, one must first understand what Big Labor seeks to achieve through the acquisition of so-called "union authorization cards."

Under current law, union officials may obtain bargaining power over workers who don't sign cards as well as those who do, over union nonmembers as well as union members. That's because federal labor law authorizes union "exclusive representation" over private and federal-government employees in all 50 states. So-called "exclusive representation" is more accurately labeled as monopoly bargaining.

• Under Section 9(a) of the 1947 Taft-Hartley Act, a union that has been certified or recognized as the representative of the workers in a bargaining unit has the right of "exclusive representation" for all workers in that unit:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit [that the federal government deems] appropriate for such purposes * * * shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

• The concept of "exclusive representation" means that the union is the sole bargaining agent for the unit. The employer is prevented from dealing with any other organization in the determination of wages, hours, and working conditions for that unit. The employer is also prevented, under most circumstances, from implementing changes in the conditions of work without prior negotiations with the union. Moreover, the individual employee within the bargaining unit, whether a union member or not, is unable to bargain with the employer on his or her own behalf unless union officials grant their permission.

"Card checks" empower union officials to force employees to accept a union as their exclusive bargaining agent solely through the acquisition of signed "union authorization cards" from employees in a particular bargaining unit. Since union officials themselves keep the signed cards until they obtain the required number, workers have no real privacy rights vis-a-vis Big Labor in this process. And under the watchful eyes of union organizers, workers may be intimidated into signing not just themselves, but all their nonunion fellow employees, over to union-boss control.

Union officials virtually never intend to merely obtain the power to negotiate pay, benefits, and working conditions for those employees who sign such cards. When union officials seek the power to bargain with a business only on behalf of those employees who choose to join the union, it need not be determined whether pro-union workers constitute a majority.

As the U.S. Supreme Court has made clear in 1938's Consolidated Edison decision and in subsequent rulings, nothing in federal law bars either a minority or a majority union from seeking and obtaining employer recognition as a members-only bargaining agent.

In recent decades, however, union officials have only very rarely exercised their members-only option. Instead, virtually all union organizing drives focus on obtaining bargaining privileges over nonmembers as well as members. The National Right to Work Committee has long favored amending federal labor law to guarantee the

individual worker's freedom to bargain on his or her own behalf, regardless of co-workers' union status.

But as long as federal law authorizes union officials to acquire monopoly-bargaining power, they should at least have to clear the hurdle of a secret-ballot vote in order to get it. Congress should certainly not make it easier for Big Labor to deny employees the opportunity to bargain for themselves by endorsing the expansion of "card check organizing."

"Card checks" frequently go in tandem with misleadingly-named "neutrality agreements," which typically require employers to help union officials secure monopoly-bargaining power.

A "neutrality agreement" is actually a contract between union officials and an employer under which the employer agrees to support attempts to organize its workforce. Although these agreements come in several different forms, common provisions include:

• Gag Rule: Far from promoting employer "neutrality," most "neutrality agreements" impose a gag order on speech not favorable to the union. The company, including its managers and supervisors, is prohibited from sharing with workers any information that might be construed as negative about the union or unionization, including even uncontested, objective facts. As long as the unionization drive continues, top managers must do everything within their power to ensure employees hear only one side of the story: the version union officers want employees to hear.

• Preemptive "Card Checks:" Most "neutrality agreements" include a clause in which the company publicly announces in advance that, should a simple majority of employees sign "union authorization cards," the company will recognize the union as the monopoly-bargaining agent of all employees without first allowing a secret-ballot election. Experience shows that many employees are coerced or misled into signing authorization cards. For instance, employees are often falsely told that authorization cards are merely health insurance enrollment forms, non-binding "statements of interest," requests for an election, or even tax forms. Furthermore, when an employer tacitly declares that it is unconcerned about such abuses and will not investigate alleged instances, employees may well decide that resistance to unionization is futile.

• Access to Premises: "Neutrality agreements" commonly give union officers permission to come on company property during work hours for the purpose of collecting "union authorization cards." This differs from the guidelines set by the National Labor Relations Board (NLRB) and the courts, under which an employer has no obligation of, and may actually be prohibited from, providing union bosses with direct access to employees.

• Access to Employees' Personal Information: "Neutrality agreements" frequently require that the company provide personal information about employees to the union, including where employees and their families live. Armed with a company-provided list of the name and address of each employee, union officials can conduct multiple home visits to pressure a targeted employee to sign a "union authorization card." Some employees report they cannot stop such intrusive and potentially intimidating visits even by repeatedly telling union organizers they have no interest in signing an authorization card.

• Captive Audience Speeches: Employees may be forced to attend company-financed "captive audience" speeches pursuant to "neutrality agreements." In these mandatory forums, managers often watch approvingly while union officials put pressure on employees to sign "union authorization cards." (However, actual collection of signed cards while managers and/or supervisors are watching is illegal, according to a June 2004 ruling by an NLRB administrative law judge.)

Sometimes it is announced that the union and company have already formed a "strategic partnership," making union representation seem a foregone conclusion. In one facility owned by Johnson Controls Inc., it was strongly implied that if workers did not support the union's organizing effort, they risked losing potential job opportunities.

In light of the destruction "neutrality agreements" wreak on employee-management relations, one may reasonably ask why any employer in his or her right mind would ever agree to sign one. But the sad fact is, employers often sign "neutrality agreements" under duress, because they believe they have no other way to fend off union picketing, threats, or comprehensive "corporate campaigns." (Corporate campaigns utilize many tactics, but typically involve the generation of negative publicity aimed at reducing an employer's goodwill with employees, investors, or the general public.) Some employers are pressured by other employers into signing "neutrality agreements." Some agreements may require an employer to seek to impose the "neutrality agreement" on other companies with whom it affiliates.

Moreover, misguided state and local politicians have in recent years passed a number of laws and ordinances mandating that employers who wish to do business with the state or locality must sign "card check/neutrality agreements."

In one notorious case, the San Francisco Airport Authority mandated that any concessionaires who wished to lease space at the airport had first to sign a "neutrality agreement." However, with legal arguments made by Right to Work attorneys that regulation was later found to be federally preempted. Its enforcement was enjoined in Aeroground, Inc. v. City & County of San Francisco, 170 F. Supp. 2d 950 (N.C. Cal. 2001). Unfortunately, many Big Labor politicians are still attempting to require "card check/neutrality agreements" as a condition of contracting with the government or of obtaining grants, even though most, if not all, such requirements are barred by federal law.

Despite the enormous pressure, alluded to above, that union officials are able to bring to bear on a business to secure its consent for a "card check/neutrality" deal, many employers continue to resist selling out employee rights that the law now entitles a business to protect. Under the U.S. Supreme Court's 1974 decision in Linden Lumber v. NLRB, an employer "who has not engaged in an unfair labor practice impairing the electoral process" cannot be legally required to recognize a union as employees' monopoly-bargaining agent based on a showing of signed cards alone.

The misnamed "Employee Free Choice Act" would make "card checks" the norm even where there isn't so much as an allegation of employer misconduct. Consequently, during unionization drives only the views workers express while being monitored by union officials would count.

Union lobbyists arrogantly claim that no one should be concerned about eviscerating employees' freedom to oppose unionization. When union agents intimidate workers, they imply, it's always "for the workers' own good." But the reality is there are many good reasons why a worker might not want to join or be represented by a union. For example, the latest data from the Bureau of National Affairs (BNA) in Washington, D.C., show that nearly four million private-sector unionized employees nationwide work in sectors for which the mean earnings of unionized employees are lower than the earnings of union-free employees. And the BNA data aren't even adjusted for cost of living, which is on average far higher in heavily unionized regions.

Looking at the BNA data alone, many unionized workers in sectors like manufacturing or wholesale and retail trade have good reason to suspect their real take-home pay is lower than it would be if they were union-free. Many others don't like the fact that union bosses seem more interested in militant electioneering than in anything else. There's no logical reason for Congress to pass a measure that destroys employees' opportunity to cast a secret ballot against potentially detrimental union representation. At the same time it upheld the legality of "card checks" in 1969's NLRB v. Gissel, the U.S. Supreme Court admitted that employees who do not wish to be unionized frequently sign authorization cards as a result of union-boss misrepresentations, threats, or "group pressure." Union officials themselves agree that the "card check" process is fraught with abuses—when the shoe is on the other foot.

The AFL-CIO hierarchy joined in a 1998 legal brief insisting that unionized employees must be given a chance to cast a secret-ballot vote before the union is decertified, even if most have already signed a petition opposing a union. Echoing Gissel, the brief said that a union's workplace status should not be the result of "group pressure."

Clearly, Big Labor is demanding "card check" certification out of expediency, not a sincere belief that cards reliably express employees' views. Any genuine labor-law reform must recognize the fact that the right to join or support a union and the right not to do so deserve equal protection under the law. This Card Check Instant Unionization Bill falsely assumes these rights are in conflict, and that purely non-coercive speech or actions that might dissuade a worker from exercising his or her right to join a union somehow violate that worker's right to join a union. Speaking at a May 12, 2004 press conference on Capitol Hill, hotel worker Faith Jetter dismissed such loopy logic out of hand:

I do not care what decision any employee makes regarding whether or not to be represented by the HERE [Hotel Employees and Restaurant Employees] union, but I think it is each employee's individual choice, to be made with full knowledge of what that choice means. * * * I would * * * want to hear all sides of the story, not just the union's side.

Ms. Jetter, a housekeeping inspectress for the Renaissance Hotel in Pittsburgh, Pa., was visiting Washington, D.C., in order to express her support for legislation introduced in the 108th Congress by Rep. Charlie Norwood (R-Ga.), as an alternative to the 108th Congress's version of the "Card Check Forced Unionism Bill."

The National Right to Work Legal Defense Foundation has represented hundreds of individual workers who have been abused by the unions during the "card check" process.

Many were lied to by union organizers about what the card really meant. They were told that signing the card would help ensure that a secret ballot election took place. Many others were subjected to significant intimidation in their homes, in front of their children, until they signed the cards.

The National Right to Work Committee opposes union monopoly bargaining regardless of how it is imposed.

Prohibiting monopoly bargaining while safeguarding employees' freedom to form unions that represent their members only would subject union officials to the same rules that already apply to officers of other private groups and return personal freedom to the workplace.

Since 1991, at least two Free World countries that formerly authorized "exclusive bargaining," New Zealand and Australia, have switched to systems in which individual workers in unionized businesses may bargain for themselves. Both countries enjoyed above-average growth in production, productivity, and personal income in the years after they made the change.

Some of the potential economic benefits of repealing monopoly bargaining in the U.S. can be seen by contrasting real earnings levels, job growth, and other key economic indices in states where monopoly bargaining is most prevalent with indices in states where it is least prevalent.

When interstate differences in cost of living are factored in, the mean weekly earnings in 2001 of employees in the 10 states with the lowest share of private-sector workers under union monopoly bargaining were $683. That's nearly $30 a week, or roughly $1500 a year, more than the mean of $654 earned by employees in the 10 states with the highest share of unionized employees. (The mean earnings data come from the Bureau of National Affairs in Washington, D.C., as adjusted by the "Interstate Cost-of-Living Index" created for the American Federation of Teachers union by Dr. F. Howard Nelson.)

Low monopoly-bargaining density states enjoy an even greater advantage in economic growth indices than they do in real earnings, as one can see by reviewing the subsequent performances of the states that had the lowest and highest monopoly-bargaining densities in 1992.

Over the next decade, the 10 states with the smallest share of workers under monopoly bargaining enjoyed an aggregate job growth of 27.7%, more than double the 13.5% growth among the states where Big Labor wielded the most monopoly power. For growth in the number of people covered by employment-based health insurance, the advantage for the lowest monopoly-bargaining states was 24.6% vs. 12.5%. The monopoly-bargaining system has, by all evidence, undermined the very economic goals union officials purport to hold near and dear. Imposing more of the same on employees is no solution.

Because it would raise the hurdle union officials need to clear before they can compel union nonmembers to accept unwanted union representation, the Committee supports enactment of the "Secret Ballot Protection Act" But more fundamental reforms are also called for. The Committee is also urges immediate passage of the "National Right to Work Act, H.R. 697, which would bar private-sector compulsory union dues and "fees" in all 50 states. Ultimately, we support repeal of all federal monopoly-bargaining provisions.

Prepared Statement of the Smithfield Packing Co.

Chairman Andrews, Ranking Member Kline and Members of the subcommittee, Smithfield Packing Company appreciates the opportunity to respond to statements made to this Subcommittee at today's hearing on the Employee Free Choice Act by Keith Ludlum, an employee at Smithfield's Tar Heel, NC, pork processing plant, and to offer our view on the Employee Free Choice Act.

As our initial statement indicated, Mr. Ludlum's testimony is riddled with untrue and exaggerated allegations involving events that, as Mr. Ludlum acknowledges, happened 10 to 15 years ago. We acknowledge that Smithfield Packing Company made mistakes at that time, when employees at the Tar Heel plant voted twice not to accept representation by the United Food & Commercial Workers (UFCW) International Union. We have accepted the rulings of the National Labor Relations Board and the federal courts on those matters. We are complying with the remedies prescribed. We are ready to hold a new, independently monitored election. But the union refuses.

The union's motive is clear. Across the nation last year, unions won 56 percent of the elections in which they participated. But the UFCW lost well over 50 percent of its elections. Clearly, the UFCW does not believe it can win a secret-ballot election at Tar Heel.

Instead, then, the union is seeking to pressure Smithfield Packing Company into recognizing the union without allowing employees a chance to vote. That is the background to the statement that Mr. Ludlum made to this committee.

First and most important, we take strong exception to his statements about working conditions at the plant. Yes, work at the pork-processing plant is hard. And employees can get hurt. That is why we as a company do everything we can to avoid accidents. We are committed to employee safety.

The North Carolina OSHA program did an eight-week, wall-to-wall inspection of our plant in 2005. The agency said then, publicly and in writing:

"We commend you on maintaining your workplace in this manner and we appreciate your commitment to protecting the health and safety of your employees."

Every year for the past 10 years, the National Safety Council has praised Smithfield for its safety record. The plant has one of the lowest accident rates of any meat-processing plant in the country, including our unionized plants and others that are represented by unions.

But, no matter how hard we work on safety, accidents can happen. If an accident does occur, we have a doctor right on the premises. We provide immediate care. In fact, Smithfield spent more than a million dollars to build a complete medical clinic at the plant. Employees and their families can see a doctor for just $10. We also provide a full-service pharmacy that fills prescriptions for small co-pay.

Also false is Mr. Ludlum's statement that Smithfield denies workers compensation to injured employees. A third-party administrator—not Smithfield—reviews all claims, makes determinations and actually pays the claims. The administrator then sends us a bill, and we pay it. Plus, an employee can appeal any decision to the North Carolina Industrial Commission.

Mr. Ludlum, interestingly, did not point out the benefits Smithfield provides to employees, including health insurance for them and their families, for only $100 a month; dental insurance; life insurance; a retirement plan and assistance with college tuition. He also did not point out that wages at the plant are well above the new minimum wage passed by this House and well above average wages in the area.

Mr. Ludlum made specific allegations regarding the union elections in 1994 and 1997 that are contradicted by the evidence:

• Mr. Ludlum testified that on election day in 1997 employees were required to walk a gauntlet of armed guards in order to go into the cafeteria to vote. Despite months of testimony and over 13,000 page of transcript, there is no evidence whatsoever to support this claim. Nor did the Administrative Law Judge make such a finding. Police officers were present in or around the cafeteria at the time the NLRB went to count the ballots, after the voting was finished. Their presence was believed to be necessary because of the size of the crowd and the fact that emotions were running high among everyone involved. But police were not present in the plant in or around the voting area while people were voting.

• Mr. Ludlum also testified that the power went out during the voting. His testimony apparently was intended to suggest that the company had orchestrated the power outage and that company representatives may have tampered with the ballot boxes while the lights were out. Again, the Administrative Law Judge made no such finding. The power did go out for about five minutes during the first day of the vote, because of a thunderstorm that knocked out power throughout that part of North Carolina. The ALJ credited the testimony of Joseph Johnson, Vice President of Operations for Four County Electric Membership Cooperative, who testified the power went out system-wide, not just at the Tar Heel plant and that the Company had absolutely nothing to do with the outage. Likewise, the ALJ did not find that anyone, including company representatives, had tampered with any of the voting boxes while the lights were out or at any other time during the election. NLRB officials were present throughout the voting.

Mr. Ludlum made a third serious allegation. He claimed that, in 1993, an employee broke his leg at the plant and was forced to return to work on crutches the very next day. We can no find no record of the particular event Mr. Ludlum described. Nor have we found anyone at the plant, other than Mr. Ludlum, who can recall it. But let us be clear: whatever may have happened fourteen years ago, requiring a hurt or injured employee to return to work in such a situation is absolutely contrary to our longstanding policy and our demonstrated way of doing business.

Smithfield Packing Company is not anti-union. A number of our plants are unionized, and the UFCW represents employees at two Smithfield Packing plants. We believe employees should decide for themselves whether they want to be represented by a union. That is our policy at every plant, including Tar Heel.

This brings us to the real difference between Smithfield and the UFCW. We believe employees should vote on whether they want a union—in a secret-ballot election. The union wants to force itself on the plant through card-check. Further, the union—through Mr. Ludlum's inaccurate testimony and by other means—hopes to persuade this Congress to enact legislation repealing secret-ballot elections and replacing them with card-check.

It is ironic that officials elected by secret ballot would try to take the protection of the secret ballot away from ordinary workers. Card-check takes away the workers' right to privacy. By design, a card-check "vote" would not be confidential. Coworkers, union organizers and management alike would know who has signed a card and who has declined to sign. In addition to those employees who sincerely wish to join a union, some employees might sign union cards because of intimidation, pressure and fear of reprisals, or just to be left alone.

The allegations Mr. Ludlum has made date from the 1990s. This issue has dragged on since that time at Tar Heel and we are ready to resolve it. We want to hold a new secret-ballot election at the plant. Just this month, Smithfield Packing Company was pleased to agree with the United Steelworkers Union and the National Labor Relations Board to hold a secret-ballot election at the company's Clayton, North Carolina, facility. At Tar Heel, we have even offered to pay half the cost of an independent observer—like the Carter Center established by President Jimmy Carter, which has overseen elections in foreign countries—to oversee the union vote. But the UFCW has refused our offer.

It is time to let the employees vote. Let them decide what is best for them. Let them decide whether the allegations made by Mr. Ludlum and the UFCW are true.

Smithfield Packing Company has had unionized plants for years. At those plants, we have worked with the unions and prospered. We will respect the employees' choice at Tar Heel, but we hope that choice will be made in the fairest way, the way most in keeping with our country's finest traditions—by secret ballot. We thank the Committee for this opportunity to express our own view and to set the record straight.

Prepared Statement of the HR Policy Association

Mr. Chairman and Members of the Subcommittee: The HR Policy Association is pleased to present our views to the Committee on the Employee Free Choice Act, which would replace federally-supervised secret ballot elections to determine union representation issues with union authorization cards signed in the presence of union organizers and coworkers. HR Policy strongly opposes this legislation.

HR Policy consists of chief human resource officers representing more than 250 of the largest corporations in the United States, collectively employing nearly 18 million employees worldwide. One of HR Policy's principal missions is to ensure that laws and policies affecting employment relations are sound, practical, and responsive to the realities of the modern workplace.

In the United States, workers have traditionally decided the important question of being represented by a union through a federally-supervised private ballot election (often called a "secret ballot election ") that ensures confidentiality and protection against coercion by either the employer or the union at the critical moment when each employee indicates his or her preference. H.R. 800, the "Employee Free Choice Act," sponsored by Rep. George Miller (DCA) would, among other things, require the National Labor Relations Board (NLRB) to certify a union when a majority of the employees have signed union authorization cards in the presence of union organizers and their coworkers.

Under existing National Labor Relations Board procedures, in place since the 1930s, a union representation election typically takes place after the union has demonstrated to the NLRB that at least 30 percent of those it is seeking to represent wish to have an election. This interest is usually demonstrated by signed union authorization cards that typically indicate a desire by the employee to be represented by the union or to have an election to determine that issue. When the election is held-usually within 60 days-it is supervised by the NLRB, which ensures that employees cast their ballot in a confidential manner with no coercion by either management or the union. Under current law, when presented with union authorization cards signed by more than 50 percent of the employees, the employer may voluntarily recognize the union (a "card check ") but is not required to do so.

Unlike a secret ballot election, union authorization cards are signed in the presence of an interested party-a pro-union co-worker or an outside union organizer-with no governmental supervision. This absence of oversight has resulted in deceptions, coercion, and other abuses over the years, as documented in cases where courageous employees who have brought coercive activity to the attention of the NLRB or the courts. Yet, even where there is no coercion, as Chief Justice Earl Warren acknowledged: "The unreliability of the cards is * * * inherent, as we have noted, in the absence of secrecy and the natural inclination of most people to avoid stands which appear to be nonconformist and antagonistic to friends and fellow employees." NLRB v. Gissel, 395 U.S. 575, 602 n.20 (1969), quoting NLRB v. Logan Packing Co., 386 F.2d 562, 566 (4th Cir. 1967).

As noted above, the casebooks are replete with examples of employees who signed cards under duress or without understanding their implications. For example, in HCF, Inc. d/b/a Shawnee Manor, 321 N.L.R.B. 1320 (1996), an employee testified that a co-employee soliciting signatures on union authorization cards threatened that, if she refused to sign, "the union would come and get her children and it would also slash her tires." In Dana Corp./Metaldyne Corp., 341 NLRB 1283 (2004), shortly after the employer recognized the union, a majority of the employees presented a petition to the NLRB to obtain a secret ballot election to overturn the employer's action but, thus far, have been prevented by Board law from doing so. A recent example in Canada, where most provinces have card check certifications, demonstrates the pitfalls. In Manitoba, 43 out of 59 migrant workers who had signed cards said they did so because they were misled into signing cards by the union which claimed it would offer legal help for some of their coworkers. The workers later claimed they didn't want a union but provincial law denies them an election to resolve the matter. CBC News story available at *http://www.cbc.ca/canada/manitoba/story/2007/01/31/migrant-workers.html.*

The superiority of secret ballot elections in manifesting employee choice is so clear-cut that even organized labor and its supporters have sung its virtues when it serves their purposes. For example, where the issue is whether secret ballot elections should be required to determine whether employees are no longer to be represented by a union (i.e., a decertification), the AFLCIO has argued to the NLRB that "other means of decision-making are 'not comparable to the privacy and independence of the voting booth,' and [the secret ballot] election system provides the surest means of avoiding decisions which are 'the result of group pressures and not individual decision[s].'" Joint brief of the AFL-CIO et al. in Chelsea Industries & Levitz Furniture Co. of the Pacific, Inc., Nos. 7-CA-36846, et al. at 13 (May 18, 1998). Indeed, the Employee Free Choice Act would still require a secret ballot election for union decertifications, even though there are a number of procedural hurdles to obtaining such elections.

In addition to requiring card check union certification, the legislation also includes several other fundamental changes in the labor laws, including having union-represented employees' wages, benefits and other conditions of employment dictated by a third party and locked in for two years where the employer and the union are unable to reach agreement within 120 days. In addition, the bill would unnecessarily add significant new remedies and procedures to the law. Meanwhile the bill would maintain all of the current rules governing decertification of a union, which includes barring even a majority of the employees from obtaining a secret ballot election if a collective bargaining agreement is in place ("contract bar ") or being negotiated for the first time ("recognition bar ") or if there are unfair labor practice charges pending, even though they may have been filed by the union simply to prevent an election.

Throughout the 70-year history of the National Labor Relations Act, both management and labor have had various complaints about how it works and have proposed changes. Yet, for all of its flaws, at its centerpiece is the ability of employees to register their vote in private, with government supervision to ensure that privacy and the absence of coercion or other activities would taint that vote. As stated by Supreme Court Justice William O. Douglas in the 1974 Linden Lumber case: "[I]n terms of getting on with the problems of inaugurating regimes of industrial peace, the policy of encouraging secret elections under the Act is favored."

August 29, 2001.

Junta Local de Conciliacion y Arbitraje del Estado de Puebla,
Lic. Armando Poxqui Quintero, 17 Norte, Numero 1006 Altos, Colonia Centro, Puebla, Mexico.

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

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

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

Sincerely,

GEORGE MILLER,
MARCY KAPTUR,
BERNARD SANDERS,
WILLIAM J. COYNE,
LANE EVANS,
BOB FILNER,
MARTIN OLAV SABO,
BARNEY FRANK,
JOE BACA,
ZOE LOFGREN,
DENNIS J. KUCINICH,
CALVIN M. DOOLEY,
FORTNEY PETE STARK,
BARBARA LEE,
JAMES P. MCGOVERN,
LLOYD DOGGETT,
Members of Congress.

Checking the Premises of "Card Check"

A Nationwide Survey of Union Members and Their Views on Labor Unions

By Zogby International for the Mackinac Center for Public Policy

Methodology: Zogby International conducted interviews of 703 union members chosen at random from a Zogby database of self-identified union households nationwide. All calls were made from Zogby International headquarters in Utica, N.Y., from June 25 through June 28, 2004. The margin of error is ±3.8 percentage points. Slight weights were applied to age, race and gender to more accurately reflect the sample population.

Results

1. For how long have you been a member of a labor union?

	Percent
Less than 5 years	17
5–9 years	24
10–14 years	15
15–19 years	11
20 years or more	33

2. In what industry do you work?

	Percent
Education	32
Government	21
Manufacturing	11
Construction	11
Services	7
Transportation	6
Energy	3
Wholesale and/or retail trade	2
Telecommunications	2
Mining	1

	Percent
Janitorial/Custodial Services	1
Textile/Laundry	--
*Other	3

**Other responses:* Arts/Entertainment (19); Newspaper/Publishing (7); Attorney; Horse racing; Office manager (number in parentheses denotes frequency of similar response).

3. Was the union to which you belong organized before or after your current employer first hired you?

	Percent
The union I belong to was organized before I was hired	93
The union I belong to was organized after I was hired	7

4. Compared to when you first joined the union, how have your opinions changed towards your union and its leaders in general—are you now much more favorable, somewhat more favorable, somewhat less favorable, or much less favorable toward the union, or have your opinions remained about the same?

Much more favorable	20%	
Somewhat more favorable	12%	(More favorable: 32%)
Somewhat less favorable	10%	
Much less favorable	15%	(Less favorable: 25%)
About the same	42%	

5–7. As a union member, which of the following responsibilities do you consider to be:

- the most important for a labor union?
- second-most important for labor unions?
- third-most important for labor unions?

TABLE 1.—RESPONSIBILITIES OF A LABOR UNION

[Ranked by percent saying most important]

	Most important	Second-most important	Third-most important
Bargaining for better wages, benefits and working conditions for its members	73	15	5
Improving job security	10	34	18
Protecting against internal union corruption	3	8	19
Helping companies be more competitive	3	5	8
Improving the public image of labor unions	2	9	16
Engaging in political activities	2	11	10
Protecting the secret-ballot election process for all workers in union membership decisions	1	4	7
Increasing union membership	1	9	11
*Other	2	2	2
Not sure	2	2	6

***Other (Most):** Retirement benefits (2); Supporting its members (2); Collective bargaining; Company safety; Get more people to vote; Going back to representation we had before; Health benefits; Helping to obtain more employment; Protecting us from being sued; Serving as an advocate for the union member; Educating younger members (number in parentheses denotes frequency of similar response).

***Other (Second-most):** Benefits (2); Job security (2); Representation (2); Retirement benefits (2); Being honest with the members; Disability insurance; Health care; Improving education of children; Making more power for the workers; Organized labor; Protecting peoples' rights; Timely contracts (number in parentheses denotes frequency of similar response).

***Other (Third-most):** Fight for union member rights (2); Better health care; Explanation of rights; How the board works with their union members to improve their situation in life; Job security; Keeping educated and informed and strong membership; Making sure elections are clean; Organized labor; Outsourcing our companies to other countries; Policing their own members; Protecting members from discrimination; Providing mutual aid and comfort; Staying out of politics; Wages; Working conditions (number in parentheses denotes frequency of similar response).

8. When you think of how your union dues are spent by your union, which of the following best describes how those dollars are spent?

	Percent
My dues are mostly spent on helping workers get better pay, benefits and working conditions	42
My dues are mostly spent to pay big salaries and perks to people in the union bureaucracy	22
My dues are mostly spent to support political parties or candidates	12
My dues are mostly spent on something else	10
I don't know how my union spends my dues	10
Not sure	4

9–10. Do you think your union spends too much, too little, or about the right amount of your dues money:

- on direct benefits to you and your family, like efforts to secure better wages, benefits and working conditions?
- on things like supporting political candidates and helping them get elected?

TABLE 2.—SPENDING DUES ON BENEFITS AND POLITICS

	Too much	Too little	Right amount	Not sure
On direct benefits to you and your family, like efforts to secure better wages, benefits and working conditions	4	43	47	6
On things like supporting political candidates and helping them get elected	34	11	42	14

11. Do you feel your union is doing the things it needs to do to make sure the union is strong and healthy for many more years, or do you feel your union is on the decline?

	Percent
Doing what it needs to make sure it is strong and healthy	51
On the decline	44
Neither/Not sure	6

12. Do you believe workers should have the right or should not have the right to vote on whether they wish to belong to a union?

	Percent
Should have the right	84
Should not have the right	11
Not sure	5

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

TABLE 3.—CHOOSING THE FAIREST WAY TO DECIDE ON A UNION

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

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

	Percent
Agree	71
Disagree	13
Not sure	16

15. Do you agree or disagree that stronger laws are needed to protect the existing secret-ballot election process and to make sure workers can make their decisions about union membership in private, without the union, their employer or anyone else knowing how they vote?

	Percent
Agree	63
Disagree	24
Not sure	14

16. Which of the following do you feel should oversee secret-ballot elections for union membership? (The options were rotated in the interview and appear in rank order below.)

	Percent
Oversight should be given to other outside parties	35%
Oversight should be given to individual unions	27
Oversight should stay with the government	24
Oversight should be given to individual companies	6
Neither/Not sure	8

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

	Percent
Keep the existing process	78
Replace it with one less private	11
Not sure	11

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

	Percent
At least one-third of the workers	9
At least half the workers	27
At least two-thirds of the workers	51
All of the workers	11
Not sure	2

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

	Percent
Agree	26
Disagree	66
Not sure	8

20. Do think it is fair or unfair for a worker to lose their job if he or she refuses to pay dues to, or support, a union?

	Percent
Fair	32
Unfair	63
Not sure	5

Mr. KLINE. These workers are: Mike I. from Georgia, who asked that this subcommittee make sure that "employees who are not in support of the union have the right to go to work and not be harassed every day;" workers like Karen M. from Oregon, who wants us to know that during a card-check drive in her facility, that she and her colleagues were "subjected to badgering and immense peer pressure" and that she "exercised my free choice not to be in the union, and my work life became miserable because of it."

These are real employees, and I don't think they support the free choice proponents of this bill that we have before us today.

In closing, let me reiterate the question before us is not whether unions are good or bad, but rather whether employees should have the same right each of our constituents had last November when they voted to send us to Congress.

It is beyond me, frankly, how one can possibly claim that a system whereby everyone—your employer, your union organizer, and your coworkers—knows exactly how you vote on the issue of unionization, how does that give the employee "free choice."

It seems pretty clear to me that the only way to ensure that a worker is free to choose is to ensure that there is a private ballot, so that no one knows how you voted. I cannot fathom how we can

sit here today and debate a proposal to take away a worker's democratic right to vote in a secret ballot.

With that, I yield back the balance of my time.

Chairman ANDREWS. Thank you, Mr. Kline.

Without objection, all members of the subcommittee will have 5 legislative days to submit additional materials for the hearing record, including any opening statement members would wish to make.

I welcome the witnesses this morning. We thank you for your attendance.

Your written prepared statements will be entered into the record, so they will be a part of the full record of the hearing.

You will notice in front of you there is a bank of lights. Each witness is given 5 minutes to summarize his or her written statement, again, which will be included in its entirety in the record. When you reach the 4-minute mark, a yellow light will go on, which indicates that you have 1 more minute to go. When you reach the red light, it is an indication that you should wrap up. If the red light goes on for too long, Mr. Kline and I agreed a trap-door exists underneath your seat through which you will fall. [Laughter.]

And we are even more enthusiastically going to hold to that rule for the members of the subcommittee. The trap-door may go off at the 4-minute mark, depending upon what happens.

But we would ask you to comply with those rules. We have a lot of people here today who want to speak, and the members want to become fully engaged.

I will introduce each of the four witnesses, and then we will begin.

Mr. Keith Ludlum is a veteran of Desert Storm. He began working in 1993 for Smithfield Foods' meat-packing plant in Tar Heel, North Carolina.

I note, for the record, the Tar Heels defeated Duke last night in basketball. [Laughter.]

In 1994, Mr. Ludlum and some of his coworkers were fired when they participated in an organizing campaign for the United Food and Commercial Workers Union. In 2006, after a long, 12-year battle, a court of appeals ordered Smithfield to reinstate Mr. Ludlum. And about 6 months ago, he finally returned to his job at Smithfield Foods.

Our second witness is Mr. Ivo Camilo.

Did I pronounce your name correctly, Mr. Camilo?

Mr. CAMILO. Ivo Camilo.

Chairman ANDREWS. Okay. Mr. Camilo. For 35 years, Mr. Camilo worked at the Blue Diamond Growers plant in Sacramento, California, the largest almond-processing plant in the world. He was a valued worker and compiled an outstanding record. In 2005, when Mr. Camilo was campaigning for the International Longshore and Warehouse Union, he was fired. The National Labor Relations Board determined Blue Diamond had unlawfully fired Mr. Camilo. And in 2006, the board ordered the company to reinstate him.

Ms. Jennifer Jason is a former labor organizer for UNITE HERE.

And, Mr. Kline, if you wanted to add anything to her introduction? Okay.

And then, finally, Ms. Teresa Joyce began working as a customer-care representative for AT&T Wireless three and a half years ago. Despite organizing efforts, it wasn't until 2 years ago, when Cingular Wireless bought AT&T Wireless, that the workers were able to organize. In 2005, Cingular voluntarily recognized the Communications Workers of America, the CWA, as the workers' exclusive bargaining representative after the company was presented with a majority of signed authorization cards.

So we will proceed, Mr. Ludlum, with you. Welcome to the committee. And your 5 minutes has begun.

STATEMENT OF KEITH LUDLUM, EMPLOYEE OF SMITHFIELD FOODS

Mr. LUDLUM. Good morning, Mr. Chairman and members of the subcommittee. My name is Keith Ludlum, and I work in the livestock department of Smithfield's Tar Heel, North Carolina, plant.

Thank you for this opportunity to tell the subcommittee about our efforts to organize at Smithfield, about Smithfield's hostile and illegal activities to stop us, and how the Employee Free Choice Act is needed to protect workers' rights.

This is my first time on Capitol Hill and my first time testifying before Congress. I want to communicate to you that my service in Desert Storm was to protect the laws of our land and not to protect companies like Smithfield that continually violate those laws.

If I can submit my entire written statement for the record, I would like to quickly summarize my story.

Smithfield's Tar Heel plant is the largest hog-slaughter and pork-processing facility in the world. The Tar Heel plant processes 32,000 hogs a day. That is 16,000 hogs per 8-hour shift, 2,000 per hour, 33 hogs every minute, one every 2 seconds.

As a hog-runner in the livestock department, I work inside the pens where hogs are unloaded off trucks. During my 8-hour shift, my coworkers and I are responsible for moving about 16,000 live hogs per day.

I returned to North Carolina after my duty in Desert Storm and started working at Smithfield in 1993. I soon saw how Smithfield mistreated its workers and, in December 1993, started working on organizing a union. We wanted a safe workplace, we wanted a union contract, we wanted to be treated with respect.

In 1994, Smithfield illegally targeted and fired me for my union-organizing activities. The supervisors and the deputy sheriff marched me out of the plant in front of all the other employees, as an example to intimidate the others. At the time, my wife was pregnant with our first child, and what should have been a joyous time for us became a difficult one.

Shortly after my firing, there was a vote, and we were cheated out of union representation because of Smithfield's illegal activities. The NLRB issued a complaint against Smithfield for numerous violations of workers' rights. The company's anti-union campaign and severe intimidation and harassment cost us the election.

Smithfield's CEO, Joe Luter III, later promised in writing that the next election would be fair. That promise was not worth the paper it was printed on. The election that followed in 1997 was even worse: intimidation, threats, arrests and firings.

I want to point out that a union election in a plant is nothing like the elections to public office that you are familiar with. During the 1997 vote, Bladon County deputy sheriffs, dressed in battle gear with guns, lined the long driveway leading to the plant. It was an effort to intimidate and frighten the workers—the voters.

Company management stood right there with the head of the sheriff's office and created an intimidating and hostile atmosphere for workers going to vote. The voting site was not a neutral or unprejudiced place. Imagine if the incumbent in a local election put armed sheriffs in front of his opponent's voting precincts.

Finally, last year, after more than 12 years of litigation by the company and through lost appeals, a settlement was reached. What was the punishment? Well, Smithfield was not fined or indicted for breaking the law, and none of its executives who were named in the litigation were punished either.

Smithfield was only required to offer jobs to those workers like me who were illegally fired and to pay back-wages for the time we were unemployed or could not find comparable pay.

They were also ordered to hold another election. Smithfield's president said he looks forward to an election by secret ballot. If anybody in this room thinks that this company is going to have a free and fair election after its history of violence and intimidation, then you haven't heard a single word that I have said.

When my job at Smithfield was offered to me again, I made the decision to leave a secure job and take a big pay cut. I knew I had to finish what I had started. I knew I had to fight for the right that was wronged at Smithfield. I had to make a difference for all the workers.

Nothing has changed at the company in the 12 years since I was fired. The intimidation and harassment continues.

This Congress, each one of you, has a duty to protect the right of American workers who want a voice at work. Sending us back to the company for another NLRB election is us sending back into the lion's den. Give us the Employee Free Choice Act so we can make our own decisions without harassment and intimidation. People's lives and jobs are on the line.

These elections are neither free nor fair, especially when a multi-billion-dollar corporation is willing to break the law repeatedly. But they do have a direct impact on me, on my coworkers at Smithfield, and on workers all across the United States.

I know that the law isn't working, but I am hoping that our lawmakers are, and that, when you see injustice like this, that you will take actions. Real laws with real teeth will deter companies from abusing their workers. Please pass the Employee Free Choice Act and give us a voice on the job.

Thank you for the opportunity to speak to you this morning. I will be happy to answer any questions you may have.

[The statement of Mr. Ludlum follows:]

Prepared Statement of Keith Ludlum, Employee of Smithfield Foods

Good Morning Mr. Chairman and Members of the Subcommittee.

My name is Keith Ludlum and I work in the livestock department at Smithfield's Tar Heel, NC plant. Thank you for this opportunity to tell the Subcommittee my story and my coworkers' stories on our fight to gain a voice at Smithfield. I am here

to tell you about our efforts to organize at Smithfield and Smithfield's hostile and illegal activities to stop us.

Smithfield's Tar Heel plant, which is located about 80 miles south of Raleigh, is the largest hog slaughter and pork processing facility in the world. The Tar Heel plant processes 32,000 hogs a day—that's 16,000 hogs per 8 hour shift; 2,000 per hour; 33 hogs every minute—one every 2 seconds. It employs about 5,500 employees. As a hog runner in the livestock department, I work inside the pens where hogs are unloaded off trucks. Each pen holds about 250-300 hogs. Inside the pens, I drive 15 or more hogs out into the restraining area. I am continually moving the hogs forward and stopping them, when necessary, so they can be branded, stunned and killed. During my 8 hour shift, my coworkers and I are responsible for moving about 16,000 live hogs per day into the plant for slaughter.

I am a native North Carolinian and after a tour of duty in Desert Storm, I returned to Bladen County in 1993 to look for work. In September of that year, I got a job at Smithfield, which had just opened in 1992 in Tar Heel.

I soon saw how Smithfield mistreated its workers. Every day I saw my fellow workers forced to work in dangerous, inhumane conditions. We were often injured severely, and if we couldn't work any more, we were fired. Day after day, I saw safety and health and worker protections ignored. I saw workers abused and humiliated.

The moment that made me realize we needed a union at Smithfield was when a fellow worker in his 50's broke his leg on the job when it was pinned between an electric pallet jack and a concrete wall. The next day, when I came to work, he was there in the break room with a full leg cast and using crutches. I asked him why he was back at work so soon. He told me that the company had told him he needed to come to work or he would lose his job. It was only later that I learned that by forcing him to return to work the next day, Smithfield avoided reporting a lost work day due to injury on their Occupational Safety and Health Administration (OSHA) log. For weeks, I watched this man hobble through the parking lot and across the greasy, wet floors of the kill floor and cut departments to get back and forth to the livestock yard. Finally one day, I approached the supervisors and asked them if the worker could park his car in a space near the livestock yard to avoid further risk of injury from slipping with his crutches. They told me "only managers can park there. He is a worker." At that moment, a light clicked on for me. Here was an injured man who couldn't get a little help because he was "just a worker." Well, I am a worker too and was not going to be used by this uncaring and callous company. On that day, I asked myself, "What can I do to change Smithfield?" I knew I had to stand up and fight these wrongs.

At Smithfield, the hogs have onsite government representation by the USDA. Yet, the workers have none. The USDA is present in the livestock yard to insure that the hogs are not abused or unduly stressed. If a hog is abused or stressed, the USDA has the power to shut down the plant and any worker responsible can be fired. If a holding pen has a drain clog and the water and feces are backing up, the USDA inspectors will tag the pen and hogs cannot be placed in that pen until the drain is unclogged. Yet, if a drain is clogged in the restraining area or runway, workers must continue to go through these ponds of hog waste and endure the vile mixture splashing on them. So, while the USDA is there to protect the hogs, inspect the processing of the meat, and ensure the safe handling of the meat, there is no onsite representation to ensure the same level of safety and health protections for the workers.

The government ranks meat packing as one of the most dangerous jobs in the country. At Smithfield, workers are on production lines that move at blinding speeds, with countless injuries. Workers get no paid sick days or personal days. In fact, workers get penalized if they take time off if they are out sick. Smithfield frequently denied workers' compensation by the company when they've been injured on the job. While Smithfield paid some of the modest fines imposed for safety violations by OSHA, we were working every day in extremely unsafe conditions.

As a result of all this, in December 1993, I started working on organizing a union at the plant. We wanted workers at my plant to have the same rights that Smithfield workers enjoy in unionized plants in other parts of the U.S. and the world. We wanted a safe workplace. We wanted a union contract. We wanted to be treated with respect.

My union activity at the time included attending meetings, talking about how the union could benefit the workers and getting employees to sign union representation cards. I spent many of my break times in the locker room and break room handing out representation cards and asking my co-workers to fill them out. On a number of occasions, my supervisors would come into the locker room or break room and harass workers by telling them that they would be fired for filling out a card or that

unionization of the plant would result in Smithfield closing the plant or forcing people to work seven days a week. This harassment was often enough to scare my coworkers out of signing the representation cards.

Besides these instances of harassment, I also witnessed company coercion. I witnessed workers being intimidated. I witnessed Smithfield repeatedly putting more value on the hogs and processing of the hogs than the workers' health, safety and well-being. The bottom line for them has always been profit—but in this case, it is at a very high human cost. Smithfield was doing everything it could to fight union representation but the workers continued to fight for what we believe are our rights under federal law. Workers at Smithfield knew they needed to be able to sit down with management on an equal basis and not just be dictated to or forced to work under these conditions.

In 1994, Smithfield illegally targeted and fired me for my union organizing activities. I was fired for trying to get workers to sign cards to join the United Food and Commercial Workers International Union (UFCW). When I was fired, the supervisors and the deputy sheriff marched me out of the plant in front of all the other employees as an example to intimidate them.

At the time, my wife was pregnant with our first child. It was an extremely difficult time for us—a time that should have been filled with joy and optimism as we awaited the birth of our child. Instead, my family suffered as I looked for a new job. It took me two years to find a decent job because I had been given a bad name by the only real employer in town, Smithfield Packing Company. In the end, I lost my car and could hardly pay my bills, buy groceries or purchase baby supplies.

Shortly after my firing, there was a close vote for representation and the NLRB issued a complaint against Smithfield for violating workers' rights. Clearly, the company's anti-union campaign and severe intimidation and harassment cost us the election. In 1997, Smithfield's CEO Joe Luter III promised in writing that the next election would be fair. The election that followed that same year was even worse—beatings, intimidation, threats, arrests and firings. There were many more NLRB violations. The NLRB found that workers were even asked to lie during NLRB testimony.

On both days of the 1997 election, Bladen County deputy sheriffs, dressed in battle gear with guns, lined the long driveway leading to the plant and guard house. Since I had a case pending before the NLRB, I was allowed to be on the property for the election and to vote in the election. On those days, there was no reason for the sheriff's presence because there had been no violence during the union organizing drive. The sheriffs created an unnecessarily intimidating and hostile atmosphere for workers going to vote. As workers passed the lines of police, they saw company management standing with the head of the sheriff's office. The Board later ruled that Smithfield used the police "as an intimidation tactic meant to instill fear in [its] employees."

Following the vote count on the final day of balloting, company personnel stormed the vote-counting area and in the resulting confrontation, one union supporter and one union representative were beaten and arrested by the company's security officers. Both men were later cleared of any wrongdoing.

Throughout this time, the UFCW fought for me and the other unfairly fired workers to get the justice we deserved. UFCW filed a legal claim on our behalf with the National Labor Relations Board on Smithfield's behavior between 1994 and 1998. Eventually, we won. In 2000, after a 13-week trial, the NLRB Judge issued a decision finding massive violations of labor law and ordered broad remedies including special access remedies. The Judge found that Smithfield violated labor laws and created "an atmosphere of intimidation and coercion" in order to prevent workers at the plant from joining the union. The Judge's decision contained some of the strongest language in recent labor history against a company's total disregard for the law.

The court cited details that included:

- Smithfield threatened to close the plant if workers formed a union.
- Smithfield threatened to freeze wages if employees unionized.
- Smithfield threatened to fire workers and threatened workers with violence.
- Smithfield fired some workers, like me, who backed the union.
- Smithfield harassed and physically assaulted workers who helped organize.
- Smithfield conspired with the local Sheriff Department and falsely arrested employees.
- Smithfield paid workers to spy on union activists—pay that was substantially more than their salaries.
- Smithfield coerced employees to participate in Smithfield's anti-union effort.
- Smithfield handed out anti-union literature.
- Smithfield ordered employees to stamp hogs with a "Vote No" stamp.

• Smithfield confiscated union materials and videotaped employee's union activities.

Smithfield appealed the Judge's ruling.

In 2000, Smithfield formed a Company Police Force, becoming the only meatpacking plant in the U.S. with its own certified police department. North Carolina law allowed these officers to carry guns at the plant and arrest workers on site. The company police force and on-site holding facility allowed them to interrogate workers for hours without any phone calls or legal counsel. [Eventually, after public protest, the company disbanded its police force in 2005.]

In 2004, the Board affirmed the Judge's 2000 decision and ruled that Smithfield engaged in massive illegal activity during both campaigns and the 1997 election and ordered extensive remedies. There were over 50 violations. Top Smithfield officials at the plant and in the company had committed egregious actions against the union campaign. Smithfield again appealed the decision to the Federal Court of Appeals in Washington, D.C.

Then, in 2006, after more than 12 years of litigation by the company including appeals, and despite the company doing everything possible to avoid paying the back wages we were entitled to, a settlement was reached. This was only after the company was found liable by the U.S. Court of Appeals. Smithfield was not fined or indicted for breaking the law and none of its executives were punished. Smithfield was required to offer jobs to those workers like me who were illegally terminated and to pay back wages for the time we were unemployed or could not find comparable pay.

They were also ordered to hold another election. Smithfield's President said he looked forward to an election by secret ballot but we've been down that road twice already in Tar Heel. Following the 1994 election, plant officials promised there would be free and fair elections but soon after, the harassment, intimidation and coercion began again and in 1997, Smithfield's conduct was even worse than before.

Last year, when the NLRB decided the case involving Smithfield's illegal anti-union campaign at its Wilson, NC plant, the Board said that Smithfield's "Proclivity to violate the act is further established." Smithfield crushed the union's efforts to organize the Wilson employees by using the same playbook and the same top managers to commit the same type of illegal conduct at the Wilson plant as it did at my plant. This included threats to close the plant, threats of job loss, threats of loss of pay and other benefits, threats of unspecified reprisals, discharge of union supporters and interrogations of employees about their union activities.

Knowing all this, and knowing that Smithfield was not changing its ways, when I knew I could get my job back at Smithfield, I had to decide—to stay at a secure job or take a big pay cut to return to work at the plant. It was not a hard decision since I knew I needed to finish what I had started. I had to fight to right the wrongs at Smithfield. I had to fight to protect the workers in the plant. I had to make a difference for future generations of workers at the plant. I had to return to Smithfield to make a difference and give a voice on the job to all the workers. We may have been cheated out of our right to organize a union in 1994 and 1997 but it wasn't going to happen a third time.

When I returned to the plant on July 31st of last year, my supervisors again tried to harass me and give me the worst and least safe job. The court order required that I return to the same job of running hogs that I had when I was fired. Instead, they gave me the job of hog tattooing, which is an extremely boring, filthy and tedious task. The job also isolated me from my co-workers, which kept me from talking to my co-workers about everything including the union. They wanted to keep me quiet and make my life miserable so I would quit. But the Labor Board and my union lawyer told the company that this violated the court order and said more charges would be filed if the situation wasn't corrected. I was moved to my previous work of running livestock. In my six months back at Smithfield, I have been intimidated and harassed numerous times because I continue to exercise my rights to fight for a union at Smithfield.

Smithfield is still up to their old dirty tricks of continuing to instill fear in the workers by violating the law and preventing us from banding together for better working conditions. Smithfield continues to threaten workers and distribute false information to block our union activities. Their efforts scare the activists and workers and deter union organizing.

Around the same time, they also violated my right to express my wishes for a union by replacing my hard hat and making me cover my rain jacket. I had written on my hat and jacket pro-union messages like "Union Time" or "Union Contract Protects Workers Rights." I was told by my supervisor that the hat and rain jacket must be clean. This was despite the fact that Smithfield allows many different messages and slogans on the gear all over the plant but not union messages. All over

the plant, people's hats had words like "NY" written on them or stickers for various products or religious symbols. Yet, I was told to get a new hat and cover my jacket. Clearly, I was being treated differently from my coworkers. This is disparate treatment.

The harassment in the plant continues to this day despite all the litigation and promises for a fair new election. Finally last week, the company agreed to pay $1.5M to the fired workers as part of compliance with the 1994/1997 election rulings from NLRB. This covered back pay—but the company was only liable for the time that workers were not able to find employment or comparable wages. After 12 years of consistent rulings by the Judge, NLRB and Federal Appeals Court, we finally had a decision.

So, has anything changed since I returned to work at Smithfield? No, not really. The intimidation and coercion clearly continues. Far too many people who work at Smithfield are still injured and abused daily. In fact, the injury rate in 2006 rose by 60 percent over the year before and has DOUBLED since 2003. Many have lost their livelihood because of Smithfield's misconduct. And, Smithfield continues to challenge laws and get away with a mere slap on the wrist. One may think that the $1.5 million settlement is more than a slap on the wrist. It was just our back pay. This is just what the fired workers earned and deserve for being fired. For a company that sells $11 billion worth of products a year, this is pennies in a bucket. There is nothing to deter companies from its unlawful conduct. There are no fines or damages. There is simply nothing to deter them. This is even true for companies that have government contracts, like Smithfield. The government should have closer scrutiny of companies with government contracts. It does not. This is not an equal playing field. And, the price paid in pain and suffering by Smithfield workers is nothing less than immoral.

The laws are far too easy on companies like Smithfield to force them to change. The company has been fined by OSHA. It has been fined by the Environmental Protection Agency. It has been found liable for massive violations of labor law. But breaking the law is just the cost of doing business for Smithfield. Chairman Joe Luter earned over $4 million in cash plus millions in stock options and deferred compensation, while workers and their families regularly go through hell. That's why we need the protection of a union contract now—not just another farce of an election that Smithfield can steal through brute force and intimidation. We want our voices to be finally heard and we want an end to the abuse.

All of Smithfield's anti-union activities and fight against the union have so poisoned the environment at the plant that I believe it will impossible to have a free and fair election in Tar Heel. What the company has proposed would be more like giving an aspirin to someone with cancer. The poison is just too thick. What is to stop Smithfield from repeating what they did in 1997 and appealing any charges against them for another nine years? The only way workers can freely express their wishes is with a fair process.

That's why we need the Employee Free Choice Act. We need help to stop the injuries. We need help in getting Smithfield to change and do the right thing for its workers.

What has happened at Smithfield shows why we need new laws in this country. It shows that current laws give too much leeway to companies without any penalties. EFCA would make a difference in our struggles at Smithfield. EFCA would finally protect American workers who want to form a union and bargain collectively. Majority verification would help us avoid the intimidation that has happened at Smithfield during the organizing drive and the election process and will happen again if there is another NLRB election. A fair vote is difficult if not impossible at the workplace. Workplaces are not neutral and unprejudiced places like the polling sites we go to when we vote in political elections—libraries, schools and community centers. Workplaces are owned by the very companies that are fighting against union representation. The air is thick with the company's discontent. The halls are filled with anti-union rhetoric. The voting site is not a balanced and unprejudiced environment. Workers must pass through this biased environment to vote. I come from the south and I know that it sounds good to say that everyone will be able to vote secretly for the union—freely without influence. But big companies like Smithfield turn this whole process upside-down for workers, just like poll taxes and literacy tests turned voting upside down for African Americans at one time. A secret ballot is no longer secret or safe. That is why it is imperative that we are allowed card check.

It is also important to point out that elections can easily be compromised. A blackout occurred during the voting at the plant during the 1997 election. When the lights came on, a Smithfield agent, who had no right to be in the voting room, was hovering over the ballot box. On these facts, the Board found that the NLRB agent

left the ballot box unguarded during the blackout and concluded that such a situation damaged the integrity of the balloting process and warranted setting aside the election.

In addition, it is critical that we pass strong penalties and remedies against employer coercion. This would force Smithfield and other companies to change their anti-union and anti-worker ways. And on that great day, when we do finally achieve representation, EFCA will help negotiate our first contract. Just as it was necessary to fight for civil rights in the south, it is now time to fight for union representation rights.

Real laws with real teeth will deter companies, like Smithfield, from abusing their workers and doing everything they can to deter our right to organize. We need a union at Smithfield. We need protections that a union will bring the Smithfield workers. My time in the Army and fighting for this country in Iraq taught me to stand up for this country and the rights of all our citizens. I believe in this country. And, I believe that it is time that we get a union at Smithfield. But like any good soldier, I can only do this with an army of support. I need your help in giving a much needed voice to the hard working men and women at Smithfield. We need respect, dignity, a safe workplace and job security—which only a union contract can provide. I need your help in establishing the safeguards we need at Smithfield and at all companies across this great country. I urge you to pass the Employee Free Choice Act and give us a voice on the job.

Thank you and I will be happy to take any questions you may have.

Chairman ANDREWS. Thank you, Mr. Ludlum. And your entire statement, as I indicated, is part of the record of the hearing.

Mr. Camilo?

STATEMENT OF IVO CAMILO, RETIRED EMPLOYEE OF BLUE DIAMOND GROWERS

Mr. CAMILO. Hello, everyone.

Chairman ANDREWS. Mr. Camilo, can you make sure your microphone is on and pull it as close to you, so everyone can hear you?

Mr. CAMILO. Hello, everyone. Thank you for giving me the opportunity to be here. My name is Ivo Camilo. I worked as an electronic machine operator at Blue Diamond Growers' plant in Sacramento, California, for 35 years. That is the largest almond-processing plant in the world.

My coworkers and I were fed up with watching our wages sag while our health-care costs shot up. We fell further and further behind the cost of living. Due to inflation, most of us were bringing home less in 2004 than we did in 1990. Some of us had not had a raise in 7 years. Yes, you heard me right: 7 years.

As workers at the Blue Diamond Growers, we are employees at will and we have no guarantees. That is why, in 2004, we began organizing to join the International Longshore and Warehouse Union. In March 2005, we went public with our desire to join the union to better our lives.

On April 15, we gave management a letter with the names of 58 coworkers who agreed to be part of an organizing committee. We told them we knew our rights under the National Labor Relations Act and we expected those rights to be respected.

Less than a week later, I was fired. And this is what happened.

On April 18, while I was working in the manufacturing department, the scales overflowed, and I went to fix the problem. In the process, one of the scales scratched my left hand, and it produced a one-eighth-inch cut. Management accused me of "willfully contaminating the almonds." And on April 20th, two supervisors—one

in the front, one in the back, escorted me out of the building like a criminal.

I was suspended pending investigation. I was asked to surrender my badge, and I thanked the company for the 35 years that I worked with them and I left the property.

The next day, I was terminated. My direct supervisor, Ron Lees, told me they had found blood in the almonds. Under oath, Mr. Lees denies this.

By firing me, a 35-year employee, the company sent a clear message to everyone about what could happen if they supported a union.

A week after I got fired, the company maneuvered the National Labor Relations Board election system and asked for an immediate election. We know they didn't really care about our right to decide. Management had been campaigning against the union since December 2004, long before I got fired, long before we even went public.

They had put out more than 30 anti-union flyers. In group captive audience meetings and one-on-one talks, company officials and supervisors threatened that we could lose our pensions and other benefits if the union came in. They threatened that the plant would close.

Do you think we would have had a free choice if we voted then? I think not.

Blue Diamond kept the heat on. They fired two other coworkers in June 2005. The union filed unfair labor practice charges. The NLRB investigated, then held a 4-day hearing. In March 2006, an NLRB judge found Blue Diamond guilty of more than 20 labor law violations. He ordered the company to rehire me and one of my workers.

Blue Diamond's violations were so severe, the board took an unusual step of asking for a federal court injunction against the company. The hearing on the injunction was set for May 5, 2006. Blue Diamond did not have to go to court because, at the last minute, it decided not to appeal and to obey the judge's order.

My coworker Mike Flores and I returned to work on April 24, 2006. But the company never admitted doing anything wrong.

Blue Diamond Growers did not stop its anti-union campaign after the first charges were filed. Management continued to spread fear and threats. They fired two more people who supported the union. Just last month, the board finished a second 4-day hearing on the new firings.

Getting a union should not be so hard. We shouldn't have to pay such a high price in hardship when our employers break the law. The Employee Free Choice Act will increase the penalties so employers would have to think hard about firing union supporters, and it would help people fired during organizing drives get back to work sooner.

But make no mistake, tougher penalties alone is not going to fix the broken NLRB election system. In the current election process, one side has all the power. And the employer controls the voters' paychecks and their livelihoods and has unlimited access to workers at the workplace.

That is the reason we need a process of a majority sign-up. After——

Chairman ANDREWS. I am sorry, Mr. Camilo, if you could just wrap up, if you could just conclude in a couple seconds here, okay?

Mr. CAMILO. After losing my job, I felt betrayed. I was insulted by the way the company supervisors escorted me out.

But I would do it all over again. After being back at work for about 6 weeks, I decided to retire. I have stayed active in the union effort because I care about my coworkers and I care about justice.

[The statement of Mr. Camilo follows:]

Prepared Statement of Ivo Camilo, retired employee of Blue Diamond Growers

Hello everyone. Thank you for giving me the opportunity to be here. My name is Ivo Camilo. I worked as an electronic machine operator at the Blue Diamond Growers plant in Sacramento, California for 35 years. That is the largest almond processing plant in the world.

In October 2004, I started working with a group of co-workers who were organizing to join the International Longshore and Warehouse Union. It has been my experience that as workers of Blue Diamond Growers we have no voice in terms of policy change and no job security. We are employees at will and we have no guarantees.

In March 2005, we went public with our demand to gain a voice and respect on the job. In April we gave management a letter with the names of 58 co-workers who agreed to be part of an organizing committee. We told them we knew our rights under the National Labor Relations Act—and we expected those rights to be respected. We got together and delivered that letter April 15. Less than a week later I was fired. This is how it happened:

On April 18, at 12 pm, while working in the manufacturing department, the scales were overflowing and I went to fix the problem. In the process, one of the scales scratched my left hand. It produced a ⅛″ cut. Management accused me of "willfully contaminating the almonds" and on April 20th at 2 p.m. two supervisors escorted me out of the building. I was suspended pending investigation. I was asked to surrender my badge, I thanked the company for the 35 years that I had worked with them, and left the property.

A day later, on April 21, I was terminated. My direct supervisor, Ron Lees, told me he had found blood on the almonds. (Under oath, Lees would later deny this.) Another person working with me said she saw the blood but did not report it. By company rules, she should have been disciplined too, but she wasn't.

On April 28, a week after Blue Diamond fired me, management asked the National Labor Relations Board to hold an election at the plant. The company twisted the facts and exploited an anti-labor section of the law. It claimed that the rally we had when we delivered our letter April 15 was really a "picket for recognition," so we should be forced to vote.

We knew they didn't really care about our right to decide. Management had been campaigning against the union since December 2004, long before I got fired, long before we even went public. They had put out more than 30 anti-union flyers. In group captive audience meetings and one-on-one talks, company officials and supervisors threatened that we could lose our pensions and other benefits if the union came in. They threatened that the plant would close. Do you think we would have had a free choice if we voted then? I think not.

Blue Diamond kept the heat on. They fired two other co-workers in June 2005. The union filed unfair labor practice charges. After a complete investigation, the NLRB issued complaints on more than two dozen charges, then held a four-day hearing in December 2005. Both sides had the opportunity to present evidence. In March 2006, NLRB Administrative Law Judge Jay R. Pollack found Blue Diamond guilty of more than 20 labor law violations. He ordered the company to re-hire me and one of my co-workers. Blue Diamond's violations were so severe the company, called a 10(j) injunction.

This injunction would have allowed the Board to ask a federal court to immediately enforce Judge Pollack's order, even if Blue Diamond appealed his ruling. 10(j) injunctions are rare and hard to get. The Board saves them for the worst of labor law violators. The regional NLRB office in San Francisco had to ask the General Counsel's office in Washington, D.C. for permission to seek the injunction. The General Counsel had only approved 10(j)s in 70 cases since June 2001.

The hearing on the 10(j) was set for May 5, 2006. Blue Diamond did not have to go to court, because at the last minute it decided not to appeal and to obey Judge Pollack's order. My co-worker Mike Flores and I returned to work on April 24, 2006—but the company never admitted wrongdoing.

Blue Diamond Growers did not stop its anti-union campaign after the first charges were filed. They continued to spread fear and threats and in September 2005 they fired another co-worker who supported the union. Even after they were found guilty and had to re-hire me and a co-worker, they fired another union supporter. The Board just finished a second four-day hearing on the new firings.

Getting a union shouldn't be so hard. We shouldn't have to pay such a high price in hardship when our employers break the law. The Employee Free Choice Act would increase the penalties so employers would have to think hard about firing union supporters—and it would help people fired during organizing drives get back to work sooner.

After losing my job, I felt angry and betrayed. I was insulted by the way company supervisors escorted me out. I was sad, because of all the friends that I made that I left behind.

But I also learned that I would do it all over again. I would join the organizing committee, attend meetings, and speak with my co-workers about the need for health coverage, better wages, and better conditions at work. I learned that I deserve respect and recognition for my work. I learned that I believe in justice and in equality. And that as a member of my community I matter, and my family and my co-workers matter as well.

After being back at work for about six weeks, I decided to retire, but I have stayed active in the union effort, because I care about my co-workers and I care about justice.

Chairman ANDREWS. Thank you very much. And your entire statement is a part of the record, sir. Thank you very, very much.

Ms. Jason, welcome.

STATEMENT OF JENNIFER JASON, FORMER UNITE HERE ORGANIZER

Ms. JASON. Chairman Andrews, Ranking Member Kline and members of the subcommittee, good morning. My name is Jen Jason, and I thank you for the opportunity to be here today and to share my experiences with card-check campaigns as a former organizer for UNITE HERE.

I began my career with UNITE with a strong belief in workers' rights and democracy in the workplace. During the course of my employment with the union, I began to understand the reality behind the rhetoric. I was taught to manipulate workers just to get a majority on the cards. I learned that promises made by organizers at the worker's house had little to do with how the union actually functions as a service organization.

After graduating college, I was accepted into the AFL-CIO organizing institute, a program designed to interview, train and place new labor organizers. As an organizer for UNITE, I primarily worked on, and later led, card-check organizing campaigns.

A card-check campaign begins with union organizers going to the homes of workers over a weekend. This is a tactic called house-calling. Called a "blitz" by the unions, it entails teams of two or more organizers going directly to the homes of workers to get cards signed. Personal information and home addresses obtained from license plates and other sources are used to create this master house-calling list. You can almost think of a blitz as being a surprise attack on the workers.

As organizers, we were taught to play upon this element of surprise to get in their door. We were trained to perform a five-part

house-call strategy that includes introductions, listening, agitation, union solution, and commitment.

The goal of the organizer is to quickly establish a trust relationship and then to use that trust to get the worker mad at his or her boss.

I began to realize that the number of signed cards had less to do with support for the union and more to do with how effective an organizer was at doing their job. In fact, the ultimate vote count in a secret ballot election is always significantly less than the number of cards actually collected.

As an organizer working under a card-check system, I could quickly agitate a set of workers into signing cards. I didn't have to prove the union's case. I didn't have to answer complicated questions asked to me by workers. And I didn't have to answer for the service record of my union.

Card-check campaigns also have little to do with giving workers information. We were trained to avoid topics such as dues increases in the specter of a strike. We were trained to constantly move the worker back to what the organizer had identified as that worker's hot-button issues. During organizer training sessions, this is something called re-agitation. The logic follows that if you can keep a worker agitated and direct their anger at their boss, you can pretty much get them to sign anything.

If someone told me that she was perfectly content at work, enjoyed her job and liked her boss, I would take a quick look around her house and then ask agitation questions like, "So, I guess, on your wages, you know, you probably won't be able to remodel your house, huh?" It was designed to make her feel cheated by her boss. Five minutes earlier, of course, she had just said that she enjoyed her working situation.

Many workers do actually realize that they had been manipulated after the fact and asked for their cards back or asked to have them returned to them. The union's strategy was to never return or destroy such cards, but to include them in the official count toward the majority.

In addition to the house-call, the union frequently manipulates the size of the bargaining unit. One of the most common ways that we did this, in order to ensure that the union could claim that it had reached a majority on cards, was to actually reduce the size of the group of workers that we were going to be representing after the fact.

Because of this, many workers who were promised that their decision to sign a union card mattered were ultimately shut out just so that the numbers would work.

In a card-check campaign, the cards become more important than the worker. And I remember one time in which Ernest Bennett, who was the director of organizing for UNITE HERE at the time, said to a group of workers in a meeting, training them for the Cintas campaign, that if three workers weren't fired by the end of the first week of organizing, UNITE was going to lose that organizing campaign.

After 4 years of watching what I feel were disgraceful practices on the part of organizing unions and having experienced personal discrimination in my own workplace, I chose to leave UNITE,

though I remain committed to working toward fairness and prosperity for both employers and employees in the American workplace. Ultimately, it was these types of union practices that pointed to a culture of corruption that I was unwilling to participate in.

If you truly believe in employees' free choice, if you truly value an employee's free choice, you will defeat this bill, and you will uphold an employee's right to a secret ballot election.

Thank you for your time. I look forward to answering any questions that you may have.

[The statement of Ms. Jason follows:]

Prepared Statement of Jennifer Jason, Former UNITE HERE Organizer

Chairman Andrews, Ranking Member Kline, members of the House Subcommittee on Health, Employment, Labor and Pensions, good morning. My name is Jen Jason. I am a former labor organizer for UNITE HERE, a union that represents more than 450,000 active members and more than 400,000 retirees throughout North America in the textile, lodging, foodservice and manufacturing industries.

Thank you for the opportunity to be here today as the committee considers the "Employee Free Choice Act" to share my personal experiences with "card check" campaigns as a former organizer.

As a child growing up with a United Methodist Minister for a father, I was raised with the strong belief that I should spend my life working toward social justice in some way. For a time, I considered entering the ministry. However, after graduating college, I felt that I needed to spend time working in a service position while I made certain of my calling. I was accepted into the AFL-CIO Organizing Institute, a program designed to interview, train and place new labor organizers. The AFL-CIO trained me in the skills necessary for these efforts and I was eventually hired into UNITE's organizing department.

As an Organizer for UNITE, I primarily worked on and later led "card check" organizing campaigns. Depending on the situation, this meant that we either had a pre-existing "card check" agreement with the company in question, or there was going to be a complicated and aggressive corporate campaign waged against a company in order to coerce an agreement, or I was working in a jurisdiction in which "card check" was predetermined through legislation, such as in Quebec and Manitoba.

During my tenure, I organized under U.S. labor law and in Canada under different provincially specific laws in Ontario, British Columbia, as well as Quebec and Manitoba. I was directed to organize thousands of workers using "card check" strategies against companies such as TJ Maxx, Levi's, New Flyer Bus Company, and Cintas.

A "card check" campaign begins with union organizers going to the homes of workers over a weekend, a tactic called "housecalling," with the sole intent of having those workers sign authorization cards. Called a "blitz" by the unions, it entails teams of two or more organizers going directly to the homes of workers. The workers' personal information and home addresses used during the blitz was obtained from license plates and other sources that were used to create a master list.

In most cases, the workers have no idea that there is a union campaign underway. Organizers are taught to play upon this element of surprise to get "into the door." They are trained to perform a five part house call strategy that includes: Introductions, Listening, Agitation, Union Solution, and Commitment. The goal of the organizer is to quickly establish a trust relationship with the worker, move from talking about what their job entails to what they would like to change about their job, agitate them by insisting that management won't fix their workplace problems without a union and finally convincing the worker to sign a card.

At the time, I personally took great pride in the fact that I could always get the worker to sign the card if I could get inside their home. Typically, if a worker signed a card, it had nothing to do with whether a worker was satisfied with the job or felt they were treated fairly by his or her boss. I found that most often it was the skill of the organizer to create issues from information the organizer had extracted from the worker during the "probe" stage of the house call that determined whether the worker signed the card.

I began to realize that the number of cards that were signed had less to do with support for the union and more to do with the effectiveness of the organizer speaking to the workers.

This appears to be consistent with results of secret ballot elections that are conducted in which workers are able to vote and make their final decision free from manipulation, intimidation or pressure tactics from either side.

From my experience, the number of cards signed appear to have little relationship to the ultimate vote count. During a private election campaign, even though a union still sends organizers out to workers' homes on frequent canvassing in attempts to gain support, the worker has a better chance to get perspective on the questions at hand. The time allocated for the election to go forward allows the worker a chance to think through his or her own issues without undue influence—thus avoiding an immediate, impulsive decision based on little or no fact. After all, the decision to join a union is often life-changing, and workers should be afforded the time to debate, discuss and research all of the options available to them.

As an organizer working under a "card check" system versus an election system, I knew that "card check" gave me the ability to quickly agitate a set of workers into signing cards. I did not have to prove the union's case, answer more informed questions from workers or be held accountable for the service record of my union.

When the union is allowed to implement the "card check" strategy, the decision about whether or not an individual employee would choose to join a union is reduced to a crisis decision. This situation is created by the organizer and places the worker into a high pressure sales situation. Furthermore, my experience is that in jurisdictions in which "card check" was actually legislated, organizers tended to be even more willing to harass, lie and use fear tactics to intimidate workers into signing cards. I have personally heard from workers that they signed the union card simply to get the organizer to leave their home and not harass them further. At no point during a "card check" campaign, is the opportunity created or fostered for employees to seriously consider their working lives and to think about possible solutions to any problems.

I began my career with UNITE with a strong belief in worker's rights and democracy in the workplace. During the course of my employment with the union, I began to understand the reality behind the rhetoric. I took in the ways that organizers were manipulating workers just to get a majority on "the cards" and the various strategies that they employed. I began to appreciate that promises made by organizers at a worker's house had little to do with how the union actually functions as a "service" organization.

For example, we rarely showed workers what an actual union contract looked like because we knew that it wouldn't necessarily reflect what a worker would want to see. We were trained to avoid topics such as dues increases, strike histories, etc. and to constantly move the worker back to what the organizer identified as his or her "issues" during the first part of the housecall. This technique was commonly referred to as "reagitation" during organizer training sessions. The logic follows that if you can keep workers agitated and direct that anger at their boss, you can get them to sign the card. If someone told me that she was perfectly contented at work, enjoyed her job and liked her boss, I would look around her house and ask questions based on what I noticed: "wow, I bet on your salary, you'll never be able to get your house remodeled," or, "so does the company pay for day care?" These were questions to which I knew the answer and could use to make her feel that she was cheated by her boss. Five minutes earlier she had just told me that she was feeling good about her work situation.

Frankly, it isn't difficult to agitate someone in a short period of time, work them up to the point where they are feeling very upset, tell them that I have the solution, and that if they simply sign a card, the union will solve all of their problems. I know many workers who later, upon reflection, knew that they had been manipulated and asked for their card to be returned to them. The union's strategy, of course, was never to return or destroy such cards, but to include them in the official count towards the majority. This is why it is imperative that workers have the time and the space to make a reasoned decision based on the facts and their true feelings.

In addition to the "housecall," the union frequently employs other tactics to manipulate the card numbers and add legitimacy to their organizing drive. One strategy is to manipulate unit size. One of the most common ways that we ensured the union could claim that we had reached a majority was to change the size of the group of workers we were going to organize after the drive was finished. During the blitz, workers in every department would be "housecalled," but if need be, certain groups of workers would be removed from the final unit, regardless of their level of union support. In doing so, the union reduced the number of cards needed to reach a majority. Another such strategy is that organizers are told to train workers to "provoke" unfair labor practices on the part of the company in an attempt to create campaign legitimacy and coerce a "card check" agreement.

One egregious example was when Ernest Bennett, the Director of Organizing for UNITE at the time, told a room full of organizers during a training meeting for the Cintas campaign that if three workers weren't fired by the end of the first week of organizing, UNITE would not win the campaign. Another strategy is that organizers are told not to file any unfair labor practice charges because it would slow the "card check" process and make time for the workers to question their decisions.

After four years of watching what I feel were disgraceful practices on the part of organizing unions, and having experienced personal discrimination in my own workplace, I chose to leave UNITE, though I remain committed to work toward fairness and prosperity for both employers and employees in the American workplace.

Thank you for the opportunity to testify. I look forward to any questions you may have.

Chairman ANDREWS. Thank you, Ms. Jason.

Mrs. Joyce, welcome.

STATEMENT OF TERESA JOYCE, EMPLOYEE OF CINGULAR WIRELESS

Ms. JOYCE. Thank you.

Mr. Chairman and members of the subcommittee——

Chairman ANDREWS. Ms. Joyce, I am sorry. Could you turn your microphone on and make sure it is by your mouth?

Ms. JOYCE. Okay.

Chairman ANDREWS. There you go. Thank you.

Ms. JOYCE. Mr. Chairman and members of the subcommittee, good morning, and thank you for inviting me to participate in this important hearing on workers' rights. My name is Teresa Joyce, and I am a customer-care representative with Cingular Wireless in Lebanon, Virginia.

I have a good union job that pays well and provides affordable health-care benefits for myself and my family. However, it wasn't always this way. Four years ago, before Cingular took over, AT&T Wireless owned our call center, and it was a very different experience.

Under AT&T Wireless, our health-care benefits were costly, wages were stagnant, and supervisors treated us with very little respect. I knew it didn't have to be this way. For over 23 years, my husband had mined the Appalachian Mountains and was a proud member of the United Mine Workers of America, the UMWA.

Through his union, my husband was able to bargain for better wages, health insurance, and improved safety equipment for the miners. As a result, we were able to live a comfortable, middle-class life. My husband and I have raised three happy and healthy children, as well as we are able to educate them.

I knew the difference that a union could make, and I knew that to improve conditions at AT&T Wireless we, too, would need a union.

At AT&T Wireless, we had absolutely no say on workplace conditions, including our wages and our benefits. Our raises were determined by favoritism and seldom a reflection of our work. Some years, we would receive as little as a two-cent raise.

On top of this, workers had no real means for reporting unfair treatment by our supervisors. When we approached upper management about unfair treatment and inadequate pay, our requests fell on deaf ears.

Frustrated with our company's neglect and indifference, my coworkers and I decided to come together to form a union with the Communication Workers of America, the CWA. We were able to bargain for fair raises, affordable health-care benefits and respect at work.

Once word reached management that we were trying to organize, they did everything they could to stop us from exercising our right to form a union. Our supervisors constantly threatened that AT&T Wireless would leave our town and that we would no longer have a job. They also claimed that if we did succeed with our organizing efforts, our union dues would be so enormous that we would actually need two jobs.

My coworkers and I would distribute union flyers and make posters to put on the walls in our break room with information about the union. Our supervisors would immediately gather our information and dispose of it.

Management wanted to deny other workers the opportunity to make an informed, educated decision on whether or not to join a union. They wanted to control the information that workers received and instill fear through constant threats and lies about the union.

At one point, one of the managers went so far as to park her car at the front entrance of a building where my coworkers and I were holding a union meeting. Deeper into our organizing campaign, management began to drive out our most outspoken union supporters for so-called "bad attitudes" and other flimsy charges.

Despite the company's ongoing intimidation tactics, we continued our organizing efforts. Having had past experience with unions and knowing what a difference they could make, I was especially active in the fight to unionize at AT&T Wireless.

Months into our organizing struggle, we heard that Cingular Wireless was going to purchase AT&T Wireless. At some point during the merger, several coworkers and I sat in on a conference call with Cingular Wireless executives to talk about what would happen with the merger regarding the former AT&T Wireless workers.

When asked about organizing efforts, Cingular CEO Stan Sigmund revealed that he had a great relationship with the CWA, and he assured us that each AT&T Wireless call center employee would be able to choose whether or not they wanted union representation, free of employer interference.

I was overjoyed. It was a relief to know that we could finally speak openly about the union without fear of employer retaliation.

Shortly afterwards, the harassment and intimidation stopped. We were free to distribute union literature to other workers during our break and were even allowed to set up a table in the break room with information on CWA. We made posters, put out flyers and made phone calls about the benefits of joining a union and having a say on our wages and work conditions.

In 2005, a majority of us voted for the union by signing authorization cards. And on September 6th of 2005, we were officially recognized as members of the CWA. Management even helped us with a cookout at our call center to celebrate.

Today, the supervisors treat us with respect. We have been able to bargain for fair wages and affordable health-care benefits. Our

wages are now determined by a wage scale, not favoritism. We have more vacation days, and more importantly we have job security.

Cases such as mine, where the employer agrees to take no position and allow workers to freely choose whether or not they want a union, are few and far between. The reality is that, every 23 minutes, a worker is illegally fired or discriminated against for exercising her or his human and constitutional rights to form a union.

I had two uncles that sacrificed their lives for this great country during World War II. I lost a cousin in a cousin in Iraq a year ago in November. And I also have another cousin in Afghanistan. My own daughter and son-in-law are in the United States Navy. Their lives are at risk every day so that they can protect our freedoms. Every day they spread democratic principles and values to people abroad.

It is outrageous and it is shameful that the very freedoms they fight to preserve all over the world are the very freedoms that are routinely trampled on here at home.

Mr. Chairman and members of the subcommittee, there is something terribly wrong with our laws and with our country when workers are systematically harassed, threatened and even fired from their jobs, stripped of their very livelihood, just for the simple act of exercising their right to form a union to improve their lives.

As a country that prides itself on our rights and our freedoms, we must take immediate action to restore workers' most basic liberties at the workplace.

Thank you again for the opportunity to testify at this hearing.

[The statement of Ms. Joyce follows:]

Prepared Statement of Teresa Joyce, Cingular Worker and CWA Union Member

Mr. Chairman and members of the Subcommittee, good morning and thank you for inviting me to participate in this important hearing on workers' rights. My name is Teresa Joyce and I am a customer care representative with Cingular Wireless in Lebanon, Virginia. I have a good union job that pays well and provides affordable healthcare benefits for my family and me. However, it wasn't always this way. Four years ago, before Cingular took over, AT&T Wireless owned our call center—and it was a very different experience.

Under AT&T, our health care benefits were costly, wages were stagnant and supervisors treated us with very little respect. I knew it didn't have to be this way. For 23 years, my husband had mined the Appalachian Mountains and was a proud member of the United Mine Workers of America (UMWA). Through his union, my husband was able to bargain for better wages, health insurance and improved safety equipment for the miners. As a result, we were able to live a comfortable, middle-class life and raise three happy and healthy children. I knew the difference a union could make and I knew that to improve conditions at the call center, we too, would need a union.

At AT&T Wireless, we had absolutely no say on workplace conditions, including wages and benefits. Our raises were determined by favoritism and seldom a reflection of our work. Some years, we would receive as little as a two-cent increase. On top of this, workers had no real means for reporting unfair treatment by supervisors. When we approached upper management about unfair treatment and inadequate pay, our requests fell on def ears. Frustrated with the companies' neglect and indifference, my co-workers and I decided to come together to form a union with the Communication Workers of America (CWA) to bargain for fair raises, affordable health care benefits and respect at work.

Once word reached management that we were trying to organize, they did everything they could to stop us from exercising our right to form a union. Our supervisors constantly threatened that AT&T Wireless would leave our town and that we

would lose our jobs. They also claimed that if we did succeed with our organizing efforts, our union dues would be so enormous we may actually need two jobs.

My co-workers and I would distribute union flyers in our break room and place posters on the walls with information about the union. Supervisors would immediately gather the information and dispose of it. Management wanted to deny other workers the opportunity to make an informed, educated decision on whether or not to join a union. They wanted to control the information workers received and instill fear through constant threats and lies about the union. At one point, one of the managers went so far as to park her car at the front entrance of a building where my co-workers and I were holding a union meeting. Deeper into our organizing campaign, management began to drive out our most outspoken union supporters for so-called "bad attitudes" and other flimsy charges.

Despite the company's on-going intimidation tactics, we continued our organizing efforts. Having had past experience with unions and knowing what a difference they could make, I was especially active in the fight to unionize at AT&T Wireless.

Months into our organizing struggle, we heard that Cingular Wireless was going to purchase AT&T Wireless. At some point during the merger, several co-workers and I sat in on a conference call with Cingular Wireless executives to talk about what the merger would mean for former AT&T Wireless employees. When asked about our organizing efforts, Cingular CEO, Stan Sigmund, revealed he had a good relationship with CWA and assured us that each AT&T Wireless call center employee would be able to choose whether or not they wanted union representation, free of employer interference. I was overjoyed. It was a relief to know that we could finally speak openly about the union without the fear of employer retaliation.

Shortly afterwards, the harassment and intimidation stopped. We were free to distribute union literature to other workers during our break and were even allowed to set up a table in the break room with information on CWA. We made posters, put out flyers and made phone calls about the benefits of joining a union and having a say on wages and work conditions. In 2005, a majority of us voted for the union by signing authorization cards and on Sept 6th, 2005 we were officially recognized as CWA members. Management even helped us arrange a cookout at the call center to celebrate.

Today, supervisors treat us with respect. We've been able to bargain for fair wage increases and affordable health care benefits. Our wages are now determined by a wage scale, not favoritism. We have more vacation days and—more importantly—we have job security.

Cases such as mine, where the employer agrees to take no position and allow their workers' to freely choose whether or not they want a union, are few and far between. The reality is that every 23 minutes, a worker is illegally fired or discriminated against for exercising her human and constitutional right to form a union. I had two uncles sacrifice their lives for this great country during World War II. I lost a cousin in the war in Iraq. I have another cousin in Afghanistan and my daughter, Laura, and her husband serve in the US Navy. Every day they risk their lives to protect our freedoms. Every day they work to spread democratic principles and values to audiences abroad. It's outrageous and it's shameful when the very freedoms they fight to preserve are the very freedoms that are routinely trampled on, here, at home.

Mr. Chairman and members of the Subcommittee, there is something terribly wrong with our laws and with our country, when workers are systematically harassed, threatened and even fired from their jobs—stripped of their very livelihood—for the simple act of exercising their right to form a union to improve their lives. As a country that prides itself on our rights and freedoms, we must take immediate action to restore workers' most basic liberties at the workplace.

Thank you again for the opportunity to testify at this hearing.

Chairman ANDREWS. Mrs. Joyce, thank you.

And we thank each of the four of you for your testimony. We will now proceed with questions. And we live by the same 5-minute rule, as well.

I think it is important we put the testimony in context.

And, Ms. Jason, any fair-minded person, when they hear what you say, would have to be concerned about the possibility of workers being coerced to sign cards in majority sign-up procedures.

I think it is important we put this in context.

The majority sign-up procedure and other forms of union organizing have been around for more than 6 decades, on the law that we have now. And our research indicates that, in those more than 6 decades, there have been 42 occasions when the National Labor Relations Board has made a finding of coercive behavior by a union organizer—42 findings in over 60 years.

The other side of the coin is rather different. In 2005 alone, more than 31,000 workers received back-pay or some other remedy because of a finding by the National Labor Relations Board that their rights had been in some way abridged.

Also, we want to take a look at some of the coercive circumstances that Ms. Jason talked about in her testimony. First is house-calling, and I wanted to put that in some perspective.

I can understand how there might be a time when someone knocking on your door would be fairly coercive.

But, Mr. Ludlum, I want you to again describe for us what the scene looked like the day that you and your fellow workers went to vote in 1997 in the ballot election. You made some reference to sheriff's officers being present. Could you describe that a little more fully for us?

Mr. LUDLUM. Yes, sir. The plant manager had gotten the local sheriff to have his deputies out there in full battle gear, with shotguns, lining the plant entrance, all up in the hallways, all the way up to the election booth area. Plant management was all up in the election booth area, standing there with their white hats on, their white smocks, showing their authority, and everybody saying, "No union. No union." Now, that is coercion.

Chairman ANDREWS. Now, Mr. Camilo, I wanted to ask if you could tell us, one of the points that Ms. Jason made was about access to information about employees to try to get them to sign the cards. And she talked about people getting information off of license plates and whatnot.

When you were involved—and I would ask Mrs. Joyce, too—when you were involved in the effort to organize workers at your workplace, did your employer give you a list of the names and addresses of the people who worked for the employer? Mr. Camilo, did you get that list?

Mr. CAMILO. No, I didn't get a list. I know I presented a list to the employers of 58 of us that were trying to organize.

Chairman ANDREWS. Did the employer say, "Sure, here is a list of the other people that would like to organize; here are their names and addresses and phone numbers"? Did you get such a list?

Mr. CAMILO. No, they did not provide that list to me.

Chairman ANDREWS. Mrs. Joyce, did you have access to such a list?

Ms. JOYCE. We never made house-calls when we were organizing with AT&T Wireless. We tried to get information to employees that, if they wanted to talk to us about the union, would come and meet us at restaurants in town. We tried to have it at a townhall. That is when we had managers find out and try to—they were taking pictures of us. They were parking their cars in front of the entrances.

Chairman ANDREWS. Prior to the neutrality agreement that you made reference to at Cingular, did the prior employer permit the union to come on company grounds and tell their side of the story?

Ms. JOYCE. Never, never.

Chairman ANDREWS. Were there meetings that involved employees where only those opposed to the union were allowed to speak?

Ms. JOYCE. Yes, we had meetings—for instance, in the town where I am from, we had a Bonanza Steakhouse, and we had meetings up there where any employees were welcome to come and ask questions. That is what we were there for, to give out information.

Chairman ANDREWS. But how about the meetings that were held in the workplace by—I guess it was AT&T was the prior employer? Were pro-union people allowed to speak at those meetings in the workplace?

Ms. JOYCE. No. We were never allowed—we were taken off the phones by managers and taken to a room to tell us the negative effects of a union. We were told major lies about what a union would do. That is when we were told we would lose our jobs.

Chairman ANDREWS. Mr. Ludlum, why did you go back to your present employer after 12 years? Did you take a pay cut when you went back?

Mr. LUDLUM. Yes, yes.

Chairman ANDREWS. Why did you go back?

Mr. LUDLUM. Because I knew that being selfish doesn't accomplish anything. And I knew what that company was doing to my community and to the workers there. So I had to go back, in order to make a change for a company that thought that their plan was going to work, by getting rid of people that were pro-union and wanting to make it better for people and the children of our community.

Chairman ANDREWS. Well, Mr. Ludlum, we are going to try to help you make that change.

Mr. LUDLUM. Thank you, sir.

Chairman ANDREWS. Mr. Kline?

Mr. KLINE. Thank you, Mr. Chairman.

I would like to thank the witnesses for being here today and for their testimony and everybody sticking pretty close to the clock. I am going to try to set the standard for my colleagues up here and stay within my 5 minutes.

Mr. Ludlum, I just want to make sure I understand the scene. The chairman asked you what it looked like when you went to vote. It sounded pretty bad. But when you walked past the sheriff's deputies and everything, did you go cast a secret ballot?

Mr. LUDLUM. Yes, sir.

Mr. KLINE. And did you think that the sheriffs were opening the ballots and looking at it? It was in private, right?

Mr. LUDLUM. Yes, sir. But at the time of the vote counting, all of a sudden power was lost in the plant; the lights went out. [Laughter.]

Mr. KLINE. So you didn't get to vote?

Mr. LUDLUM. And there were supervisors there at the ballot box when the lights came back on, so——

[Laughter.]

Mr. KLINE. I see. And was the——

Chairman ANDREWS. Was this in Florida? Was this in Florida, Mr. Ludlum? [Laughter.]

Mr. KLINE. That is cute, Mr. Chairman. That is very, very cute. [Laughter.]

The NLRB wasn't there?

Mr. LUDLUM. You have got to understand——

Mr. KLINE. The NLRB wasn't there?

Mr. LUDLUM. Yes, they were there.

Mr. KLINE. Okay, thank you.

Ms. Jason, we have heard some pretty tough stories here about intimidation by employers, and clearly that should not be. Can you tell us, from your experience, about any intimidation, any violence, any harassment that may have taken place by unions?

Ms. JASON. Yes. And let me just say that I am here to say that I don't think harassment should take place on either side——

Mr. KLINE. Exactly.

Ms. JASON [continuing]. Of the equation. And really, it is about making sure that people can privately decide and cast their vote.

There are a lot of strategies that the union uses, like I mentioned about house-calling and different agitational strategies that the union uses in order to keep people up, get their emotions very high and create a crisis situation in which there is a tremendous amount of urgency about solving problems that are perceived by the company and really put out there by the union.

And so, there are a lot of ways in which, especially during the context of a card-check campaign—and this is what I worked on a lot of the time, as an organizer—in which, really, there were no rules about, you know, how we got the cards. And it didn't matter whether or not that person who was signing the card at the end loved me or hated me.

So there were many times where we, you know, visited people very late at night and stayed in their house and basically put my feet up on the ottoman and made it clear that I wasn't going to leave until they signed the card.

There were threats made to anti-union people. As an organizer, there were many times where I was directed to create what is called a rat campaign, in which you identified a pro-union supporter who hasn't signed a union card, label them as company rats, and harass them on the shop floor. In one such environment in Indianapolis, a woman actually had a heart attack on the shop floor because the stress was so great.

And this is intentionally created by the union, this environment of fear and intimidation, is intentionally created as a campaign strategy on the part of the union.

Mr. KLINE. Okay.

Thank you very much, Mr. Chairman. I will yield back, trying to set that example.

Chairman ANDREWS. Thank you.

And keeping with the full committee's practice, members will be recognized in accordance with their seniority who were present at the time of the gavel and then will be recognized by seniority after the gavel.

And we would start with Mr. Kildee for 5 minutes.

Mr. KILDEE. Thank you, Mr. Chairman.

Since the Wagner Act was passed in 1935, there has been probably cases of coercion on both sides, but all the studies—all the studies—show that the vast amount of the coercion takes place on the employer side.

And that was the example that I grew up with. I was born in 1929; I remember the sit-down strike in Flint in 1937. And General Motors, for example, was the highest contractor of Pinkerton Detectives. When my dad joined the union, he had to hide his button under his collar because he wasn't sure that the person next to him might be a Pinkerton detective who would report him.

So, if you take the coercion—now, you may find abuse on either side, but all the studies indicate that the coercion is really more, by far, on the part of the employer. They used to use blackjacks, 1936, 1937, when I was growing up, and now they use briefcases. You know, if you go to the western part of Michigan, particularly, you find in the Yellow Pages, "Labor problems? Union problems? Call us." I mean, these are experts who really will help companies keep unions out.

So, the coercion has always been far greater, in my 77 years upon this earth, on the part of management. Now, we don't want it on either side. But sheer numbers, they have the power to do it in a far greater manner than a union trying to get started in a place. There is no question about that. And I have experienced that myself regularly.

Let me ask a question of Mr. Camilo. What effect did the threat of plant closure, the loss of pensions and the benefits have on the workers at Blue Diamond?

Mr. CAMILO. Make the employees scared. Like, in 2004, a lot of people vote for union, but then after, because they get scared, so they can't make a decision to vote for a union at that time.

Mr. KILDEE. So they would use that to intimidate or frighten the workers, then?

Mr. CAMILO [continuing]. So workers are nervous. They are afraid to lose their job. Some are just single mothers. They just feel bad, they don't want to lose their job, because if they lose their job they will lose their house, they will lose everything they have.

Mr. KILDEE. I thank you very much.

And because we have two panels today, I will yield back the balance of my time also, Mr. Chairman.

Chairman ANDREWS. Thank you, Mr. Kildee.

I am pleased to recognize the ranking member of the full committee, the gentleman from California, Mr. McKeon, for 5 minutes.

Mr. MCKEON. Thank you, Mr. Chairman.

I, too, want to thank all of you for being here. And, you know, we have heard stories on both sides, things that the unions have done incorrectly, things that labor have done incorrectly. None of these things should happen in our country, and it is sad that that happened.

You know, I am not quite as old as Mr. Kildee, but almost. [Laughter.]

And we come from a different generation. And I remember stories of my dad telling me that when he was a young man that they didn't have unions, and the company he was working for, the sales manager would come in every week and just fire someone, just to

keep them scared, just to make sure that everybody toed the line and did the things they were told.

Those days of that kind of intimidation I think are well behind us, just as—as a young man, I served as a missionary for our church. When I got off the train in San Antonio, I saw signs for drinking fountains, colored and white. This was before civil rights. We have come a long ways.

Do we still have problems? Yes, we do. But I think the reason that we are here today and what we are looking at is, what is the best way, what is the most democratic way to let these decisions be made?

And, obviously, we have differences of opinion. I come down on the side of an election where nobody knows who voted which way.

And, you know, Mr. Ludlum, thank you for your service. I also serve on the Armed Services Committee, and I appreciate what you have done for our country, and I feel bad that you had these kind of problems. But we have only heard your side of the story.

And, Mr. Chairman, I would like to request that we give Smithfield Company a chance to respond and put their statement in the record, so that we have some balance in that. I don't think we would have a problem with that, would we?

Chairman ANDREWS. Well, if I may, if the gentleman would yield, at the beginning of the hearing, as per the committee rules, any member is welcome to submit material for the record under unanimous consent. If you choose to do that, you are welcome to.

Mr. MCKEON. Okay, thank you.

Mr. Ludlum, you said you left a good-paying job. What kind of a job was that?

Mr. LUDLUM. I worked for various construction companies as a contract administrator.

Mr. MCKEON. And did they have unions there? Were you a member of the union there?

Mr. LUDLUM. No.

Mr. MCKEON. But they treated you differently so they didn't need a union there? You didn't feel like they should be organized? What——

Mr. LUDLUM. No, they treated the employees well. I don't say that every company, every business, every proprietorship, whatever, needs a union. But when employees need a union, then they need the right to vote on that union and get a union.

Mr. MCKEON. I agree. I agree totally. I think they should have the right to vote. And I think that should be done by a secret ballot so that neither the employer nor the union knows how people are making that decision, and that should be a private, secret ballot.

You know, I have a letter here—I would like to put it in the record, Mr. Chairman—that many members—if I go down the line, they all are on your side of the aisle. But this is a letter that was to state of Puebla—it was a group down in Mexico.

And it says, "As members of the Congress of the United States, we are deeply concerned with international labor standards and the role of labor rights in international trade agreements. We are writing to encourage you to use a secret ballot in all union recognition elections.

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

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

And I would like to have that inserted into the record——

Chairman ANDREWS. Without objection.

Mr. MCKEON [continuing]. Because I agree totally with that.

And, again, thank you all for being here today.

I yield back.

Chairman ANDREWS. Thank you.

The chair recognizes the gentlelady from California, Ms. Sánchez, for 5 minutes.

Ms. SÁNCHEZ. Thank you, Mr. Chairman.

And thank you to all of the panelists for your thoughtful testimony today.

My first question is for Ms. Joyce.

Ms. Joyce, Ms. Jason, the panel member who identified herself as a former UNITE organizer, testifies that the decision to join a union is often life-changing, and that is why she thinks that employers should be able to force employees to use the NLRB election process even when a majority of them have signed cards expressing their desire to be represented by a union.

Do you agree with the implication that employees would be better off engaged in an election battle with an anti-union employer than decided to join a union through the card-check process?

Ms. JOYCE. No. I think they should be able to have the choice if they—my story is much different from the one Ms. Jason portrayed. At AT&T Wireless we didn't harass workers. You don't need to harass workers when the company gives people a two-cent raise. [Laughter.]

Ms. SÁNCHEZ. So you would agree that—basically, fundamentally, do you think it is a better process to have these heated anti-union messaging in the workplace followed by an NLRB election, or just a majority of employees being able to decide they want to be represented by a union by signing off on a card-check?

Ms. JOYCE. I think that workers feel relieved to be able to sign a card and get the majority. They are terrified to have to go and vote. Even when we tried to go off the property, management would show up. And it was very frightening to think you may get fired or lose your job or be harassed because you want to make a choice to join a union.

Ms. SÁNCHEZ. Thank you.

My next question is for Mr. Camilo.

In your testimony, you describe some of the anti-union tactics that were used by Blue Diamond, including captive-audience sessions and one-on-one meetings in which officials threatened to close the plant and take everyone's pension away. Also there were some firings, yours included, among others, of your coworkers.

Ms. Jason, who disagrees with the Employee Free Choice Act method of card-check, said that unions use high-pressure tactics on the employees to try to get them to sign these cards.

How would you compare your experience in dealing with union folks who were trying to organize versus the employers who are trying to prohibit the union from coming in? How would you compare the tactics used by the two?

Mr. CAMILO. Is that question for me?

Ms. SÁNCHEZ. Yes.

Mr. CAMILO. Well, the union—support for unions if you want to. With the company, they keep on persuading you that union is bad, you don't want to pay union dues. They are just so phony, I think. But they keep on intimidating people.

Like, in my case, because our plant organized, they fired me. After 35 years of working for that company, they fired me. They made a statement I contaminated the product. Then when we went to court, they denied it. They said, "No, we didn't find no blood." Why did they fire me?

Ms. SÁNCHEZ. And ultimately——

Mr. CAMILO. My sister worked there for 42 years, but she is afraid to let them know that she is for a union. She just keeps silent. So we feel great intimidation. I mean, we don't want them to know. After I got fired, a lot of people got scared.

And soon after, Blue Diamond took a side that they want a union, they want a secret ballot, because they are intimidating people; that is why they want it. They don't want a card-check, I mean majority, to sign up. And majority sign-up is a way that you sign your card freely, make your decision the way you want it, not by persuasion of a company.

Ms. SÁNCHEZ. Thank you.

Last question, and I am running out of time, but, Mr. Ludlum, much has been made about the fact that NLRB elections are done via secret ballot. Do you believe that process is truly free and open and free of intimidation or coercion when you go in to cast your ballot in an NLRB election on whether you want union representation or not?

Mr. LUDLUM. No, no. When I said earlier that I think the workers ought to have a chance to vote, secret ballot elections on company property under the intimidation of sheriffs and company management is not a vote, okay. Signing a card, that is a vote for an employee, signing a card openly and freely, whether it is on property, off property, in a restaurant or whatever, that is their choice and their vote and everything.

You know, a lot of employees don't even go show up to vote because they don't want management to see them even in there. So not even showing up is a "no" vote.

Ms. SÁNCHEZ. Thank you. I guess——

Chairman ANDREWS. The gentlelady's time has expired.

The chair recognizes the gentleman from Michigan, Mr. Hoekstra, for 5 minutes.

Mr. HOEKSTRA. Hoekstra.

Chairman ANDREWS. Hoekstra, excuse me. It has been so long since you have been here, I forgot the pronunciation of your name. [Laughter.]

I don't mean that as an insult. Mr. Hoekstra was——

Mr. HOEKSTRA. That is only because I have been on leave from the committee.

Chairman ANDREWS. He was chairman of the Intelligence Committee, and he is back, and we welcome him back.

Mr. HOEKSTRA. Hey, thank you. It is great to be back. It brings back memories, let me tell you.

I just first want to respond to the comments from my colleague from the state of Michigan, since he was talking about my district in Michigan when he was talking about west Michigan.

Let me just point to my colleague, Mr. Kildee, that, in a state that struggles with one of the highest unemployment rates in the country at over 7 percent—at least in west Michigan, we are about 2 points below that in unemployment. And if there is a bright spot in the state of Michigan, it is the west side of the state, where we have got great companies, we have got great employees that have found a way to be successful in a state that has a very unfriendly economy to businesses today.

I think that, as we have gone through the process and listening to the testimony, I don't think there is anybody here who disagrees that there needs to be free and fair election. That means that you can't be coerced by the unions and you can't be coerced by businesses. And employees ought to have that right to go and have that decision and do it in secret. At least that is what I am hoping for.

You know, this committee has a pretty good tradition of standing up for workers' rights, at least parts of this committee do. It was about 10 years ago that this committee, over the objections of members on the other side, took on corruption, took on corruption within the Teamsters Union, where there was a fraudulent election of a union, 1.4 million members, one of the largest private-sector unions in America today. And this committee stood up and said, there is going to be another election because of the fraudulent leadership of, at that time, President Carey of the Teamsters. There was another election. It was a fair election. And we defended the rights of 1.4 million Teamsters.

And, Mr. Chairman, I hope that we, as a subcommittee, will take a look at restoring workers' rights to those 1.4 million Teamsters by taking the final step in getting the consent decree removed and getting this union from under the control of the federal government. It is time that that happened.

And it would be a great step for worker democracy and one that I hope, this time, Republicans and Democrats could work together on. I don't think any of us believe that, after this union has been under control, I think, of the federal government for around 17 years, that the federal government still should have it under its thumb. And I think this would be a great step for worker democracy.

The question that I would have for Ms. Joyce on this is, you know, the card-check process is an interesting process. And it demonstrates that perhaps with only half of the members or employees of a company being part of the process and only half being contacted, that there could be union recognition.

At that point in time, because 50.1 percent of the workers have agreed that they want union representation and the other 49 per-

cent not having a vote, at that time should the union represent the 50 percent or 51 percent of the workers that have signed the card-check, or should that be a requirement for 100 percent of the workers?

Ms. JOYCE. Just as with any election, it is the majority. When the union——

Mr. HOEKSTRA. But this is not an election. This is a card-check. This is not an election.

Ms. JOYCE. Well, per se, when you get 51 percent—it is 50 percent plus one person——

Mr. HOEKSTRA. Right.

Ms. JOYCE [continuing]. You get the majority that say, "Yes, we want the union to help represent us," that is the majority of the employees. Everyone has the choice of whether they want to belong to the union or not. In fact, when the totals are brought in, we have to have that majority.

Mr. HOEKSTRA. But it is not an election. There is not necessarily—the people who disagree with joining and who may never have been asked, the benefits and the detriments may never have been explained to them——

Ms. JOYCE. At our call center, everyone knew——

Mr. HOEKSTRA. I don't care about—I am just talking philosophically here——

Chairman ANDREWS. The gentleman's time has expired.

Mr. HOEKSTRA. All right. Thank you.

Thank you, Mr. Chairman.

Chairman ANDREWS. Thank you.

The chair recognizes the gentleman from Iowa, Mr. Loebsack, for 5 minutes.

Mr. LOEBSACK. Thank you, Mr. Chair.

Thanks to all of you for your testimony today. It has been enlightening.

I might just make one comment. It seems to me that part of the problem that we are facing here—I like to put things in, kind of, a bigger context. We all know that of course union membership, as a percent of the workforce in this country, has been dropping dramatically over the course of the last couple of decades.

And, in particular in the meat-packing industry and a number of others, I think what we are seeing is—a lot of this is the result of the globalization process. We are seeing a race to the bottom, if you will, in a lot of industries. And we are seeing tremendous pressure on the workers.

And I think what we see is an increase in productivity on the part of the workers, but we see a decline in their ability to organize, we see a decline in their benefits, whether it is real wages or whether it is health benefits, whatever the case may be.

And my own view, for what it is worth, is that we have a lot of company executives who are very aware of the squeezing of the working class, and, oftentimes in the workplace, it is manifested by the kinds of activities that we have heard from a number of you today.

And it is not that there aren't abuses on both sides; we have heard that from a number of panel members here and from some of you, as well.

But I do want to just ask a couple of quick questions, if I can.

Mr. Ludlum, I was out of the room when our chair questioned you, and you may have addressed this already. But can you talk to us about the role of the UFCW in this process? Did they engage in any kind of intimidation tactics?

You know, you were part of this process. How did they approach this whole process? And I don't mean just during a vote.

Mr. LUDLUM. No, when I first started working at Smithfield I knew nothing about unions, had never been a part of a union, was not raised up in union territory. You know, I was raised up in the South, you know, so there wasn't a lot of unions in the area or anything like that; knew nothing about them. But, as I started working there and leaving the plant, the organizers would be out there handbilling at the highway, you know. They would be right there at the line, where they had to stay on public property and handbill. And every once in a while, I would get a handbill; sometimes I wouldn't. Sometimes I would read it, and sometimes I wouldn't, you know.

But the union did not make my decision on whether or not I needed a union. I did. And the company made it for me, you know.

As I've seen workers getting hurt, getting mistreated, you know—in particular, the straw that broke the camel's back was one employee in the livestock area, when his leg got broke when it got caught between an electric pallet jack and a concrete wall, and then the very next morning he was at work with a full cast and crutches.

And I was asking him, I said, "What are you doing in here?" He said, "I have got to be here or I am going to lose my job." And come to find out, it was just to prevent the company from having a loss-of-workday case on their OSHA law.

So this man had to go all the way through the parking lot, a large parking lot—you know, they employ over 5,500 employees—a large parking lot, all the way through the plant, through the greasy cut floors and kill floors, to sit in the livestock break area all day, with crutches and a cast on, you know, and just be under the pain and being uncomfortable all day and risking himself again.

And when I went to supervision, who drove around and parked right in the livestock yard, 10 feet from where he was sitting at in the break room, I said, "How about you guys let him drive around, you know, and park where you guys are parking at?" And they said, "No, that is for management, and he is an employee."

And that is when the switch flipped for me. That is when I said, "Okay, this is a mindset. This is what has to change. They are going to treat these people with respect, because I am a worker too."

Mr. LOEBSACK. Right. I appreciate that.

I will just make one brief comment. Being from Iowa, we know a lot about the hog industry, as you do in North Carolina, and also about the processing industry as well. And we are represented in many of these plants in Iowa by the UFCW, and I am really happy that we are, of course.

I will yield back——

Chairman ANDREWS. Would the gentleman yield before he does that?

I did want the record to reflect the discussion earlier about the letter on the Mexican unions—and we will submit written information on this—I do want the record to reflect that that was a situation where it was union versus union, as to which was supposed to be recognized. It was the view of the signers of the letter, including Chairman Miller, that the incumbent union was a government-run sham union and the union that was to replace it was a more conventional union that truly represented the workers.

I do want the record to reflect that that is the reason the chairman and others signed the letter.

The chair recognizes the gentlelady from North Carolina, Ms. Foxx.

Ms. FOXX. Thank you, Mr. Chairman. And I appreciate that.

I would like to respond to your last comment, in your clarification about that letter. It seems to me that the important point was that you and your colleagues recognized the importance of a secret ballot in protecting people, no matter what the issue was.

Chairman ANDREWS. Will the gentlelady yield?

Ms. FOXX. I will as soon as I finish my other comments.

Chairman ANDREWS. Sure.

Ms. FOXX. Thank you.

I appreciate the fact that we are going to allow the Smithfield Packing Company to include their statement in the record for today too. I am very pleased about doing that. I agree with my colleague that there are at least two sides to every story and every issue—at least two. I learned, when I served in the state legislature, there are usually about 25 different sides to an issue.

Mr. Ludlum, I want to thank you, too, for your service to our country. I always try to thank every veteran and every active military person for their service because I think it is very important that we do that and recognize it.

But I want to ask you a question about the current situation at Smithfield. Isn't it true that Smithfield has called on the UFCW to agree to a private, secret ballot election, so that the workers at Tar Heel can decide whether or not to be unionized?

And isn't it true that they have agreed to have a carefully regulated-by-the-federal-government election and have even offered to share the cost of a neutral observer, such as someone from the Carter Center, to oversee that balloting? Isn't that true?

Mr. LUDLUM. Oh, yes, ma'am. They definitely want a fair shot at keeping us in the secret ballot process because it was 12 years from the first one, 10 years from the second one, and they can postpone, you know, a legitimate election for another 12, 14 years, you know, have 20, 30 years operating and abusing workers, you know.

And you asked if the government regulates that the NLRB is there, but when you lose power and lights go off and there is no agent around the ballot box? No, the only secrets that are being kept is the secrets that the company's dirty tricks are going to continue to happen.

Ms. FOXX. But they do want to have a secret ballot election and they will have to abide by that election if they have the election?

Mr. LUDLUM. Yes, they want a secret ballot election.

Ms. FOXX. And I would like to make one other comment about Ms. Jason's comment.

You mentioned, in response to the question from Mr. Hoekstra, everyone has a choice. And in the example that he used, which you did not complete, a 51 percent, or 50-plus-one sign those cards and they wanted to be represented by a union, you never responded to the rest of it, then assuming the other 49 percent don't want to be represented by a union. And you said everyone has a choice. But in this kind of a situation, they don't. You are not willing to give them that choice.

Thank you very much, Mr. Chairman.

Chairman ANDREWS. Will the gentlelady yield, since she——

Ms. FOXX. Oh, yes, now I will.

Chairman ANDREWS. I would respectfully say to her that one major difference in the Mexican situation is that the union that was the incumbent was functionally an arm of the Mexican government. If you have got a situation where your government is against you, I think most people want to be protected in their privacy against their government, as opposed to the present situation.

Second, I would say, to Mr. Ludlum's situation, the UFCW has no choice but to go for a secret ballot election under present law. It is either nothing or that.

Right? Is that correct, under the present law?

Ms. FOXX. Correct.

Chairman ANDREWS. Okay. The chair recognizes——

Ms. FOXX. Would the chairman yield?

Chairman ANDREWS. Yes, it is your time. Yes, ma'am.

Ms. FOXX. Would you say that in our country we should just have sign-up cards, or would you do away with the secret ballot elections in this country?

Chairman ANDREWS. I would say that we should guarantee under the labor law a free choice of every employee, and this bill is the right way to do it.

The chair recognizes the gentleman from New Jersey, Mr. Holt, for 5 minutes.

Mr. HOLT. Thank you. Thank you, Mr. Chairman. And thank you for holding these hearings.

Mr. Ludlum, when it takes as long as a decade to finally get reinstated, what is the message that the law sends to employers and employees about the value of unions and the importance of unions?

Mr. LUDLUM. Well, I mean, you know, I am a shining example for Smithfield to the other workers. If you speak up, you stand up for your rights, we will fire you and we will see you in 12, 13 years.

Mr. HOLT. Do you think that a majority vote through the card-check would make it easier or harder to organize?

Mr. LUDLUM. Oh, I think it would make it easier, you know.

Mr. HOLT. It would make it easier.

Let me ask a couple of questions of Jen Jason.

I understand that you are now a consultant to businesses. Is that correct?

Ms. JASON. Yes.

Mr. HOLT. And I understand that your Web site talks about what you call union avoidance programs. Is that correct?

Ms. JASON. Yes.

Mr. HOLT. And after you left as an organizer for UNITE HERE, who was your first client?

Ms. JASON. We worked for the Cintas corporation.

Mr. HOLT. For Cintas. And how soon after you left UNITE HERE did you take them as a client?

Ms. JASON. I don't recall at the time. Within a couple of months. Once we started up the consultant company.

Mr. HOLT. So, okay, as soon as you started the company.

Ms. JASON. Excuse me. As I said, I remained committed to the idea that workers deserve their rights and deserve democracy in the workplace. And one of the things we wanted to do with our consulting company was to use our experiences as organizers to help companies understand the ways in which employees feel like they are being discriminated against, feel that favoritism is being used against them, and to help them rectify the situation in a peaceful way so that there doesn't have to be strife between management and employees.

Mr. HOLT. So in whose interest is union avoidance? Why would someone, some company or anyone want to avoid unions? What would they be avoiding?

Ms. JASON. Well, I mean, in this particular example, I think what we are talking about is corporate leverage organizing campaigns that are well outside of the jurisdiction of the NLRB, which we have been talking about, in which signing a union card is an indication that you want to get a union and you want to have a vote. I think that is essentially how they are using it now.

But, as some of your colleagues have said, in the last 10 years, with the history of the way that the economy has been working and manufacturing has been moving overseas, unions have become more desperate to organize workers and have used even more aggressive tactics against companies to force them to agree to card-check outside the jurisdiction of the NLRB.

And basically what that means to a company and to the employees is that that union—for example, UNITE HERE in the Cintas case—will wage long-standing public relations campaigns, shareholder actions and things like that that are actually detrimental to the company and to the employees, especially in a case where there is no, to my knowledge, there is no overwhelming voice of people saying, "We want a union here," but it was actually a strategic decision made by the corporate union to organize that company, not a call from the shop floor saying, "I am breaking my back here; I need your help."

Mr. HOLT. Well, my time is nearly expired. What I think is a key issue here of whether we are making unionization harder, making it harder to organize. I think the data are pretty clear that workers would be better off if collective unionizing were the norm, rather than the exception, and that making it more difficult actually is a disservice to the overall economy, not just the workers.

So I have seen union avoidance consultants at work, and I know they can be quite effective. But I question whether they really operate in the interest of workers and the economy as a whole.

Thank you.

Chairman ANDREWS. Thank you, Mr. Holt.

The chair recognizes the gentleman from Louisiana, Dr. Boustany, for 5 minutes.

Mr. BOUSTANY. Thank you, Mr. Chairman. Thank you for holding this hearing.

I want to thank the witnesses. You have all given very compelling personal stories, and it has been very interesting to me.

And, clearly, abuses occur, intimidation occurs, on both sides. And this committee is interested in looking at fairness and what is really fair to the worker. And, clearly, that is a central issue. And it seems to me that fairness to the worker would mean not short-circuiting a secret ballot system which is set up fairly, with proper safeguards. That seems to be the fairest way to handle this.

Now, I guess the question I have is this: If we were to move forward with card-check, what do you recommend—and I would like to hear from each of you on this—what do you recommend be done to prevent fraud and intimidation under that type of system?

I mean, do you recommend that the NLRB be present in every meeting? Which, I mean, that is impossible. But what do you recommend that this committee look at? And how do we verify that we are not going to have intimidation and fraudulent activity with card-check?

Mr. Ludlum, why don't you start with that?

Mr. LUDLUM. Yes, if you find somebody bending somebody's arm behind their back to make them sign a card, put them in jail, whether it be a CEO or a union organizer.

Mr. BOUSTANY. But how would you really prevent this? I mean, I——

Mr. LUDLUM. Well, eventually——

Mr. BOUSTANY. You are talking about enforcement after the fact. How do we devise a fair system?

Mr. LUDLUM. Well, I mean, eventually, then you say, okay, that card is not legitimate. You know? I mean, a person will come out and tell you. I mean, as soon as they feel safe, somehow it will come out. A lie will always find you.

Mr. BOUSTANY. Mr. Camilo?

Mr. CAMILO. Well, you can read all the cards and contact the person that signed the cards to make sure that they signed it if you have any doubt.

Mr. BOUSTANY. Ms. Jason?

Mr. JASON. Well, I am certainly not a legislative expert, but I would suggest—and having worked in card-check scenarios throughout the U.S. and Canada in multiple different provincial locations, card-check doesn't solve the problem of harassment. Card-check doesn't solve the problem of violence on the shop floor or any of these things that have been described by other members of this panel. In reality, it just heightens the sense of urgency that is created and the potential for violence.

And so, my actual, honest response is I would not recommend it. I would recommend that a secret ballot be upheld in which a person can say one way or another whether or not they want a union but that no one ever finds out what they voted.

Mr. BOUSTANY. Thank you.

Mrs. Joyce?

Ms. JOYCE. I agree that, for example, if I call my land-line service and want to change my plan, then they have somebody contact me, and I can say "Yes, I agree to that" or "No, that is not my card."

But that is much better than trying to get an employee that really wants a union to have to go where the management can watch you, taking pictures of you, and worried about getting fired because you choose to have a union represent you.

Mr. BOUSTANY. Okay, well, I would say, you know, as a member of this committee, I am interested in fairness, and I want to see a fair system in place. But I am not satisfied that we can create a system with card-check that would be reasonably full-proof with regard to intimidation tactics and fraudulent abuses. That is the problem I have, as a member of this committee.

And it seems to me that a secret ballot election is a system whereby at least you can create some degree of safeguard that protects the right of the worker. And I think that is the central issue that we need to keep our eyes on.

And I see my time is running out, so, again, I thank you for your testimony.

Mr. Chairman, thank you very much. I yield back.

Chairman ANDREWS. I thank the gentleman.

And the chair recognizes the gentlelady from New York, Ms. McCarthy, for 5 minutes.

Mrs. MCCARTHY. Thank you, Mr. Chairman. And I appreciate this hearing.

You know, as we talk about union coercion in the workplace, let me give you some information that I had done a little research on.

The anti-union H.R. Policy Association was able to identify only 42 cases involving coercion in the signing of union authorization forms in the more than 60 years since the NLRA has permitted unions, or less than one per year.

So I think that, you know, trying to put this on to the unions, that they are giving everyone a difficult time, I think is a little out of place there. Yet we know that we see our unions trying to organize, and they are being shut out constantly.

So something is not working, and obviously we need to have a better playing field for those that want to be unionized.

Going back to the beginning of some of the testimony, Ms. Jason talked about how the unions would go to the homes. They are not allowed on the property, so where are they supposed to talk to those members that might want to join a union?

And, to be very honest with you, as a politician, twice a year I go around knocking door to door and going to people's homes so they can sign my petitions so I can run for re-election. So, you know, those that don't want me in the home ask me to leave. Those that want to sign up just sign up. So, I don't know, I kind of consider that freedom of speech, in one way or the other. So I see nothing wrong with that.

But, again, to have Ms. Jason testify here and certainly—let me ask you. Why did you join a union in the first place where you were working?

Ms. JASON. I am sorry?

Mrs. MCCARTHY. Why were you involved in the union?

Ms. JASON. In the first place?

Mrs. MCCARTHY. Yes.

Ms. JASON. Well, I grew up in a family that valued social justice issues. And I really strongly believed——

Mrs. MCCARTHY. When you were in the union, did you see why should stay into a union, as far as the workplace conditions?

Ms. JASON. Well, what I found in my experience was that, while the need may have always been present for change in the workplace, or while there was certainly a call for people to advocate for change or to discuss change in how they were going to solve problems in the workplace, and, you know——

Mrs. MCCARTHY. Okay. With that being said, though—no, I am just asking, why were you in the union? Why were you in the workplace? Why were you trying to organize? Because obviously—is there a reason for it?

Ms. JASON. Well, if I could answer more fully, I started off with a strong belief in these things. I ended my career with UNITE with a strong belief in these things.

Mrs. MCCARTHY. And yet——

Ms. JASON. In the middle, I took a look at the reality of what was going on on the shop floor.

Mrs. MCCARTHY. Taking my time back, when you quit your job as an organizer, how soon after you quit did you start your own business?

Ms. JASON. As I said, it was a couple of months.

Mrs. MCCARTHY. Couple of months. And who was your first client?

Ms. JASON. Cintas.

Mrs. MCCARTHY. And basically, what were they paying you, basically, a year that first year?

Ms. JASON. We had a consulting agreement. They weren't personally paying me. It was a consulting agreement between my company and Cintas.

Mrs. MCCARTHY. And what was about how much?

Ms. JASON. For $225,000.

Mrs. MCCARTHY. Correct. [Laughter.]

I don't know. It just seems to me that you have a conflict of interest, you know, on a number of those issues.

We have testimony from a number of members that belong——

Mr. KLINE. Excuse me. Would the gentlelady yield for just a second?

Are you suggesting by that conflict that her testimony is inaccurate or misrepresenting? What is——

Mrs. MCCARTHY. I think it is a little biased. [Laughter.]

Taking my time back, you know, there are many union workers, and especially in the world that we are seeing today, that workers are not getting a fair shake. We are seeing health-care plans being taken away. We are seeing pensions being taken away. These are things that we, as Americans, have always fought for.

Now, there are many good employers out there, and there are. And those that don't want to join the unions, that is certainly the employee's right.

But when we make it so difficult for people that want to work with a union because they do protect workers' rights—if you re-

member correctly why unions even started, it basically goes back to the time when our union people—or our people, just average working people, were taken definite advantage of. And we are seeing that more and more.

We all want fair elections. All we want is people to be able to say to another person, "We think we need to have a union." And I think that is fair.

We have seen too much abuse, as far as employers not allowing the employees to have that. And I hope this committee will certainly help change that.

With that, I would like to offer for the——

Chairman ANDREWS. The gentlewoman's time has expired.

Mrs. MCCARTHY. I would like to offer for the record the Form LM-20 which Ms. Jason has filled out and also testimony from many people that want to join unions.

Chairman ANDREWS. Without objection.

The chair recognizes the gentleman from Michigan, welcomes him to the committee, Mr. Walberg, for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman.

First of all, let me also thank Mr. Ludlum for his service, for the cause of freedom.

Also having been a father of a military personnel, I would say to Ms. Joyce, as well, thank you for being a family member in support of people who were willing to go, as you said very clearly, and fight for the cause of freedom. That is important we remember that.

And I applaud you for your positions and thank you for taking right, each of you, the freedom to express your point of view on this issue.

Having said that, as well, I admit that I, as probably everyone in this room, come with perspectives that come from filters in our life. I was raised in a union home. My father was a tool and die maker/machinist. I worked at U.S. Steel Southworks in Chicago for a time, as a steelworker.

I had a foreman, not a union official but a foreman, come up to me early on in my time at U.S. Steel, diligently sweeping out the kitchen area, the materials area underneath the No. 2 electric furnace there, and tell me, "Walberg, take it easy. Go find a box, curl up, take a nap. Unions work long and hard to get your working conditions. Don't screw it up in 1 week."

That is a filter that I have in my life. I admit that. But we all have those filters.

And yet, there are principles that go way beyond filters.

So I just want to ask a couple questions here, and would appreciate a "yes" or "no" answer.

Mr. Ludlum, do you believe exceptions to the rules of NLRB or the law should be a reason for undoing free and private elections in the workplace, yes or no?

Mr. Ludlum, yes or no? Or I will move on.

Mr. Camilo, do you believe exceptions to the rules should be a reason for undoing free and private elections in the workplace? [Laughter.]

Ms. Jason, do you believe exceptions to the rules should be a reason for ending free and private elections in the workplace?

Ms. JASON. No.

Mr. WALBERG. Ms. Joyce, do you believe exceptions to the rules should be a reason for ending free and private elections in the workplace?

Ms. JOYCE. I am sorry, I don't completely understand what you are asking.

Mr. WALBERG. Do you believe exceptions to the rule of law or the NLRB—and we have exceptions on both sides; we can admit that. We have bad management, and we have bad unions. We have all seen it; we have read about it.

Do you believe exceptions to the rule of law or the NLRB should be a reason for ending free and private elections in the workplace?

Ms. JOYCE. I believe in——

Mr. WALBERG. Yes or no?

Ms. SÁNCHEZ. Excuse me. Would the gentleman yield for a question?

Mr. WALBERG. Not until I am finished with these questions.

Ms. SÁNCHEZ. It would help clarify——

Mr. WALBERG. Thank you.

Ms. SÁNCHEZ [continuing]. I think the question that you are asking of them.

Mr. WALBERG. No, I think the question is very clear.

Ms. SÁNCHEZ. By "exceptions" do you mean violations?

Mr. WALBERG. I have not——

Chairman ANDREWS. The gentleman from Michigan has the floor.

Mr. WALBERG. I have not yielded.

The second question I would like to ask: Mr. Ludlum, do you believe that an employee who doesn't want to join a union should have that opinion protected under the right to privacy?

Mr. LUDLUM. Is this yes or no also?

Mr. WALBERG. Yes or no. [Laughter.]

It is not multiple choice. I don't think it is that difficult. Yes or no? We are talking about freedom. You fought for it.

Do you believe that an employee who doesn't want to join a union should have that opinion protected under the right to privacy?

Mr. LUDLUM. That doesn't want to join the union?

Mr. WALBERG. One who doesn't want to.

Mr. LUDLUM. Yes.

Mr. WALBERG. Thank you.

Mr. Camilo, do you believe that an employee who doesn't want to join a union should have that opinion protected under the right to privacy?

Mr. CAMILO. If a majority wants a union——

Mr. WALBERG. Yes or no?

Mr. CAMILO [continuing]. Then they should have a union.

Mr. WALBERG. I didn't ask that question.

Ms. Jason, do you believe that an employee who doesn't want to join a union should have that opinion protected under the right to privacy?

Ms. JASON. Absolutely.

Mr. WALBERG. Thank you.

Ms. Joyce, do you believe that an employee who doesn't want to join a union should have that opinion protected under the right to privacy?

Ms. JOYCE. Yes.

Mr. WALBERG. Thank you.

Chairman ANDREWS. The gentleman's time has expired.

Mr. WALBERG. Thank you.

Chairman ANDREWS. The chair recognizes the gentleman from Connecticut, Mr. Courtney, for 5 minutes.

Mr. COURTNEY. Mr. Chair, I yield back to you.

Chairman ANDREWS. I thank the gentleman for yielding. I will ask a question, then we will yield to Ms. Sánchez.

Mr. Ludlum, do you think that when people are in coercive situations where an employer controls the entire process leading up to a vote, that that vote reflects a free and unfettered choice of a worker?

Mr. LUDLUM. No.

Chairman ANDREWS. The chair yields to Ms. Sánchez—Mr. Courtney yields to Ms. Sánchez.

Ms. SÁNCHEZ. I thank the gentleman for his time.

I was probably just as confused as some of the panelists by one of the questions that was just asked of them in a yes-or-no form as to whether or not "exceptions" to the NLRB should therefore trigger dispensing with free and fair elections.

By "exceptions" did the gentleman mean violations to the NLRB law and rules?

Mr. WALBERG. If I may answer, Mr. Chairman?

Chairman ANDREWS. Are you yielding to the gentleman from Michigan?

Ms. SÁNCHEZ. I believe it is Mr. Courtney's time.

Chairman ANDREWS. Are you, Mr. Courtney, yielding to the gentleman from Michigan?

Mr. COURTNEY. I will. [Laughter.]

Chairman ANDREWS. Thank you, Mr. Courtney, for being so helpful.

Ms. SÁNCHEZ. By "exceptions" did you mean violations?

Mr. WALBERG. This is tough for a freshman to understand all this process.

But, yes, I absolutely meant that. Very much did I mean that these were exceptions that were violations, that were violations of the law, that were illegal.

Ms. SÁNCHEZ. May I——

Mr. WALBERG. On either side. That was the question——

Ms. SÁNCHEZ. Okay. May I reclaim my time, Mr. Courtney?

Mr. COURTNEY. Go ahead, yes.

Ms. SÁNCHEZ. Thank you, Mr. Courtney.

Well, it would seem to me that if there are enough violations of a rule that is not being followed in a free and fair manner, that perhaps the elections are not free and fair. And so, perhaps we ought to be considering another way in which employees can express their desire whether to be represented by a union or not be represented by a union.

And I don't know if that helps the panelists clarify the question that my colleague was asking.

Mr. WALBERG. Will the gentlelady yield for my response?

Ms. SÁNCHEZ. I will yield time back to Mr. Courtney. He controls the time.

Mr. COURTNEY. You can respond.

Mr. WALBERG. Thank you.

And I would agree that is worth looking at. I was saying exceptions, and I think there are exceptions on both sides. I don't think that we are talking about something that is massive, either side. I think we would say that the majority of our business, our corporations, our job providers live under the law.

These are egregious exceptions. I admit that. When you have a man with a broken leg expected to work——

Ms. SÁNCHEZ. Would Mr. Courtney yield time to me?

I just want to clarify, in terms of "exceptions" which means "violations," companies—I just want to cite some statistics.

Workers in 2005 who received back-pay because of illegal employer discrimination for activities protected under the National Labor Relations Act: 31,358 employees received back-pay because of exceptions or violations to NLRB on behalf of employers.

Percentage of cases in which employers never agreed to a contract after workers form a union under the NLRB process: 34 percent. So even if a union is elected, in 34 percent of those cases, there is no contract that ever gets negotiated because employers don't bargain in good faith.

And I could cite multiple statistics. But I think, if I could have unanimous consent to enter this document into the record——

Chairman ANDREWS. Without objection.

Ms. SÁNCHEZ. I would also end by saying that, by far and away, statistics that show employer exceptions or violations to NLRB rules far exceeds any union or employee exceptions or violations to the NLRB rules.

And, with that, I would yield back to Mr. Courtney and thank him again for his time.

Mr. COURTNEY. Mr. Chair, I think that is game, set and match. [Laughter.]

I want to yield back to the chair.

Chairman ANDREWS. Thank you, Chairman Courtney. [Laughter.]

We appreciate that very much.

The chair yields to the gentleman from Illinois, Mr. Hare, for 5 minutes.

Mr. HARE. Ms. Jason, I won't force you to do the yes-or-no thing here all the time, but I am a member of UNITE HERE and I did some organizing. And I was just wondering, I never got paid $220,000 for organizing. Did you make that when you organized for UNITE HERE?

Ms. JASON. No, I didn't.

Mr. HARE. Okay. You were quoted as saying to The Windsor Star on September the 3rd that, quoting, "Cintas prides itself with being principally anti-union." Did you make that statement?

Ms. JASON. I don't recall.

Mr. HARE. Okay. Well, I will put it in the record and get you a copy of it. [Laughter.]

Let me ask you this then. Having said that, I am a little bit confused. You said you went into this as a dreamer or whatever and out of it as wanting to do the right thing.

Are you aware that Cintas has settled over 60 charges of labor violations with general counsel of the NLRB?

Ms. JASON. Well——

Mr. HARE. I am just asking, are you aware they have settled 60 charges with the NLRB?

Ms. JASON. To be perfectly honest with you, I am not here on behalf of Cintas or as a representative——

Mr. HARE. No, no, no. I am not asking you—I am just asking you, are you aware that your client, that paid you $220,000-some, has settled over 60 charges of violating labor law? And you were quoted in the paper, talking about them being an anti-union company.

So I am asking you, are you aware of this?

Ms. JASON. I am aware that, as a union organizer, one of our strategies in the Cintas campaign was to intentionally provoke unfair labor practices.

Mr. HARE. Let me reclaim my time. Maybe I didn't read the question properly. Let me try reframing the question then.

Are you aware that this company had 60 charges of violating the labor laws with the National Labor Relations Board and settled those?

Ms. JASON. I am not.

Mr. HARE. Thank you very much for answering the question.

Let me ask you this. How, in heaven's name, if the employer has the employees for 8 hours on the floor of the factory or, in your case, a call center, and the union people, the union organizers are not allowed on company property—they are left to, I was, handbill—if not going to their home, will we do a Vulcan mind meld to communicate with these people? [Laughter.]

Because it would seem to me, in order to be fair—we keep hearing about fair elections, and I am just wondering if you can tell me, if organizers shouldn't be going to people's homes and talking to them about the benefits of getting overtime, health care, decent working conditions, safety violations—and, by the way, let me just tell you, I came out of the factory, they had 52 cutters, and I was only one of two that came out with all 10 of my fingers. Pretty dangerous work.

So how are we supposed to communicate with the workers in a fair and open process if we are not supposed to go to their home?

Ms. JASON. Well, I would say, first of all, you know, there is no problem with a worker inviting an organizer into their home to discuss issues on the shop floor. I am not against that.

What I am against is the fact that the way that organizers are trained to use a systematic sales tactic to go, unannounced, to a person's home, basically coerce their way into the door, and then once you are in the house implement that——

Mr. HARE. How did you coerce—I am interested. When you knocked at the door of the, say, Hare residence, how did you coerce to come into my home? I mean, did you offer me a gift to come in? How did you get into my home?

Ms. JASON. Well, during an election campaign, these types of things don't often happen with card-signing because there needs to be a certain amount of relationship between that time and the election.

Mr. HARE. Right.

Ms. JASON. But in the card-check, really that is a one-moment point of sale. So there have been many instances in which organizers go into the doors, and, you know, many of my colleagues pretended to be people they weren't——

Mr. HARE. Did you ever——

Ms. JASON [continuing]. Pretended to be representatives from an organization that——

Mr. HARE. Let me ask you this. I don't mean to interrupt you, but I guess I am trying to get to this because of the intimidation thing that you said. Were you instructed by the union, then, that when you were in the person's home, you said, "You will sign this union card or else"?

Ms. JASON. There are much more sophisticated ways of making that message.

Mr. HARE. But did you ever tell anybody in their home that if you don't sign, you are in deep trouble or you could lose your job for not wanting to join the union?

Ms. JASON. I often, as an organizer, made the point that, if you didn't sign a union card, you were at great risk from the company.

Chairman ANDREWS. Did the gentleman yield back? The gentleman's time has expired.

The chair recognizes the gentleman from Pennsylvania, Mr. Sestak, for 5 minutes.

Mr. SESTAK. I yield my time to Mr. Courtney, Mr. Chairman.

Chairman ANDREWS. Geez. Mr. Courtney, here you go. [Laughter.]

Mr. COURTNEY. Thank you, Mr. Sestak.

And I actually just wanted to follow up on some of the questions that the other side had posed, about the question of whether or not duress or fraud is something that there is going to be any opportunity for employers to ever raise those issues in the context of a card-check.

And once in a while, I think it is good to actually look at the bill that we are debating here. [Laughter.]

And section 2 actually has language in it that instructs the NLRB to design a card that will, I think, be fully transparent and clearly state what the choice is for the worker who is being asked to sign it.

And secondly, it is also establishing a procedure for people to challenge the validity of the signatures so that—and the chairman and I have talked about this outside of this hearing, is that I think everybody wants to get to the goal of fairness here. And just merely by changing the law to establish the card-check system as a way of certifying a union doesn't mean that we are throwing fairness out the door; that there will be an opportunity, if there are instances of fraud and duress, for employers or anybody else to present that to the National Labor Relations Board.

And I wanted to just sort of follow up with Ms. Joyce, because you have actually participated in a card-check campaign. I mean,

these are not the back of a napkin. I mean, the card actually contains real information so that people understand what it is that they are signing. Isn't that correct?

Ms. JOYCE. Yes. And you sign it and you date it with the fact that you do want the union to be involved where you work.

Mr. COURTNEY. And the language in it is also very clear. I mean, there is sort of a suggestion that is being left here today that cards somehow are different from ballot. I mean, in fact, there is probably more information that could be contained on a card than there actually is on a ballot, which is just simply a "yes" or a "no" selection. Isn't that correct?

Ms. JOYCE. I wish I would have brought a card with me. It simply says, "I"—you put your name—that, yes, you do want union representation. And you sign it again and you date it.

Mr. COURTNEY. Thank you. That is my only——

Ms. JOYCE. It is very clear.

Mr. COURTNEY [continuing]. Question.

Thank you, Mr. Chairman.

Chairman ANDREWS. The gentleman's time has expired.

The chair recognizes the gentlelady from New York, Ms. Clarke, for 5 minutes.

Ms. CLARKE. Thank you very much, Mr. Chair.

This has been a historic hearing. Your testimonies here today strengthens our nation, as we go through this transition in the economy and how we treat the workers of America.

My question is to Mr. Camilo. I want to thank you, first of all, for sharing what has been, I am sure, a very devastating chapter in your life—the commitment that you gave to Blue Diamond and what had happened just in seeking to unionize.

I am happy to share with you that this legislation will change all of that, in that employers will think twice before doing to others what has been done to you.

You know, I come from New York City, and we pride ourselves on being a union town. But I have to tell you, growing up in a community where unionized workers were the basis for the growth and development of our communities and seeing that decrease, it is something that has destabilized many communities around this nation.

Mr. Camilo—and I know this is emotional for you—could you just share with us what you think that this legislation will do to strengthen us as a nation and the generation coming behind us?

Mr. CAMILO. I think this legislation should consider that labor work is the ground of this land, that we work hard, all the work done by laborers, that they should at least give us a way that we can vote freely, without intimidation of companies.

And the Employee Free Choice Act is the right way to go, because we can do it in our free time, in any way, any place that we want, without intimidation of the company. We don't talk about voting in a working place, because of the great intimidation.

What happened to me, because I was, myself, supporting organizing a union, they fired me. And all the other workers were intimidated. If they had a card majority in the system, probably that wouldn't have happened. And that is what we need.

I believe Congress should not be so hard on it, but the Congress should be much harder on employers. They are coercing us and stopping us from doing what is good for us and for the nation.

Ms. CLARKE. I want to thank you, Mr. Camilo. You have sacrificed a lot.

Mr. CAMILO. Thank you.

Ms. CLARKE. And you are one of many throughout this nation who continue to sacrifice. We are proud of you. And I want you to know that I will remember this on the day that I cast my vote in favor of this bill. Thank you, sir.

Chairman ANDREWS. Does the gentlewoman yield back?

Ms. CLARKE. I yield back, Mr. Chair.

Chairman ANDREWS. Thank you.

I want to thank each of the four witnesses for their very significant contribution to this record and this discussion. We are very grateful for your time, and we thank you very much.

We would now ask the witnesses for the second panel to come to the witness table.

Again, we thank each of the four witnesses for their participation this morning. [Applause.]

Applaud them. They deserve it. They deserve it. [Applause.]

I am going to begin the introduction process as the witnesses take their seats.

Nancy Schiffer is associate general counsel with the American Federation of Labor and Congress of Industrial Organizations, AFL-CIO.

Harley Shaiken holds the Class of 1930 chair and is a professor at the Graduate School of Education and a member of the department of geography at the University of California-Berkeley.

Charles Cohen, who is a return visitor to our committee—he is welcome—is senior partner in the labor and employment practice in the law firm of Morgan Lewis & Bockius, Washington, D.C., and served as a member of the National Labor Relations Board.

And Gordon Lafer—is it Lafer, Professor? Gordon Lafer is an associate professor at the University of Oregon's Labor Education and Research Center, second only to Cornell University's School of Industrial Labor Relations, which I say as a proud Cornell graduate.

Lady and gentlemen, thank you for your patience this morning through the first panel. I assure you that your testimony is no less significant and important to us because of the delay, but we certainly did want to hear what the first group of witnesses said.

I will reiterate the instructions I gave at the beginning of the hearing. The box in front of you indicates that you have a 5-minute period to summarize your testimony. In each of your cases, the written testimony will be included as a part of the record of the hearing, so we would ask you to summarize your written testimony.

When the yellow light in front of you goes on, it is an indication that you have 1 minute to complete your remarks. And when the red light goes on, that is the conclusion of the 5 minutes, at which time we will then proceed to questions from the members of the subcommittee.

Ms. Schiffer, you have been here before. We welcome you back. And we would ask that you proceed with your testimony.

Ms. SCHIFFER. Thank you, Chairman——

Chairman ANDREWS. If the gentlelady would suspend, we would just ask if the door could be closed so the witness can be heard. Thank you very much.

Ms. Schiffer, please proceed.

STATEMENT OF NANCY SCHIFFER, LAWYER, AFL–CIO

Ms. SCHIFFER. Chairman Andrews, Ranking Member Kline and members of the committee, thank you so much for this opportunity to testify in support of the Employee Free Choice Act.

I feel a special privilege to do this because I have spent 30-plus years as a lawyer working with employees who want to form unions so they can improve their working conditions.

As a new lawyer, I worked for the National Labor Relations Board in their Detroit regional office. It is their busiest office. I ran elections, as an NLRB agent. I held hearings and issued decisions about allegations of objectionable conduct during election campaigns. And I investigated and prosecuted violations of the act. And I believed in the NLRB election process.

I left the NLRB to work with a private law firm. We represented a variety of local unions and some national unions. And after some years there, I joined the legal department of the United Auto Workers, where I stayed for 18 years.

While at the firm and also at the Auto Workers, I worked primarily with workers who wanted to form a union. And I saw the NLRB's election process from a different perspective: the worker's perspective.

I frequently met with workers who wanted to form a union, over the years, hundreds and hundreds of workers, all sorts of workplaces. I met with them to tell them what their legal rights were under the National Labor Relations Act during the campaign and what to expect from their employer.

I tried to get the workers ready for the campaign of intimidation and fear that I knew they would have to endure, and they always did—have to endure it, I mean. I would listen to their stories of worker intimidation, threats, misrepresentation and abuse, and I would try to make sure their rights were protected, and I would try to push the election process forward.

But, at some point in my career in doing this, I could no longer, in good conscience, keep telling workers that the National Labor Relations Act protected their right to form a union. I knew what the statute said, but I knew full well that, in practice, it could not and would not protect them. I had seen it fail too many times.

I knew the difference between what was supposed to happen and what really happened. And I knew that they would have to be heroes in order to survive their organizing effort. And that is just wrong.

And I have always wanted the opportunity to be able to tell their stories to someone, you, who has the authority and the power to do something about it.

In campaign after campaign, initiating the NLRB's election process triggered a campaign of intimidation and fear by the employer, and you have heard some of it today: mandatory meetings, threats,

bribes, spying, turning workers against each other, interrogations, harassments, workers are fired.

And it adds up to an intensely coercive workplace. And the more workers support the union, the more coercive and intense it becomes for them and everyone in the workplace. And every worker knows what happens to union supporters.

Workers see that their rights are violated with impunity during the so-called NLRB-supervised election process, and they lose heart because they feel betrayed by the law that they thought protected them and they feel afraid.

I would like to tell you about one particular conversation I had late one evening with a retail store worker. And I am telling this to you because I hope it will help you to understand what workers really face—not the rhetoric, but the reality.

The woman's supervisor had told her if she supported the union he would fire her. And I was talking to her about giving this information to support an unfair labor practice charge at the Labor Board, and she started to cry. She was afraid the employer would find out that she had helped the union and she would be fired, she said.

She explained that she had a 10-year-old son who had asthma and that, if she got fired, she would lose her health care and she wouldn't be able to afford her medications. She wanted to do the right thing, but she was afraid—afraid for her son. And who wouldn't be? That kind of fear doesn't go away when the NLRB agent hands you a ballot.

She had no evidence—and there was none—that this process was, as one of the people said today, thoroughly monitored and entirely supervised. In this hearing, as I have sat here, the focus has been on secret balloting and has totally ignored the reality of the election campaign process.

In my written testimony, I try to describe what workers face, what it is like for them when they go through that election process, and explain why workers need the Employee Free Choice Act so that they can choose union representation and collective bargaining without fear and intimidation, and I tried to debunk some of the myths about it.

I thank you so much for this opportunity. It is a real privilege for me.

[The statement of Ms. Schiffer follows:]

Prepared Statement of Nancy Schiffer, Associate General Counsel, AFL–CIO

Chairman Andrews and Members of the Committee: My name is Nancy Schiffer. Since 2000 I have been an Associate General Counsel with the AFL-CIO.

Thank you for this opportunity to testify before you today about the Employee Free Choice Act. This is a special privilege for me because I have spent my thirty plus years as a lawyer working with employees who want a union in their workplace so they can bargain a contract to improve their working conditions.

I started my career at the National Labor Relations Board's Detroit Regional Office, its busiest. While there, I conducted representation elections for workers as an NLRB agent; I was a Hearing Officer who heard evidence and made determinations about objectionable conduct affecting an election; and, as a Field Attorney, I investigated and prosecuted violations of the National Labor Relations Act. I then worked with a private law firm in Detroit that was counsel to numerous local unions and several national unions in a variety of industries. For the next 18 years, I worked in the Legal Department of the United Auto Workers in Detroit.

Both at the firm and with the UAW I spent most of my time meeting with workers who wanted to form a union and helping them through the National Labor Relations Board's representation process. Hundreds and hundreds of workers: teachers, accountants, nurses, retail sales clerks, engineers, nursing home aides, factory workers, and many others. I would tell them about their rights under the National Labor Relations Act and what to expect from their employer. In every organizing effort, I tried to get workers ready for what would happen to them when their employer discovered their interest in a union. And it always happened. I would listen to their stories of employer intimidation, misrepresentation, and abuse and try to make sure their rights were protected.

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

That's wrong and I have always wanted an opportunity to tell their stories to someone who has the authority and the power to do something about it. The Employee Free Choice Act is the "what" of what can be done and you are "who" that can make it happen.

The Employee Free Choice Act represents an opportunity to change the National Labor Relations Act in a way that will restore its purpose, as set forth in the Act in 1935:

It is declared to be the policy of the United States to * * * encourag[e] the practice and procedure of collective bargaining and * * * protect[s] the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

This law was designed as a shield to facilitate employee representation and promote their ability to enhance working conditions through collective bargaining with their employers. Its stated purpose has remained our nation's official and principal labor-relations goal even following changes in 1947 with the Taft Hartley Amendments.

But over the years, the law has been perverted. It now acts as a sword which is used by employers to frustrate employee freedom of choice and deny them their right to collective bargaining. When workers want to form a union to bargain with their employer, the NLRB election process, which was originally established as their means to this end, now provides a virtually insurmountable series of practical, procedural, and legal obstacles.

The NLRA's procedures for representation still sound facially workable. But here's the problem: There is a world of difference between the rights guaranteed in the NLRA and the reality of what happens to workers when they want to achieve collective bargaining. Only by deliberately denying the reality of employee organizing can anyone conclude that the NLRA's path to union representation and collective bargaining for workers is anything but hopelessly off course.

Why does this matter? Economic inequality is the hallmark of our time. Wages have stagnated. Only 38 percent of Americans say their families are getting ahead. Less than a quarter say they expect the next generation's standard of living will be better than today. Six million fewer Americans have health insurance today than in 1995. Meanwhile, corporations are reaping unprecedented profits. Corporate CEOs earned 262 times as much as the average workers in 2005—up from 35 times more in 1978.

Collective bargaining is the best opportunity that working men and women have to achieve individual opportunity, restore economic fairness and rebuild America's middle class. Union workers earn 30% more than non-union workers. For women and workers of color, the union wage advantage is even higher: 31% for women, 36% for African-Americans and 46% for Latinos. Collective bargaining helps to narrow race and gender wage gaps. The union advantage extends to health care coverage and retirement benefits. Union workers are 63% more likely to have medical and health insurance through their jobs. Union workers are nearly four times as likely to have a guaranteed pension, and 77% more likely to have jobs that provide short-term disability benefits.[1] Workers in low-wage occupations such as childcare workers, cooks, housekeeping cleaners and cashiers, have been able to raise their earnings above the poverty line through collective bargaining. Collective bargaining provides an opportunity for workers to bargain for a better future.

Recent surveys show that 60 million non-union workers would like to have a union for collective bargaining in their workplace. But the NLRA no longer protects workers' rights to form a union. And for more and more workers, it no longer pro-

vides a process that will lead to union representation and a collectively bargained contract.

According to NLRB statistics, in 1969, the number of workers who suffered illegal retaliation for exercising their federal labor law rights was just over 6,000. By the 1990s, more than 20,000 workers each year were victims of discrimination. In 2005, according to the NLRB's Annual Report, 31,358 workers received backpay because of illegal employer discrimination in violation of the National Labor Relations Act—one worker every 17 minutes. Imagine if, instead of firing workers to guarantee a union-free workplace, this many workers were fired to maintain a women-free workplace or a minority-free workplace.

Sadly, as these statistics and my own experience demonstrate, initiating the NLRB's election process triggers a campaign of intimidation and misrepresentation by employers in the workplace. "Union avoidance" has become an area of legal practice that is listed in law firm directories along with estate planning and corporate mergers and acquisitions. Maintaining a "union free" workplace is identified by many of our largest corporations as a high-priority goal for human resource management. An entire business of consultants, now a $4 billion dollar industry, has grown up in the United States devoted to making sure that the NLRA's election process does not result in collective bargaining.[2] Some of these groups are so confident of their campaign tactics to scare and frighten workers that they guarantee the employer its money back if their workplace doesn't remain union-free. Anti-union consultants are hired by employers in 75—82% of worker campaigns to form unions.[3]

The NLRB election process is broken. Only by relying on rhetoric and ignoring the reality of what workers face when they want a union for collective bargaining, can it be argued otherwise.

If general political elections were run like NLRB elections, only the incumbent office holder, and not the challenger, would have access to a list of registered voters and their home addresses. The challenger would not get these until just before the election. Only the incumbent, and not the challenger, would be able to talk to voters, in person, every single day. The challenger, meanwhile, would have to remain outside the boundaries of the state or district involved and try to meet voters by flagging them down as they drive past. The election would always be conducted in the incumbent candidate's party offices, with voters escorted to the polls by the incumbent's staff. And finally, during the entire course of the campaign, the incumbent, but not the challenger, would have the sole authority and ability to electioneer among the voters at their place of employment, during the entire time they are working. Moreover, the incumbent could pull them off their jobs and make then attend one-sided electioneering meetings whenever it wanted. The challenger could never, ever make voters come to a meeting, anywhere or anyplace. And the incumbent could fire voters who refused to attend mandatory meetings, or if they tried to leave the meeting, or even if they objected to or questioned what was being said.

But this is how an NLRB election process is conducted. An employer can and does compel workers to attend one-sided anti-union meetings. These compulsory meetings are conducted in 92% of worker campaigns. And if a worker refuses to go or tries to leave, the employer can legally fire them. And if a worker tries to object to what is being said or even to ask a question, the employer can legally fire them. Compulsory meetings are conducted with large and small groups of workers; they often involve high level management officials whom workers have never met before, but who are now intensely focused on their interests—in collective bargaining.[4]

Mandatory meetings are also conducted with individual workers, either at their workplace or by being called into their supervisor's office. Supervisors are required to be the employer's front line offensive team in the anti-union campaign. They are responsible for monitoring and assessing the union sympathies of the workers they supervisor. Many times, the worker has never actually talked to the supervisor before and thought the supervisor only knew her as "Hey, you." Now the worker is in the office with just her supervisor or perhaps the supervisor and another, higher level, management official. They are both telling her that the union will bring violence to the workplace, that the employer will never agree to any improvements in working conditions, or even, that choosing a union will result in layoffs or in the workplace being closed down. In over half of worker campaigns, employers threaten or predict that the workplace will close if workers vote for collective bargaining—even more in mobile industries [71% in manufacturing].

Sometimes employers spy on their workers. Fourteen percent use electronic spying, video and still cameras, long distance microphones, company guards, supervisors, and even the local police for spying. Supervisors are sent to offsite union meetings to observe who attends. I have been involved with cases where supervisors followed union supporters around the work place and even into the bathrooms to see who they talked to and who they didn't. The company even posted management

observers in nearby restaurants and other gathering places to see which workers talked with union representatives. Long-distance microphones were aimed at them to find out what they talked about while they were on their breaks, outside the workplace.

Employers also offer bribes to influence workers during the campaign. They promise either all or selected employees increased benefits, a better shift assignment, a promotion or some other advantage. Fifty-one percent offer bribes or other special favors; fifty-nine percent promise to improve wages.[5]

In one fourth of worker campaigns for collective bargaining, workers are fired. A new study by the Center for Economic and Policy Research (CEPR) supports an ever higher number, that one in five activists are fired.[6] When a worker who has supported the union is fired, fear is instantly and inevitably injected into the workplace. Workers are afraid that the same thing will happen to them if they support the union. This fear devastates the organizing campaign. And the fear persists because fired workers are rarely returned to their jobs as lengthy legal delays are common.

This adds up to an inherently and intensely coercive environment. Before the NLRB agent ever arrives at the workplace with the voting booth and cardboard ballot box, workers have been harassed, intimidated, spied on, threatened and fired. How can a secret ballot election cure this? It can't and it doesn't.

What is free about your choice when your employer has threatened to relocate your work if the union wins? What is free about your choice when your employer points to a nearby sister location that voted for a union with an almost 100 vote margin and, four years later, no bargaining has taken place [but fails to mention that it's because the employer is gaming the system]? What is free about your choice when you can plainly see that union support means being followed and harassed and videotaped? This kind of fear does not disappear when the worker is handed a ballot. It's their job and their families' livelihood. That's too much to risk. It's too much to have to risk.

One night I talked with a woman who worked at a store where workers were trying to organize. I remember this conversation well. It was late in the evening and I was at home; so was she. Her supervisor had told her that if she supported the union, he would get rid of her. She told me she knew this was illegal, but she was afraid to give her story to the NLRB agent investigating charges against her employer. She was afraid that the employer would find out and that she would be fired. In tears, she explained that her ten-year-old son had asthma and she could not afford to jeopardize her job because she needed her health care coverage to pay for his medications. She wanted to do the right thing, but she was afraid. Afraid for her son. That kind of fear doesn't go away.

Workers who have been subjected to this kind of coercive campaign believe their employer will retaliate against them if the union wins the election. Either the employer will continue its campaign of fear and intimidation after the election, or the employer will figure out who voted for the union and retaliate. Or both. And workers know how little the law does to protect them. In one election-related case I litigated, there were thirteen votes in favor of the union in a secret ballot election. Within six months each of the thirteen workers who had voted for the union had been terminated.

Part of the reason for workers' fear and part of the reason employers violate the Act with impunity is that no effective remedies are imposed. And that they come months and years too late. What happens if an employer is prosecuted for illegally threatening workers that it will close or lay off workers if they vote to form a union? Or for illegally spying on workers' who are supporting a union? Or illegally telling workers that they cannot talk about the union? After the case is investigated and evaluated, it is litigated in a hearing before an NLRB Administrative Law Judge, appealed to the National Labor Relations Board and enforced in federal court. Only then can the employer be required to take any remedial action whatsoever. It will be required to post a notice on a bulletin board saying that it will not violate the law again. A piece of paper stapled to the bulletin board. In one of my cases the notice the employer posted required three 11" x 14" sheets to list all of the violations it had committed. Yet during the time the notice was posted, the employer committed all of the same violations again.

The employer is also subject to a cease-and-desist order, which is limited to the specific violation charged. If the initial violation is for illegally interrogating workers about their union support and then the employer subsequently illegally threatens to reduce wages if employees choose representation, this constitutes an entirely different circumstance under current Board practice and the process starts all over again: investigation, hearing, appeal, appeal. If employees at several facilities of a single employer are organizing, violations at one worksite almost never produce an order not to commit those same violations at the other worksites.

I have often asked workers to testify about their employer's illegal conduct. They know they will have to confront their supervisor and probably their supervisor's supervisor in a hearing, face-to-face. They are terrified, but they want to do the right thing. When they ask what the employer will have to do if found guilty, I tell them, "Post a Notice." They are incredulous, jaw-dropping and eye-opening incredulous: "That's it?" And they lose heart because they feel betrayed by the law that they thought protected them.

What if a worker is fired in retaliation for union support? After the legal process has been concluded, the employer must pay the worker for lost wages, minus any money the employee earned in the meantime. If the worker is able to secure a job elsewhere at the same rate of pay, the employer pays absolutely nothing. If payment is required, interest is simple interest, not compounded. There are no compensatory or punitive damages. In 2003, the average backpay amount was $3,800 and most workers never return to their jobs. A small price to pay to stay "union-free."

In September 2000, Human Rights Watch, one of the world's most respected human rights organizations, published an historic book-length report on workers' freedom to form unions and bargaining collectively in the United States, based on an 18-month survey. HRW Executive Director Kenneth Roth summarized the report's findings:

Our findings are disturbing, to say the least. Loophole-ridden law, paralyzing delays, and feeble enforcement have led to a culture of impunity in many areas of U.S. labor law and practice. Legal obstacles tilt the playing field so steeply against workers' freedom of association that the United States is in violation of international human rights standards for workers.

The HRW report places part of the blame for this failure on the lack of effective remedies for violations of workers' rights during campaigns to form a union:

Many employers have come to view remedies like backpay for workers fired because of union activity as a routine cost of doing business, well worth it to get rid of organizing leaders and derail workers' organizing efforts. As a result, a culture of near-impunity has taken shape in much of U.S. labor law and practice.[7]

What happens in the workplace while the discharge case is being filed, investigated, and litigated? Workers are afraid to support the union. No one wants to be fired. Who can afford to jeopardize their family's welfare, even if they are deeply committed to bringing collective bargaining to their workplace. Interest in the union has been successfully smothered. But the employer pays absolutely nothing for this collateral damage.

Even when workers are able to form their union, they are not able to bargain a first contract. Out of 1,586 initial contract bargaining cases closed by the Federal Mediation and Conciliation Service (FMCS) during 2004, 710 (45% of the total) were closed without a contract being reached.[8] According to NLRB General Counsel Ronald Meisburg, meritorious NLRB charges alleging illegal refusals to bargain by employers are filed in 28% of all newly certified bargaining relationships. Of all NLRB charges alleging refusals to bargain by employers, half occur in first contract bargaining. What is the remedy when an employer engages in unlawful bargaining tactics? The employer is ordered to bargain some more.

In one of my cases, by the time the parties reached the bargaining table—not concluded their first contract but only finally reached the bargaining table—6½ years had elapsed since the workers voted by an almost 100 vote margin for union representation. The woman they had elected as their president had retired and moved to Florida. And the woman elected to lead the bargaining had had a massive heart attack and died, just two weeks before their first negotiating session.

Anti-union consultants and "union-avoidance" specialists know that the employer's anti-union campaign does not end when the Board certifies the union as the workers' representative. These consultants and specialists typically offer their services through the entire bargaining process. If they can continue the campaign of fear and intimidation and not reach a contract for a year, they are rewarded with another opportunity to eliminate the union. If no contract is concluded in twelve months, the NLRB will conduct another election. So the strategy for remaining union-free includes stalling contract negotiations, frustrating collective bargaining, and fomenting disillusionment and a feeling of futility.

The Employee Free Choice Act is aimed at removing the obstacles workers face when they want to be able to bargain with their employer. It does this in three ways.

First, the Employee Free Choice Act allows workers to have their union recognized when the majority of workers has expressed its decision to form a union for collective bargaining. The legislation amends the National Labor Relations Act by providing a process by which workers can have their union certified by the National Labor Relations Board if a majority has signed valid authorizations designating the

union as their representative for collective bargaining. It does not change in the process for petitioning for an election and does not eliminate the election process.

Under current law, recognition based on majority sign-up is already perfectly legal and has been since the passage of the Wagner Act in 1935, when it was widely used. It has been endorsed by Congress, recognized and enforced by the National Labor Relations Board and federal courts, and approved by the United States Supreme Court.

Majority sign-up is how many public sector workers choose unionization. The states of California, New York, New Jersey and Illinois now provide majority sign-up for their public sector workers. And it has increasingly been the path to unionization in the private sector, used by many thousands of workers, including those at Cingular, Kaiser-Permanente, Alcoa, Inc., and others.

Under current law, the employer has the right to veto this decision of a majority of the workers. In fact, even if every single worker in the workplace wants to form a union to bargain a contract, the employer has no obligation whatsoever to recognize their union and bargain. Without the Employee Free Choice Act, the employer—not the workers—has the right to decide whether the workers' choice will be honored. Today, workers can be forced by their employer into the delay-ridden, divisive, coercive representation election process.

Majority sign-up procedures would make the process for choosing to form a union similar to the process already in place for disbanding a union. No NLRB election is required when workers no longer want a union to represent them. If a majority of workers demonstrate that they no longer want their union, the employer can and must withdraw recognition and refuse to bargain a contract. Or workers can petition the NLRB to conduct an election to decertify the union. The NLRB will conduct such an election if only 30 percent of the workers support the petition request. Even an employer can file a petition and trigger an election if it has evidence that the union may have lost its majority support. The Employee Free Choice Act does not change these existing procedures.

Although poll after poll shows that workers are very satisfied with their unions, [a December 2006 Hart poll showed that 87 percent of union members approve of unions and only 7 percent disapprove, compared to 65 percent approval of unions by the public overall], nothing in the Employee Free Choice Act would make it harder for workers to terminate their union representation.

Under current law, union coercion in connection with signing authorization forms is illegal. The Employee Free Choice Act does not change this current law. Coercion would continue to be illegal. But the Employee Free Choice Act adds additional protections. It directs the National Labor Relations Board to establish procedures for determining the validity of signed authorizations. Such procedures would allow the NLRB to determine whether authorizations are invalid because of coercion or fraud. The Employee Free Choice Act includes further protections by also directing the NLRB to formulate model authorization language so that the effect and purpose of the authorization is perfectly clear to potential signers. A union could not be certified without a majority of valid authorizations which comply with these procedures.

Is coercion in the signing of authorizations a legitimate concern? A recent review of 113 cases cited by the HR Policy Association as "involving" fraud and coercion identified only 42 decisions since the Act's inception that actually found coercion, fraud or misrepresentation in the signing of union authorization forms. That's less than one case per year. Compare that to the 31,358 cases in 2005 of illegal firings and other discrimination against workers for exercising their federally protected labor law rights.[9] That's a ratio of over 30,000 to 1.

Allowing employees to demonstrate their union support through signed authorizations will avoid the intimidation and fear triggered by the current NLRB election process. Workers' choice for representation and collective bargaining would be recognized and honored—not left to the whim of their employer. Workers would not be required to endure the coercive onslaught that has become an employer's anti-union campaign only to be forced, for a second time, to demonstrate their choice for union representation as part of the NLRB's election process.

Second, the Employee Free Choice Act would provide for first contract mediation and arbitration to ensure that workers actually achieve meaningful collective bargaining. The mediation and arbitration would be conducted by the Federal Mediation and Conciliation Service (FMCS). This legislation will give both parties access to mediation and arbitration. If mediation is not successful in producing a mutually agreeable contract, the dispute is referred for binding arbitration. This process will ensure that workers who choose a union actually achieve the contract they seek. Otherwise, the right to choose is illusory and accomplishes nothing.

Thirdly, the Employee Free Choice Act would create meaningful penalties for violations of the Act. It would provide for triple back pay awards to workers who have been illegally fired during organizing and first contract efforts. Illegal threats, coercion and other intimidation would be subject to fines of up to $20,000 per infraction. The bill provides guidelines for the determination of such civil penalties that take into account the gravity of the violation and its impact on the charging party, workers and the public interest. Finally, the Employee Free Choice Act provides for timely injunctive relief against egregious illegal employer conduct when workers are trying to from a union and negotiate a first contract. Currently, the National Labor Relations Act mandates such injunctive relief only for violations of the law by unions. But there is no current, parallel provision of the Act that requires injunctive relief to protect workers from illegal conduct by their employers. The National Labor Relations Act provides a discretionary process for such violations, but it has been so rarely used in recent years that is has all but disappeared. The Employee Free Choice Act would correct this imbalance by requiring mandatory injunctions for significant illegal conduct by an employer when its employees are seeking union representation, including during first contract negotiations.

Injunctive relief is essential for protecting workers' rights. A notice posting three years after illegal interrogations or threats does not remedy anything. It will not dispel the fear and it will not convince workers that they are really free to exercise their right to support union representation. Reinstating the lead union supporter years after her termination will not restore workers' confidence in the ability of the law to protect them. Injunctive relief works.

Conclusion: The Employee Free Choice Act would reform the NLRA so that workers can choose union representation and collective bargaining without fear and intimidation. When a majority of workers demonstrate their choice to form a union their representative can be certified by the NLRB without the need for the delay-ridden, coercive and divisive NLRB election process. Federal labor law would finally, and again, assure that workers who want collective bargaining are able to have it. And it would guarantee that collective bargaining would be conducted effectively and efficiently and would result in a contract. Finally, it would create real penalties as a deterrent to unlawful employer conduct.

We urge your support of the Employee Free Choice Act.

Thank you again for this opportunity to address the committee.

ENDNOTES

[1] U.S. Department of Labor, Bureau of Labor Statistics.

[2] John Logan (2006), "The Union Avoidance Industry in the USA," British Journal of Industrial Relations 44:4, December 2006, p. 655.

[3] Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing," September 6, 2000, Table 8, p. 73; Chirag Mehta and Nik Theodore, "Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns," report for American Rights at Work, December 2005.

[4] See above, Bronfenbrenner; Mehta and Theodore.

[5] See above, Mehta and Theodore.

[6] John Schmitt and Ben Zipperer, "Dropping the Ax: Illegal Firings During Union Election Campaigns," Center for Economic and Policy Research, January 2007.

[7] Human Rights Watch, "Unfair Advantage, Workers; Freedom of Association in the United States Under International Human Rights Standards," 2000, p. 10.

[8] *http://fmcs.gov/assets/files/annual%20reports/FY04—AnnualReport—FINAL113004.doc.*

[9] NLRB Annual Report, 2005.

[An AFL–CIO fact sheet follows:]

AFL–CIO Fact Sheet

Employee Free Choice Act: Summary

The Employee Free Choice Act was introduced as bipartisan legislation by Sens. Edward Kennedy (D-Mass.) and Arlen Specter (R-Pa.) and Reps. George Miller (D-Calif.) and Peter King (R-N.Y.).

1. Certification on the Basis of Majority Sign-Up

Provides for certification of a union as the bargaining representative if the National Labor Relations Board (NLRB) finds that a majority of employees in an appropriate unit has signed authorizations designating the union as its bargaining representative. Requires the board to develop model authorization language and procedures for establishing the validity of signed authorizations.

2. First-Contract Mediation and Arbitration

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

3. Stronger Penalties for Violations While Employees Are Attempting to Form a Union or Attain a First Contract

Makes the following new provisions applicable to violations of the National Labor Relations Act committed by employers against employees during any period while employees are attempting to form a union or negotiate a first contract with the employer:

a. Civil Penalties: Provides for civil fines of up to $20,000 per violation against employers found to have willfully or repeatedly violated employees' rights during an organizing campaign or first contract drive.

b. Treble Back Pay: Increases the amount an employer is required to pay when an employee is discharged or discriminated against during an organizing campaign or first contract drive to three times back pay.

c. Mandatory Applications for Injunctions: Provides that just as the NLRB is required to seek a federal court injunction against a union whenever there is reasonable cause to believe the union has violated the secondary boycott prohibitions in the act, the NLRB must seek a federal court injunction against an employer whenever there is reasonable cause to believe the employer has discharged or discriminated against employees, threatened to discharge or discriminate against employees or engaged in conduct that significantly interferes with employee rights during an organizing or first contract drive. Authorizes the courts to grant temporary restraining orders or other appropriate injunctive relief.

Chairman ANDREWS. Ms. Schiffer, thank you very much. And, as I said, your entire written statement will be in the record as presented.

Professor Shaiken, welcome to the committee.

STATEMENT OF HARLEY SHAIKEN, PROFESSOR, UNIVERSITY OF CALIFORNIA–BERKELEY

Mr. SHAIKEN. Thank you. And, Mr. Chairman and members of the committee, I am very honored to be here to testify on this issue.

When the Congress passed the Wagner Act in 1935, it was rightly hailed as labor's Magna Carta. But I think when it was passed it was hardly unusual. It was meant to encourage the rights of workers to organize and bargain collectively if they so choose.

Seventy years later, we have seen the act turned on its head. I think earlier in the hearing today, Mr. Holt——

Chairman ANDREWS. Excuse me, Mr. Shaiken, is your microphone on? You have a very clear voice but it would be better——

Mr. SHAIKEN. I thought I was being too loud there, for a moment.

Chairman ANDREWS. No, that is okay. Excuse me.

Mr. SHAIKEN. It is on now.

Mr. Holt's question about are we making it harder to join a union I think is a pretty critical question. And the evidence on this is overwhelming. We are making it much harder to join a union. And, in that process, I think American workers have lost a fundamental right.

I would like to talk very briefly about three dimensions of this.

First, when it comes to joining a union, we have a democracy deficit, a growing gap between the preference of eligible workers to

join and the reality of declining union numbers. The most recent polls tell us that almost 60 percent of eligible workers would join a union if they could. The most recent BLS numbers tell us a little over 7 percent of workers in the private sector are union members.

I think the only way to really explain that gap is that, for many Americans, joining a union has become a risk rather than a right.

And I would like to briefly touch on two issues that came up earlier.

First, the notion of pressure. On any hotly contested issue, there is a lot of pressure on all sides, and union certification elections are no exception. But when the Wagner Act was passed, the drafters were very clear: Only the employer had the economic weight to exert coercion, because only the employer can derail a career, transfer someone, fire an individual or close a facility.

Related to that, the issue of secrecy. Now, it is true with the secret ballot election the identity of how an individual worker votes is kept secret, but not the identity of the unit that votes. So when meat-cutters at Wal-Mart a number of years ago voted to have a union, the company decided very visibly to close the entire department. So individual identities were protected, but the identity of the group remained very visible.

Now, I think, in a democracy, we rightly consider the secret ballot to be sacred. But for the secret ballot to be meaningful, you need a democratic context. What we have today in the context of NLRB elections is a very coercive context, an inherently coercive context, of which there is more than ample evidence.

As a result, secret ballot votes on union organization more approximate a plebiscite in a dictatorship than a real election. The votes are counted honestly, but the fear and coercion behind the vote is what decides what takes place when ballots are cast. I think, in practice, this fundamentally eliminates and undermines a key right.

My second two points are what stem from this. A great disconnect: Productivity is going up, economic growth is increasing, worker wages are going down. Many workers are completely disconnected from this growth.

Finally, we have an opportunity for a high road to competitiveness in the global economy today that requires that workers, as well as consumers and stockholders, benefit from growth. For that we need a vibrant labor movement.

I think George P. Shultz, the former secretary of state, summarized it very well: "Free societies and free unions go together." He continued to say, "We need a system of checks and balances." We have lost that system in the American workplace. American workers have lost a key right.

Thank you.

[The statement of Mr. Shaiken follows:]

Prepared Statement of Harley Shaiken, Professor, University of California, Berkeley

Americans are confronting a troubling paradox. Polls tell us a record 58 percent of eligible workers would join a union if they could (Peter D. Hart Research Associates, 2007) while the Bureau of Labor statistics informs us that union membership in the private sector has slid to 7.4 percent in 2006, a record low (BLS, 2007).[1]

What causes this growing gap between employee preference and workplace reality? It reflects the fact that for many Americans joining a union has become a risk rather than a right. According to the 2005 National Labor Relations Board (NLRB) annual report,[2] 31,358 people—or one worker every 17 minutes—were disciplined or even fired for union activity. The result is a big chill on union organizing and a "democracy deficit" for the entire society.

Shrinking union membership impacts all Americans. Unions paved the way to the middle class for millions, pioneering benefits such as paid pensions and health care. Now labor's plummeting numbers contribute to a squeeze on the middle class, rising inequality, and an erosion of democratic values.

In 1935, during the dark days of the Great Depression, Congress passed the National Labor Relations Act (NLRA), often called the Wagner Act, guaranteeing workers the right to organize and bargain collectively. It was immediately hailed as labor's "Magna Carta." Since then, amendments, court rulings, and administrative decisions have turned the Act on its head. Congress never voted to repeal this legislation yet many workers have seen their fundamental right to organize eroded in the way the Act is now implemented.

Today, if workers seek to organize, the NLRB generally sets a secret-ballot election a month or two following the formal request. (Although in some cases legal procedures delay the election up to several years.) During the period between the request and the election, the company retains overwhelming power to influence the outcome of the vote. According to Fortune magazine, "workers are routinely fired or discriminated against for supporting unions, most employers hire anti-union consultants to block organizing drives and some go so far as to close down work sites when employees vote for a union" (Gunther, 2006). Penalties are virtually nonexistent for violating workers' diminished rights by, for example, firing individuals for union activity. It's not just that the playing field is tilted against organizing; unions are barred from the stadium.

Nonetheless, you might say, "What's undemocratic about a secret-ballot election?" The secret-ballot is appropriately considered sacred in a democracy, but it requires a democratic context to be meaningful. Today, NLRB-supervised elections often take place in highly coercive environments. As a result, they approximate plebiscites in a dictatorship rather than a functioning democracy. The votes may be counted honestly, but the outcome ratifies the inequitable atmosphere in which the vote occurs.

The Employee Free Choice Act (EFCA) seeks to provide a more democratic context. What the Act does is simple: it allows workers to form a union if a majority of employees in a workplace sign up for one. In addition, it provides meaningful penalties for violating workers' rights and insures that collective bargaining results if workers choose a union. The Act restores balance to a system that currently is driven by aggressive employers, anti-union consultants, coercion, and fear.

Two broad themes run through this testimony: first, declining unions fuel "the Great Disconnect"—rising productivity decoupled from wages and, second, more robust unions contribute to a "High Road Competitiveness" a more broadly shared prosperity that benefits working families as well as consumers and shareholders.

The Great Disconnect

These are tough times for America's working families. During a period of robust economic growth, record profits, and the fastest sustained productivity increases since the 1950s, only a thin slice at the top of the economic heap is enjoying higher living standards.

We are living through a period that might best be termed the "Great Disconnect" since the economy is growing and wages are flattening. The good news is that productivity expanded by a healthy 20 percent between 2000 and 2006 (Mishel, 2006 :2); the bad news is that most of this has bypassed workers. Real wages, Larry Mishel tells us, whether we're talking about a median worker or a college graduate, will have edged up about 2 percent as a spillover from the late 1990s (Ibid).[3] Between 1966 and 2001 only the top 10 percent of taxpayers scored increases in real labor income per hour that kept up with productivity growth, according to economists Ian Dew-Becker and Robert J. Gordon. "The bottom 90 percent of the income distribution fell behind or even were left out of the productivity gains entirely" (2005: 78). While life has been good at the top, more recently it has become absolutely regal at the very top. Dew-Becker and Gordon found that "the top one-tenth of one percent of the income distribution earned as much of the real 1997-2001 gain in wage and salary income as the bottom 50 percent" (2005: 59). This income distribution is so extreme that even the top 1 percent feel they are among the dispossessed. It's hardly a surprise that The Economist magazine noted in summer 2006 that "Growth is fast, unemployment is low and profits are fat * * * [Yet] only one

in four Americans believes the economy is in good shape. While firms' profits have soared, wages for the typical worker have barely budged" (2006).

During the first five years of the Bush administration, U.S. firms expanded their share of the economy more rapidly than during any period since World War II. Profits stemming from current production as a share of national income have jumped from 7 percent in mid-2001 to 12.2 percent at the beginning of 2006, the highest increase since data collection began in 1947 (Swan & Guerrera, 2006).

Business analysts across the political spectrum now widely acknowledge that the link between a strong economy and middle class hopes is broken. Henry Paulson, President Bush's Treasury Secretary, admitted in August 2006 that "amid this country's strong economic expansion, many Americans simply aren't feeling the benefits" (Paulson). Paul Krugman concurred, stating "all indicators of the economic status of ordinary Americans—poverty rates, family incomes, the number of people without health insurance—show that most of us were worse off in 2005 than we were in 2000, and there's little reason to think that 2006 was much better" (Krugman, 2006a: 48).

Even President Bush has commented on the situation recently. "I know some of our citizens worry about the fact that our dynamic economy is leaving working people behind," the President stated. "We have an obligation to help ensure that every citizen shares in this country's future. The fact is that income inequality is real; it's been rising for more than 25 years" (January 31, 2007).

Compare today's Great Disconnect to the period spanning the Great Depression and World War II, a period Goldin and Margo referred to as the "Great Compression." This earlier period was characterized by wages that rose with productivity growth and declining inequality. One major difference between the Great Compression and the Great Disconnect is the trend in union membership. As Paul Krugman points out "government policies and organized labor combined to create a broad and solid middle class" (Krugman 2006b: 46). Needless to say, the bargaining clout of unions when they represent almost one out of every three workers—as they did soon after World War II—is far greater than when they represent fewer than one out of every eight workers. As a result, Krugman tell us, "we're seeing the rise of a narrow oligarchy: income and wealth are becoming increasingly concentrated in the hands of a small, privileged elite" (Krugman, 2006).

The decline of the labor movement exacerbates income inequality not only directly but also because it diminishes the role of unions in shaping public policy. For example, partly as a result of labor's diminished clout, an increase in the minimum wage has been blocked in recent years. Tax policy, to take a second example, has favored the rich, leading to smaller revenues to invest in health care, education, and other public programs that benefit the middle class. A stronger labor movement would have produced different tax and spending policies.

Alan Greenspan, in testimony before Congress on July 21, 2005 noted that growing inequality of income and wealth are "very disturbing." He added that "* * * a free market democratic society is ill-served by an economy in which the rewards of that economy [are] distributed in a way which too many of our population do not feel is appropriate * * * I think it is a major issue in this country." For those who don't remember the 1920s, we are bringing back that decade's income distribution.

Unions—The Folks that Brought You the Middle Class

"Unions," the bumper sticker goes, "the folks that brought you the weekend." In fact, unions brought America its first broad middle class. Even today, union wages are higher and benefits more extensive than in comparable nonunion workplaces. Union members enjoy higher compensation directly, but the far larger nonunion sector benefits as well. Unions' influence on wages is felt most strongly by workers at the bottom and middle of the wage scale, where it also narrows the historic gaps associated with race and ethnicity. As union membership slides, however, both unions' ability to raise wages for their members and spin-off benefits for nonunion workers erode, wiping out the middle class dreams of many Americans.

Bureau of Labor Statistics data indicate a union wage advantage of 28.1 percent for wages and 43.7 percent for total compensation—wages and benefits (Mishel et al., 2007: 181). Another analysis that controls for factors such as experience, industry, education, and region shows a smaller but still significant 14.7 percent union premium (Ibid.) This second study records a higher union premium for African Americans (20.3 percent), Hispanics (21.9 percent), and Asians (16.7 percent) (Ibid.).

Union gains flow to nonunion workers, particularly in industries with high union density. Simply put, employers match what unions win to avoid unionization. Farber (2002, 2003) found that the overall impact on nonunion wages—the combined extra gains that all nonunion workers receive—approaches the total gains for union members, a major boost for consumer demand throughout the economy

(Mishel and Walters, 2003: 10). The corollary is that as unions decline so does this payout. According to Farber (2002: 1), "more than half of the decline in the average wage paid to workers with a high school education or less can be accounted for by the decline in union density."

The story is similar for employee benefits, an area in which unions played a pioneering role. Two features characterize the union advantage for benefits: a higher percentage of unionized workers are covered, and they receive richer benefits than in the nonunion sector. Take health care: 28.2 percent more unionized workers are covered, and they receive 15.6 percent higher coverage for families (Mishel et al., 2007:184). The story for pensions is similar: 53.9 percent more union workers are covered, and their employers spend 36.1 percent more on the generally preferred defined-benefit plans[4] (Ibid). As union density slips, so do worker benefits. Over the period 1983-97 the proportion of workers receiving employer-provided health insurance slid by 8.3 percentage points to 62.8 percent, and the drop in union density explains about 20 percent of this decline (Buchmueller et al., 1999: 8).

Unions are particularly important for those stuck at the bottom of the wage scale. "Because unions boost workers' bargaining power and help them win a greater share of productivity gains," according to Business Week, "any resurgence would give low-wage workers more clout to deal with the effects of factors such as globalization, immigration, and technology" (Conlin and Bernstein, 2004). Blanchflower and Bryson (2003: 30) underscored this claim, finding in their research that "unions are particularly good at protecting the wages of the most vulnerable workers."

Beyond the benefits that show up on a pay stub, unions have helped to weave a broader social safety net that provides security for the middle class. Labor has championed state-level programs such as Workers' Compensation and Unemployment Insurance. These programs tend to be stronger and more inclusive for all workers—union and nonunion alike—in states where unions are stronger, reflecting the political strength of the labor movement. And research underscores the fact that unionized workers have better access to social safety net programs such as these (Weil, 2003: 15).[5]

High Road Competitiveness

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

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

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

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

The real productivity story is best understood in the workplace where the rubber truly hits the road. An innovative employer working with a progressive union can achieve high levels of productivity and quality, pay high wages, and be competitive. Consider four examples from very different industries: auto, retail, telecommunications, and hotels.

The New United Motor Manufacturing (NUMMI) plant—a joint partnership of General Motors and Toyota organized by the United Auto Workers—achieves strong results in a unionized environment (Appelbaum et al, 2000, 7). The plant produces high quality cars and trucks and pays among the highest wages in the domestic auto industry. NUMMI ranked third in 2005 for productivity among small truck assembly plants in North America (Harbour Consulting, 2006). In fact, among car manufacturers overall, two of the top three assembly plants in North America were UAW in 2005 (they ranked one and two), and six of the top ten were represented by the union (Ibid.) The Detroit Three have more than their share of problems right now, but labor productivity has made major strides.

In retailing, the high-road, partially unionized Costco outperforms the low-road Sam's Club, a Wal-Mart affiliate. Costco's labor costs are 40 percent higher than Wal-Mart's, but nonetheless Costco produced $21,805 in operating profit per hourly employee in the U.S. in 2005, almost double the $11,615 generated at Sam's Club (Cascio, 2006: 28, 35). And, Costco sells $866 per square foot compared to $525 at Sam's Club. How does Costco do it? "It absolutely makes good business sense," CEO James Sinegal maintains. "Most people agree that we're the lowest-cost provider. Yet we pay the highest wages. So it must mean we get better productivity." Echoing Henry Ford, he points out "that's not just altruism; it's good business" (Cascio 2006: 28). Costco, as Freeman and Medoff (1984) found in unionized firms, has lower turnover—6 percent annually compared to 21 percent for Sam's Club" (Holmes and Zellner, 2004).

Cingular, the largest wireless carrier in the nation, accepted a "neutrality agreement" with the Communications Workers of America (CWA). Both sides agreed not to attack each other, and the company agreed to majority sign up for its workers, a preview of how the Employee Free Choice Act might work. To date, 39,000 workers have joined the union, about 85 percent of Cingular customer service reps, technicians, and retail sales workers in 35 states. How have things worked out? Lew Walker, vice president for human resources, says that the union provides a competitive advantage for the company. "They very much recognize that we are in a competitive environment," he states. Disagreements occur, but a mechanism is in place to work them out cooperatively (Gunther, 2006).

In Las Vegas, Culinary Local 226, organizes 90 percent of the hotel workers on the Strip. As a result, unionized housekeepers earn 50 percent more than their nonunion counterparts in Reno and enjoy fully paid health care. The union and the hospitality industry jointly put a heavy emphasis on training and operate the Las Vegas Culinary Training Academy, one of the most comprehensive training centers of its kind in the country. "Our union's goal and the training center's goal is you can come in as a non-English-speaking worker, come in as a low-level kitchen worker, and if you have the desire, you can leave as a gourmet food server, sous-chef or master sommelier," according to D. Taylor, the secretary-treasurer of the local (Greenhouse, 2004, A22). The Las Vegas hospitality case is one of a growing number of regional industries in which labor has been the driving force behind the formation of multi-company labor-management high-road training partnerships.[6] These cases hark back to the central role of craft unions in the building industry in apprenticeship training, helping workers find new jobs, and administering portable benefit plans. In today's skill-based and post-industrial economy, a renewal of labor's capacity to give middle- and low-income workers access to training, career counseling, job placement, and portable benefits is essential to broadly shared prosperity. This renewal is equally pivotal to enabling more businesses to compete through skills, high productivity, and quality service. The high wages and extensive training are a successful combination in the service industry, according to management officials such as J. Terrence Lanni, chairman of MGM Mirage (Greenhouse, 2004a: A22). The companies benefit and so do the union members, in this case, a group that is 70 percent female and 65 percent nonwhite.

While it is true that short-sighted management can lead a unionized firm into the ground and a recalcitrant union can put a brake on productivity, the literature and case studies confirm that unionization can foster higher productivity.

Time for a Change

In "a healthy workplace," George Schultz tells us, "it is very important that there be some system of checks and balances" (Silk 1991). Today the system of checks and balances that he extols has broken down for over 90 percent of private-sector employees.

When unions decline wages lag, inequality grows, workers at the bottom of the pay ladder suffer, and an important part of the democratic fabric of society unravels. Today unions exist in a context of fierce global pressures and bruising domestic competition. This context alone would be daunting, but an important part of labor's decline is rooted in the fact that employees have lost the right to freely choose whether or not they want to be represented by a union. Labor historian David Brody (2004: 1) points out that "the law serves today as a bulwark of the 'union-free environment' that describes nine-tenths of our private sector economy." Ironically, rather than being labor's Magna Carta, the Wagner Act has been twisted into a vehicle to thwart unionization through delay and intimidation. Steven Pearlstein, the Washington Post columnist, did not mince words when he wrote that "over the years, [the right to form unions and bargain collectively] has been whittled away by legislation, poked with holes by appeals courts and reduced to irrelevancy by a well meaning bureaucracy that has let itself be intimidated by political and legal thuggery" (Pearlstein, 2004: E01). And for those workers who happen to win a union, he continued, "any company willing to use intimidation and delaying tactics will never have to sign a first contract with a union, even if employees really want one" (Pearlstein, 2004: E01).

At issue is the right to make a choice free of coercion for "representatives of ones own choosing." To restore this right to millions of American workers, one has to go back to the future: reform the current dysfunctional labor relations system to achieve the spirit of the Wagner Act in a 21st century setting. The Employee Free Choice Act represents an important approach to redressing the lack of balance today through three main provisions: restoring the union recognition procedure that the Wagner Act initially provided; stiffening penalties to deter employer misconduct; and instituting first contract mediation/arbitration to thwart bad faith bargaining.

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

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ENDNOTES

[1] Even if you include government workers, the numbers inch up to only 12 percent.

[2] According to 1993-2003 NLRB Annual Reports, an average of 22,633 workers per year received backpay from their employer. The NLRB orders employers to award back pay to workers they illegally fired, demoted, laid off, suspended without pay, or denied work as a result of their union activity (American Rights at Work, 2007).

[3] Productivity rose 33.4 percent during the 1995-2005 period, making the economic pie substantially larger. Most of this growth, however, did not find its way into paychecks. The typical worker saw health and pension benefits rise by about half the rate of productivity growth and wages increase only one-third that rate between 1995-2005 (Mishel 2007: 112-113).

[4] Another study that controls for factors such as sector and establishment size finds that union workers are 18.3 percent more likely to have health insurance and 22.5 percent more likely to enjoy pensions, still a significant premium (Ibid).

[5] In the case of unemployment insurance, Budd and McCall (1997) estimate that unionized unemployed workers in blue-collar occupations are 23 percent more likely to receive these benefits than their nonunion counterparts (Mishel and Walters, 2003: 12). A similar situation exists for workers' compensation benefits. "Union workers are far more likely than nonunion workers," Hirsch et al. (1997) write, "to receive benefits from workers' compensation, and the likelihood of a claim is more responsive to differences in benefit levels among union than nonunion workers."

[6] Working for America Institute, The High Road Partnerships Report, available online at: *http://www.workingforamerica.org/documents/HighRoadReport/highroadreport.htm.* For a more recent set of case examples in a single state, see Keystone Research Center, The Pennsylvania High Road Partnerships Report, online at *www.keystoneresearch.org.*

Chairman ANDREWS. Mr. Shaiken, thank you very much. And, again, your full statement will be included in the record.

Mr. Cohen, welcome back to the committee.

Mr. Cohen is testifying this morning on behalf of the United States Chamber of Commerce.

You are recognized for 5 minutes.

STATEMENT OF CHARLES COHEN, CHAMBER OF COMMERCE

Mr. COHEN. Thank you very much. Chairman Andrews, Mr. Kline and members of the subcommittee, I am pleased and honored to be here yet again today. Thank you for your kind invitation.

By way of introduction, I was appointed by President Clinton, confirmed by the Senate, and served as a member of the National Labor Relations Board from March 1994 until my term expired in August 1996. Before becoming a member of the board, I worked at the NLRB in various capacities from 1971 to 1979. And, like Ms. Schiffer, I conducted NLRB elections, I investigated unfair labor practice cases, et cetera.

From 1979 to 1994, I was a labor lawyer representing management. Since leaving the board in 1996, I have returned to private practice, and I am a senior partner in the law firm of Morgan Lewis & Bockius, LLP. I am a member of the Labor Relations Committee of the U.S. Chamber of Commerce and chair of its NLRB subcommittee. And I am testifying today on behalf of the U.S. Chamber of Commerce.

Let me be clear: I am here testifying against the Employee No Choice Act. I have not misspoken. I know that the proposed legislation is called the Employee Free Choice Act, but, with all due respect, that is a misnomer.

Simply put, the proposed legislation strips employees of a secret ballot vote on the subject of unionization, something they have had since 1935. It also potentially strips them from a vote on contract ratification.

If a group of employees in an appropriate collective bargaining unit wish to select a union to represent them, the National Labor

Relations Board will hold a secret ballot election based on a petition. The ultimate question of union representation is determined by majority rule. If a majority of votes are case in favor of the union, the board will certify the union as the exclusive bargaining representative of all employees in the collective bargaining unit.

Unlike joining a club, once a union is certified by the board, it becomes the exclusive representative of the entire unit of employees, regardless of whether they voted for the union. The employer is obligated by law to bargain with the union in good faith with respect to all matters involving wages, hours and other terms and conditions of employment.

As the board and Supreme Court have acknowledged, the use of authorization cards to determine majority support is a method of last resort, not first. The Supreme Court stated in its Gissel case that authorization cards are "admittedly inferior to the election process."

The Supreme Court in Linden Lumber held that an employer may lawfully refuse to recognize a union based on authorization cards and insist on a board-supervised secret ballot election. Thus, an employer may, but cannot be compelled, to forgo a secret ballot election.

The motivating force behind neutrality card-check agreements, which we see a lot of today, and the proposed legislation is the steady decline in union membership among the private-sector workforce in the United States. Unions today represent only 7.4 percent of the private-sector workforce.

There are many explanations for this precipitous decline: the globalization of the economy and the intense competition that comes with it, the increasing regulation of the workplace through federal and state legislation rather than collective bargaining, and the changing culture of the American workplace.

The NLRB's election process is efficient and fair. Legislative change is not needed. The NLRB's election process is not slow. In fiscal year 2006, 94.2 percent of all initial representation elections were conducted within 56 days of the filing of the petition. During that same period, the median time to proceed to an election from the filing of a petition was 39 days.

Unions are currently winning well over 50 percent of NLRB's secret ballot elections involving new organizing. The NLRB's most recent election report summary shows that unions won 59.6 percent of all elections involving new organizing.

As we have heard, there are certainly horror stories of employers who abuse the system. I hold no grief for those employers. As a member of the National Labor Relations Board, I vigorously enforce the law. But those situations are the exception rather than the norm, and there is nothing new about the fact that some employers abuse the system.

In the overwhelming majority of cases where employees choose not to be represented by a union, they do so based on the information that is presented by both sides during the campaign process.

May I have another moment?

Chairman ANDREWS. If you could just summarize briefly, Mr. Cohen.

Mr. COHEN. Sure. I just want to touch for a moment on the mandatory interest arbitration provision that the Employee No Choice Act provides.

It would eviscerate another fundamental tenet of U.S. labor law: voluntary agreement. This act would destroy the bedrock principle of the act by mandating that if the parties don't have an initial collective bargaining agreement within 120 days, that after FMCS involvement there will be interest arbitration. This would parlay the taking away the vote on representation that employees have with taking away the vote on ratification of any such agreement.

The actual agreement is forged in the crucible of what the business can sustain. Imagine a company attempting to compete in the global economy, and to survive it must outsource certain non-core functions, but the government-mandated contract might well provide that the employer may not outsource. It is difficult to see how the resulting loss of business and jobs would add workers to the middle class.

This concludes my testimony.

[The statement of Mr. Cohen follows:]

Prepared Statement of Charles I. Cohen, Senior Partner, Morgan, Lewis & Bockius, LLP

Before Chairman Andrews and Members of the Subcommittee, I am pleased and honored to be here today. Thank you for your kind invitation.

By way of introduction, I was appointed by President Clinton, confirmed by the Senate, and served as a Member of the National Labor Relations Board from March 1994 until my term expired in August 1996. Before becoming a Member of the Board, I worked for the NLRB in various capacities from 1971 to 1979 and as a labor lawyer representing management in private practice from 1979 to 1994. Since leaving the Board in 1996, I have returned to private practice and am a Senior Partner in the law firm of Morgan, Lewis & Bockius LLP. I am a member of the Labor Relations Committee of the U.S. Chamber of Commerce, and Chair of its NLRB subcommittee, and am testifying today on behalf of the U.S. Chamber of Commerce.

The National Labor Relations Act was enacted in 1935 and has been substantially amended only twice—once in 1947 and once in 1959. The Act establishes a system of industrial democracy that is similar in many respects to our system of political democracy. At the heart of the Act is the secret ballot election process administered by the National Labor Relations Board. In order to understand how recent trends in organizing are diluting this central feature of the Act, some background is necessary.

The NLRB's Secret Ballot Election Process

If a group of employees in an appropriate collective bargaining unit wish to select a union to represent them, the Board will hold a secret ballot election based on a petition supported by at least thirty percent of employees in the unit. The Board administers the election by bringing portable voting booths, ballots, and a ballot box to the workplace. The election process occurs outside the presence of any supervisors or managerial representatives of the employer. No campaigning of any kind may occur in the voting area. The only people who are allowed in the voting area are the NLRB agent, the employees who are voting, and certain designated employee observers.

The ultimate question of union representation is determined by majority rule, based on the number of valid votes cast rather than the number of employees in the unit. If a majority of votes are cast in favor of the union, the Board will certify the union as the exclusive bargaining representative of all employees in the collective bargaining unit. Unlike joining a club, once a union is certified by the Board, it becomes the exclusive representative of the entire unit of employees, regardless of whether they voted for the union. The employer is obligated to bargain with the union in good faith with respect to all matters relating to wages, hours, and working conditions of the bargaining unit employees.

The Board is empowered to prosecute employers who engage in conduct that interferes with employee free choice in the election process, and may order a new election if such employer interference with the election process has occurred. The

Board also will order the employer to remedy such unfair labor practices, for example by ordering the employer to reinstate and compensate an employee who was discharged unlawfully during the election campaign. In extreme cases, the Board may even order an employer to bargain with the union without a new election, if the Board finds that its traditional remedies would not be sufficient to ensure a fair rerun election and if there is a showing that a majority of employees at one point desired union representation. The Supreme Court affirmed the Board's power to issue this extraordinary remedy in NLRB v. Gissel Packing Co., 395 U.S. 575 (1969). When issuing a Gissel bargaining order, the Board will determine whether majority support for the union existed by checking authorization cards signed by employees during the organizing process.

As the Board and the Supreme Court have acknowledged, the use of authorization cards to determine majority support is the method of last resort. A secret ballot election is the "most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support." Gissel Packing, 395 U.S. at 602. Unions likewise prefer an NLRB secret ballot election, at least when they are faced with a potential loss of majority support. In Levitz Furniture Co. of the Pacific, 333 NLRB 717 (2001), the United Food and Commercial Workers, supported by the AFL-CIO as amicus curiae, took the position that "Board elections are the preferred means of establishing whether a union has the support of a majority of the employees in a bargaining unit." Id. at 719 (emphasis added). The Board agreed with the unions' position in Levitz. See id. at 725 ("We agree with the General Counsel and the unions that Board elections are the preferred means of testing employees' support.").

Although authorization cards adequately may reflect employee sentiment when the election process has been impeded, the Board and the Court in Gissel recognized that cards are "admittedly inferior to the election process." Gissel Packing, 395 U.S. at 602. Other federal courts of appeal have expressed the same view:

• "[I]t is beyond dispute that secret election is a more accurate reflection of the employees' true desires than a check of authorization cards collected at the behest of a union organizer." NLRB v. Flomatic Corp., 347 F.2d 74, 78 (2d Cir. 1965).

• "It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a 'card check,' unless it were an employer's request for an open show of hands. The one is no more reliable than the other * * *. Overwhelming majorities of cards may indicate the probable outcome of an election, but it is no more than an indication, and close card majorities prove nothing." NLRB v. S. S. Logan Packing Co., 386 F.2d 562, 565 (4th Cir. 1967).

• "The conflicting testimony in this case demonstrates that authorization cards are often a hazardous basis upon which to ground a union majority." J. P. Stevens & Co. v. NLRB, 441 F.2d 514, 522 (5th Cir. 1971).

• "An election is the preferred method of determining the choice by employees of a collective bargaining representative." United Services for the Handicapped v. NLRB, 678 F.2d 661, 664 (6th Cir. 1982). • "Although the union in this case had a card majority, by itself this has little significance. Workers sometimes sign union authorization cards not because they intend to vote for the union in the election but to avoid offending the person who asks them to sign, often a fellow worker, or simply to get the person off their back, since signing commits the worker to nothing (except that if enough workers sign, the employer may decide to recognize the union without an election)." NLRB v. Village IX, Inc., 723 F.2d 1360, 1371 (7th Cir. 1983).

• "Freedom of choice is 'a matter at the very center of our national labor relations policy,' * * * and a secret election is the preferred method of gauging choice." Avecor, Inc. v. NLRB, 931 F.2d 924, 934 (D.C. Cir. 1991) (citations omitted).

Having recognized in Gissel that a secret ballot election is the superior method for determining whether a union has majority support, the Supreme Court in Linden Lumber v. NLRB, 419 U.S. 301 (1974), held that an employer may lawfully refuse to recognize a union based on authorization cards and insist on a Board-supervised secret ballot election. Thus, an employer may, but cannot be compelled, to forgo a secret ballot election and abide by the less reliable card check method of determining union representation. The only exception to an employer's right to insist on an election is when the employer, as in the Gissel situation, has engaged in unfair labor practices that impair the electoral process.

The Increasing Use of Neutrality/Card Check Agreements in Organizing Campaigns and the Attempt to Mandate Card Check

One of the highest priorities of unions today is to obtain agreements from employers that would allow the union to become the exclusive bargaining representative of a group of employees without ever seeking an NLRB-supervised election. These agreements, which are often referred to as "neutrality" or "card check" agreements, come in a variety of forms. In some cases, the agreement simply calls for the em-

ployer to recognize the union if it produces signed authorization cards from a majority of employees. In many cases, the agreement includes other provisions that are designed to facilitate the union's organizing campaign, such as:

• An agreement to provide the union with a list of the names and addresses of employees in the agreed-upon unit;

• An agreement to allow the union access to the employer's facilities to distribute literature and meet with employees;

• Limitations or a "gag order" on employer communications to employees about the union;

• An agreement to start contract negotiations for the newly-organized unit within a specified (and short) time frame, and to submit open issues to binding interest arbitration if no agreement is reached within that time frame; and

• An agreement to extend coverage of the neutrality/card check agreement to companies affiliated with the employer.

Whatever form the agreement may take, the basic goal is the same: to establish a procedure that allows the union to be recognized without the involvement or sanction of the National Labor Relations Board. Neutrality and card check agreements therefore present a direct threat to the jurisdiction of the Board and its crown jewel, the secret ballot election process. I have written three law review articles discussing this trend. See Charles I. Cohen, Joseph E. Santucci, Jr., & Jonathan Fritts, Resisting Its Own Obsolescence—How the National Labor Relations Board Is Questioning the Existing Law of Neutrality Agreements, 20 Notre Dame Journal of Law, Ethics & Public Policy 521 (2006), available at *http://www.morganlewis.com/ pubs/ NotreDameJournal—ResistingObsolescence.pdf;* Charles I. Cohen, Neutrality Agreements: Will the NLRB Sanction Its Own Obsolescence?, The Labor Lawyer (Fall, 2000); Charles I. Cohen & Jonathan C. Fritts, The Developing Law of Neutrality Agreements, Labor Law Journal (Winter, 2003).

An even greater threat to that crown jewel is the Employee Free Choice Act—which more accurately should be described as the Employee No Choice Act. The provisions of that proposed legislation would, in nearly all cases, eliminate governmentsupervised secret ballot elections and instead turn the National Labor Relations Board into a card counting agency.

The motivating force behind neutrality/card check agreements and the proposed legislation is the steady decline in union membership among the private sector workforce in the United States. Unions today represent only about 7.4% of the private sector workforce, about half of the rate twenty years ago. See U.S. Dep't of Labor, Bureau of Labor Statistics, Union Members in 2006 (Jan. 25, 2007), available at *http://www.bls.gov/news.release/union2.nr0.htm.* There are many explanations for this precipitous decline: the globalization of the economy and the intense competition that comes with it, the increasing regulation of the workplace through federal legislation rather than collective bargaining, and the changing culture of the American workplace. While unions may not disagree with these explanations to varying degrees, they claim that the NLRB's election process is also to blame. Unions argue that the NLRB's election process is slow and ineffective, and therefore an alternative process is needed—namely, neutrality/card check agreements.

I believe there are two basic problems with this argument. First, it is not supported by the facts. The NLRB's election process is efficient and fair, as demonstrated by hard statistics. Legislative change is not needed. Second, neutrality/card check agreements limit employee free choice and are generally the product of damaging leverage exerted by the union against the employer, which redounds to the detriment of employee knowledge and free choice.

The NLRB's Election Process Is Efficient and Fair

The standard union criticisms of the NLRB's election process are more rhetorical than factual. Unions argue that the NLRB's election process is slow and allows employers to exert undue influence over employees during the pre-election period. Both of these arguments are not supported by the facts.

The NLRB's election process is not slow. In fiscal year 2006, 94.2% of all initial representation elections were conducted within 56 days of the filing of the petition. Memorandum GC-07-03, Summary of Operations (Fiscal Year 2006), at p. 8 (January 3, 2007), available at *http://www.nlrb.gov/shared—files/GC%20Memo/2007/ GC%2007- 03%20Summary%20of%20Operations%20FY%2006.pdf.* During that same time period, the median time to proceed to an election from the filing of a petition was 39 days. Id. Based on my experience over the past 35 years, these statistics demonstrate that the Board's election process has become even more efficient over time.

Unions are currently winning well over 50% of NLRB secret ballot elections involving new organizing. This is the category of elections that unions are seeking to

replace with neutrality/card check agreements, and it is also the same category of elections that would be replaced by the Employee No Choice Act. If anything, unions' win rate in representation elections currently is on the rise. The NLRB's most recent election report summary shows that unions won 59.6% of all elections involving new organizing. See NLRB Election Report; 6-Months Summary—April 2006 through September 2006 and Cases Closed September 2006, at p. 18. This figure is about the same as it was forty years ago. In 1965, unions won 61.8% of elections in RC cases (cases that typically involve initial organizing efforts, as opposed to decertification elections or employer petitions). See Thirtieth Annual Report of the National Labor Relations Board, at p. 198 (1965). After 1965, unions' election win rate declined before rising back to the level where it is today:

• In 1975, unions won 50.4% of elections in RC cases. See Fortieth Annual Report of the National Labor Relations Board, at p. 233 (1975).

• In 1985, unions won 48% of elections in RC cases. See Fiftieth Annual Report of the National Labor Relations Board, at p. 176 (1985).

• In 1995, unions won 50.9% of elections in RC cases. See Sixtieth Annual Report of the National Labor Relations Board, at p. 153 (1995).

• In 2005, unions won 56.8% of elections in RC cases. See Seventieth Annual Report of the National Labor Relations Board, at p. 16 (2005).

These statistics undermine any argument that the NLRB's election process unduly favors employers, or that the recent decline in union membership among the private sector workforce is attributable to inherent flaws the NLRB's election process. Unions are winning NLRB elections at the same or higher rate now than they have in almost forty years. To be sure, there are "horror stories" of employers who abuse the system and commit egregious unfair labor practices in order to prevail in an election. I hold no brief for those employers. As a Member of the National Labor Relations Board, I vigorously enforced the law. In cases of unlawful conduct, the law provides remedies for the employer's behavior, including Gissel bargaining orders. But these situations are the exception rather than the norm. And, there is nothing new about the fact that some employers abuse the system. In the overwhelming majority of cases where employees choose not to be represented by a union, they do so based on the information that is presented by both sides during the campaign process.

Unions attempt to portray the Board's secret ballot election process as fundamentally unfair (except when unions are faced with a challenge to their majority status) by making unfavorable comparisons between Board elections and a typical political election in the United States. In doing so, unions frequently ignore several important facts about the NLRB election process:

• The union controls whether and when an election petition will be filed. Imagine if the challenger in a political election controlled the timing of the election.

• The union largely controls the definition of the bargaining unit in which the election will occur, because the union need only demonstrate that the petitioned-for unit is an appropriate bargaining unit. Imagine if the challenger in a political election had almost irreversible discretion to gerrymander the voting district to its maximum advantage.

• The union usually has obtained signed authorization cards from a majority of employees at the time the petition is filed. Thus, the union already knows the voters and has conducted a straw poll before the employer is even aware that an election will be held. Imagine if the challenger in a political election could campaign and poll the electorate without the incumbent's knowledge, wait until the polls show that the challenger has majority support, and then give the incumbent less than 60 days' notice of the election.

• Even though the union already knows the voters well by the time the election petition is filed, the employer must give the union a list of all of the voters' names and home addresses after the petition is filed. The union, but not the employer, is permitted to visit the employees at home to campaign for their vote.

• The union, unlike the employer, can make campaign promises to the employees to induce them to vote for the union.

• The union, like the employer, may designate an observer to be present in the voting area for the duration of the election, in order to check every voter and make sure that no irregularities occur.

These facts illustrate that, far from being unfair to unions, the NLRB's election process offers unions many unique advantages.

Problems with Neutrality/Card Check Agreements

The fundamental right protected by the National Labor Relations Act is the right of employees to choose freely whether to be represented by a union. 29 U.S.C. § 157. Neutrality/card check agreements limit employee free choice by restraining em-

ployer free speech. Section 8(c) of the Act protects the right of employers to engage in free speech concerning union representation, as long as the employer's speech does not contain a threat of reprisal or a promise of benefit. 29 U.S.C. § 158(c). Unions, through neutrality/card check agreements, seek to restrain lawful employer speech by prohibiting the employer from providing employees with any information that is unfavorable to the union during the organizing campaign. Such restrictions or "gag orders" on lawful employer speech limit employee free choice by limiting the information upon which employees make their decision.

A second problem with neutrality/card check agreements is the method by which they are negotiated. In my experience, neutrality/card check agreements are almost always the product of external leverage by unions, rather than an internal groundswell from unrepresented employees. The leverage applied by the union can come from a variety of sources. In many cases, the union has leverage because it represents employees at some of the employer's locations. The union may be able to use leverage it has in negotiations for employees in an existing bargaining unit, in order to win a neutrality/card check agreement that will facilitate organizing at other locations. Bargaining over a neutrality/card check agreement, however, has little or nothing to do with the employees in the existing bargaining unit, and it detracts from the negotiation of the core issues at hand—wages, hours, and working conditions for the employees the union already represents.

In other cases, the union exerts pressure on the employer through political or regulatory channels. This typically occurs by demonizing the employer. For example, if the employer needs regulatory approval in order to begin operating at a certain location, the union may use its political influence to attack the company and force the employer to enter into a neutrality/card check agreement for employees who will be working at that location. Political or regulatory pressure is often coupled with other forms of public relations pressure in order to exert additional leverage on the employer. In general, this combination of political, regulatory, public relations and other forms of non-conventional pressure has become known as a "corporate campaign," and it is this type of conduct—rather than employee free choice—that has produced these agreements.

Thus, when a union succeeds in obtaining a neutrality/card check agreement, it generally does so by exerting pressure on the company through forces beyond the group of employees sought to be organized. The pressure comes from employees at other locations, and/or it comes from politicians, regulators, customers, investors, and the public at large. It is a strategy of "bargaining to organize," meaning that the target of the campaign is the employer rather than the employees the union is seeking to organize. And, with the proposed legislation, unions are seeking to have the government mandate the card check portion of neutrality/card check for them.

The strategy of "bargaining to organize" stands in stark contrast to the model of organizing under the National Labor Relations Act. Under the Act, the pressure to organize comes from within—it starts with the employees themselves. If a sufficient number of employees (30%) desire union representation, they may petition the NLRB to hold a secret ballot election. If a majority vote in favor of union representation, the NLRB certifies the union as the employees' exclusive representative and the collective bargaining process begins at that point. At all times, the focus is on the employees, rather than on the employer or the union.

There is no cause for abandoning the secret ballot election process that the Board has administered for seven decades. The Act's system of industrial democracy has withstood the test of time because its focus is on the true beneficiaries of the Act—the employees. In my view, the Employee No Choice Act is not sound public policy because it would deprive employees of the fundamental right to determine the important question of union representation by casting their vote in a Board-supervised secret ballot election. Indeed, that it would be unwise public policy to abandon government-supervised secret ballot elections in favor of mandatory card check appears to me to be a self-evident proposition. It likewise would eviscerate the proud tradition of industrial democracy that has been the hallmark of the NLRB for nearly seven decades.

The Employee No Choice Act's Interest Arbitration Provisions

In addition to mandating recognition by card check rather than a secret ballot election, the Employee No Choice Act would eviscerate another fundamental tenet of U.S. labor law: voluntary agreement. As the Supreme Court held in H. K. Porter v. NLRB, 397 U.S. 99 (1970), the Act is founded on the notion that the parties, not the government, should determine the applicable terms and conditions of employment:

The object of this Act was not to allow governmental regulation of the terms and conditions of employment, but rather to ensure that employer and their employees

could work together to establish mutually satisfactory conditions. The basic theme of the Act was that through collective bargaining the passions, arguments, and struggles of prior years would be channeled into constructive, open discussions leading, it was hoped, to mutual agreement. But it was recognized from the beginning that agreement might in some cases be impossible, and it was never intended that the Government would in such cases step in, become a party to the negotiations and impose its own views of a desirable settlement.

Id. at 103-04 (emphasis added). The Employee No Choice Act would destroy this bedrock principle of the Act by mandating that, if the parties are not able to reach agreement on a first contract within a 120-day period, the terms of the contract will be set by an arbitration panel designated by the Federal Mediation and Conciliation Service. As with the abandonment of the secret ballot election, I believe this interest arbitration requirement is unwise public policy. With respect to employees, it would parlay the taking away of a vote on representation with the taking away of a vote on ratification. This is because the contract mandated by the interest arbitrator renders moot employee endorsement. Likewise, it is the employer that must run the business, remain competitive, and pay the employees each week. The union has the opportunity to influence the employer's thinking by engaging in economic warfare. But, the actual agreement is forged in the crucible of what the business can sustain. Imagine a company attempting to compete in the global economy and, to survive, it must outsource certain non-core functions. But, the government-mandated contract might well provide that the employer may not outsource. It is difficult to see how the resulting loss of business and jobs would add workers to the middle class. I firmly believe that our present system has it right and that the employer must retain the power to determine whether the terms of the agreement are acceptable to it. In the end, that will work to the benefit of not only the employer, but of the employees as well.

Conclusion

This concludes my prepared oral testimony. I look forward to discussing my comments in more detail during the question and answer period, but before that, I would again like to thank the Subcommittee for inviting me here today, and for its attention to these very important developments regarding labor law in the 21st century.

Chairman ANDREWS. Mr. Cohen, thank you very much. And, again, in your case, your complete statement will be entered into the record.

Professor Lafer, welcome to the committee.

STATEMENT OF GORDON LAFER, PROFESSOR, UNIVERSITY OF OREGON

Mr. LAFER. Thank you, Chairman Andrews, Ranking Member Kline and members of the committee. Thank you for the opportunity to be here.

My name is Gordon Lafer. I hold a Ph.D. in political science from Yale University, and I am a currently a professor at the University of Oregon. I am also the national co-chair of the American Political Science Association's Labor Project.

I think that when most people hear that there are union elections, they assume that they work more or less the same as elections to Congress. Unfortunately, nothing could be further from the truth.

My research examines the extent to which NLRB elections live up to American standards, from the founding fathers to the present, for what constitutes a free and fair election.

Unfortunately, I have to report to you that NLRB elections, by these standards, look more like the discredited practices of rogue regimes abroad than like anything we would call American. I have attached a report that summarizes this research, and today I want to focus on just a few highlights.

Before I do, I want to say a word about secret ballots though. There are some who may believe that, as long as an election ends in a secret ballot, it doesn't matter what happens before; it must be fair. That in the workplace, even if a worker is intimidated by their boss——

Chairman ANDREWS. Excuse me, Professor Lafer, you might want to use the microphone that is next to you. That one appears to be a bit defective.

Mr. LAFER. Okay.

Chairman ANDREWS. If you try that, I think it would be better. Thank you.

Mr. LAFER. Thank you. Is this better?

Let me just start with going back to a word about secret ballots. There is the view that, as long as an election ends in a secret ballot, it doesn't matter what happens beforehand. That in the workplace, even if a worker is intimidated by their employer, they can always lie and pretend that they are anti-union. As long as, at the end of the day, they go into a booth with a curtain and can vote their conscience, the system must be fair.

It is critical to know that the American democratic tradition, from the founders to the present, fundamentally rejects this view. In our tradition, while the secret ballots are a necessary ingredient, there is a whole set of other standards that have to be met before Election Day, including things like free speech, equal access to the media, which are equally crucial. Indeed, our government has often condemned elections in other countries where there was no question that it ended in a secret ballot, because it failed these other standards.

Unfortunately, with the exception of the secret ballot, which in fact the NLRB procedures in some ways protects and in other ways undermines, every other aspect of the NLRB election system fails to meet American standards for what defines a free and fair election.

I would like to illustrate just a few aspects of this problem.

First, in terms of free speech and equal access to the media, it goes without saying that in congressional elections there is no such thing as a neighborhood or a mall that is available to one candidate and off-limits to the other. Radio and T.V. stations must offer ad time on an equal basis to both sides. Even private corporations are banned from inviting one candidate to address their employees without giving equal opportunity to the opposition.

But this most basic standard of equality and freedom is ignored by the NLRB. By law, management is allowed to plaster the workplace with anti-union leaflets, posters and banners, while prohibiting pro-union employees from doing likewise. Anti-union managers are free to campaign against unionization all day long, any place in the workplace, while pro-union workers are banned from talking about unionization except on break times.

The most extreme restriction on free speech is employers forcing workers to attend mass anti-unions meetings. Not only are pro-union employees not given equal time, but they can be forced to attend on condition that they keep their mouths shut. If they ask a question, they can be fired on the spot, legally.

If, during the last presidential election, the Democrats could have forced every voter in America to watch "Fahrenheit 9/11" and only that, with no opportunity for questions from the other side, or perhaps if the Bush campaign could have forced everyone to watch the Swiftboat Veterans for Truth movie, maybe they would have done so, but none of us would call this democracy. And the fact that it ended in a secret ballot would, in no way, change that judgment.

Let me say a word about economic coercion of voters. When the founders of our country created the world's first democracy and gave the vote to the common people, they were particularly concerned that employers might use their economic power over workers to influence their vote. As Alexander Hamilton warned, "Power over a man's purse is power over his will."

For this reason, there is a whole range of laws that protect employees to be able to make free political choices, free from the influence of their employers. In federal elections, elections to Congress, private corporations are completely prohibited from telling employees how they think they should vote or suggesting that if one candidate or the other wins business may suffer and people may have to be laid off.

But in NLRB elections, this kind of intimidation is completely legal. Standard employer practice is to have direct supervisors, the person with the most immediate control over one's job, instruct subordinates in the strictest possible terms as to why they should oppose unionization. Thus, NLRB elections maximize exactly the kind of behavior that federal law classifies as anti-democratic.

The truth is that we uphold higher standards now for voters abroad than for American workers. In 2002, for instance, the State Department condemned elections in the Ukraine that ended in a secret ballot as undemocratic, for, among the reasons: employees of state-owned enterprises were pressured to support the ruling party; faculty were told by their university to vote for specific candidates; and the governing party enjoyed one-sided media coverage while the opposition was largely shut out of state-run T.V.

Every one of the reasons for which the Ukrainian elections were deemed undemocratic is completely legal and extremely commonplace in NLRB elections. So the sad fact is that, right now, our government demands higher standards of democracy for voters in the Ukraine and elsewhere than for Americans in workplaces across the country.

If we are serious about having a truly democratic process for American workers, we must recognize that the current system is profoundly broken, profoundly undemocratic, and, I would say, profoundly un-American. I believe that the Employee Free Choice Act goes a long way toward that goal.

Thank you again for the opportunity to be here today. I would be happy to answer any questions you may have.

[The statement of Mr. Lafer follows:]

Statement of Gordon Lafer, Professor, University of Oregon

Chairman Andrews, Ranking Member Kline, and Members of the Committee, thank you for the opportunity to participate in this hearing. My name is Gordon Lafer. I hold a PhD in Political Science from Yale University and am currently a professor at the University of Oregon's Labor Education and Research Center. I am

also the national co-chair of the American Political Science Association's Labor Project.

Over the past two years, I have conducted extensive research measuring the extent to which National Labor Relations Board elections match up to American standards—developed from the Founding Fathers to the present—for defining "free and fair" elections. Unfortunately, I must report that NLRB elections look more like the discredited practices of rogue regimes abroad than like anything we would call American.

I have attached a report that summarizes this research.

Today I want to focus on just a few highlights.

The role of secret ballots

Before going into the substance of my findings, I want to say a word about secret ballots, since so much of the debate around labor law reform has focused on the role of secret ballots. To some, it may seem that as long as an election ends in a secret ballot, it must be fair. In the workplace, one might imagine that even in the worst case, if a worker is intimidated by his or her employer, one could lie to one's supervisor and pretend to be opposing the union; as long as, at the end of the day, you cast your ballot in the privacy of a voting booth, you are free to exercise your conscience.

It is critical to note that the American democratic tradition—from the Founders to the present—fundamentally rejects this view. In elections to public office, while the secret ballot is a necessary ingredient, there are a whole set of standards that must be met in the leadup to election day—such as equal access to the media and voters, free speech, etc.—which are equally crucial elements of defining a "free and fair" process. Indeed, our government has often condemned elections abroad when there was no question that they ended in a secret ballot, because they failed to meet these other, equally important standards.

Unfortunately, with the exception of the secret ballot—which NLRB procedures protect in some ways and undermine in others—every other aspect of NLRB elections fails to meet American standards defining "free and fair" elections.

Today I would like to focus on just three dimensions of democratic elections: access to voters; free speech; and protection of voters from economic coercion.

Access to voter lists

The first step in any American election campaign is getting a list of eligible voters, and it is law that both parties must have equal access to the voter rolls.

In NLRB elections, however, management has a complete list of employee contact information, and can use this for campaigning against unionization at any time—while employees have no equal right to such lists. Employers use legal maneuvers to delay union elections for months. Only after all delays have been settled does the union have a right to the list of eligible voters. A federal commission found that on average, unions received the voter list less than 20 days before the election.[1] Even then, the NLRB requires employers to provide workers' names and addresses—but no apartment numbers, zip codes, or telephone numbers.

If we imagine this system being applied to Congressional elections—where one candidate had the voter rolls two years before election day, while his or her opponent was restricted to a partial list and only got it a month before the vote—none of us would call this a "free and fair" election.

Economic coercion of voters

When the founders of our country created the world's first democracy and gave the vote to the common people, they were particularly concerned that employers might use their economic power over workers to influence their political choices. In general, Alexander Hamilton warned, "power over a man's purse is power over his will."

For this reason, there are a wide range of federal and state laws that make sure employees can make political choices free from economic coercion.

In elections to Congress, it is illegal for a private corporation to tell its employees how they should vote, or to suggest that if one party wins business will suffer and workers will be laid off.[2] Supervisor or managers can't say anything to those they

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[1] Dunlop Commission, Final Report, p. 47.

[2] Under FECA, corporations are free to campaign to their "restricted class" of managerial and supervisory employees, but are prohibited from engaging in any communication to rank-and-file employees that includes express advocacy for a specific candidate or party. 2 USC 441(b)(2)(A); 11 CRF 114.3, 114.4. According to the FEC, "express advocacy" can be either an explicit message to vote for or against a given candidate, or a message that doesn't use such explicit language

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oversee that amounts to endorsing one side or the other. It is noteworthy that federal law doesn't require that employers spell out a quid pro quo threat stating, for instance, that anyone caught wearing a button supporting the "wrong" candidate will never get a promotion. It is understood that employees naturally are extremely sensitive to the need to make a good impression on their boss, and don't need a threat to be spelled out for it to influence their behavior. Thus, federal law protects the ability of workers to make a political choice based on personal conscience rather than economic coercion.

But in NLRB elections, this kind of intimidation is completely legal. Standard employer behavior involves having mass meetings where upper management attacks the idea of unionization, and then having supervisors tell each of their subordinates personally that they should vote against the union. In this way, NLRB elections maximize exactly the kind of behavior that is banned in federal elections.

Free speech and equal access to media

Free speech is the cornerstone of American democracy.

In election to public office, it is a bedrock principle that there is no such thing as a neighborhood, park or shopping mall that is accessible to one candidate but off-limits to the other. Radio and television stations are required to sell ad time on the same terms to competing candidates. Even private corporations are prohibited from inviting one candidate to address employees without giving equal opportunity to the opposition. From the founders to the present, it has been understood that democracy requires free speech, equal access to the media, and robust debate.

Yet this most basic standard of freedom is ignored by the NLRB.

Management is allowed to plaster the workplace with anti-union leaflets, posters, and banners—while maintaining a ban on pro-union employees doing likewise.

In addition, anti-union managers are free to campaign against unionization all day long, anyplace in the workplace, while pro-union workers are banned from talking about unionization except on break times. As a result, research shows that in a typical campaign, most employees never even have a single conversation with a union representative.

The most extreme restriction on free speech is employers' forcing workers to attend mass anti-union meetings. Not only is the union given no equal time, but pro-union employees can be forced to attend with the condition that they don't open their mouths. If they ask a question, they can be fired on the spot.

If, during the 2004 presidential election, the Bush campaign could have forced every voter in America to watch the Swiftboat Veterans' for Truth movie, with no opportunity for response from the other side—or if the Democrats could have forced everyone to watch Fahrenheit 9/11—they might well have seized the opportunity. But none of us would call this democracy.

Higher Standards Abroad than At Home

The truth is that we uphold higher standards for voters abroad than for American workers.

In 2002, the State Department condemned elections in Ukraine for failing to "ensure a level playing field," because

- employees of state-owned enterprises were pressured to support the ruling party;
- faculty and students were instructed by their university to vote for specific candidates;
- and the governing party enjoyed one-sided media coverage, while the opposition was largely shut out of state-run television.

Every one of these practices is completely legal under the NLRB.

The sad fact is that right now, our government demands higher standards of democracy for voters in Ukraine than it does for Americans in workplaces across the country.

Illegal activity in NLRB system, compared with FEC

The things I've described so far are legal. However, NLRB elections are also characterized by an extraordinary level of illegal activity.

Labor law is the only area of American employment law in which it is statutorily impossible to impose fines, prison, or any other punitive damage.

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but that "can only be interpreted by a 'reasonable person' as advocating the election or defeat of one or more clearly identified candidates." Federal Election Commission, Campaign Guide for Corporations and Labor Organizations, Washington, DC, June, 2001, p. 31.

As a result, it is not just "rogue" employers who break the law. Any rational employer might decide it's worth it to fire a few workers in order to scare hundreds more into abandoning their support for unionization.

In my research, I have measured the impact of illegal retaliation against union supporters by making the most conservative possible calculations. Nevertheless, the results are extremely troubling. One out of every 17 eligible voters in NLRB elections is fired, suspended, demoted or otherwise economically punished for supporting unionization.

If federal elections were run by NLRB standards, we would have seen 7.5 million Americans economically penalized for backing the "wrong" candidate in the last election cycle.

Imagine what this would mean. Every family in America would know someone who had been fired or suspended in retaliation for their political beliefs. Most citizens would quickly become too scared to participate in any public show of support for opposition candidates. If we continued to hold elections amidst such widespread repression, they would be sham elections. The outcome would not represent the popular will, but would simply reflect the fear that governed the country.

What I'm describing may sound like a bad science fiction movie. But it is the reality that workers face when they try to organize.

If we compare illegal activity per voter under the NLRB with that under the FEC, the data suggests that NLRB elections are 3,500 times dirtier than federal elections.

This number may sound incredible; but it's true. But suppose my numbers are off by as much as an entire order of magnitude. Then the NLRB system would be only 350 times dirtier than federal elections.

Anyway you count it, the system is profoundly broken, profoundly undemocratic, and, I would say, profoundly un-American.

Conclusion

If we're serious about having a truly democratic process for American workers, we must begin by fixing these problems.

Thank you again for the opportunity to be here today.

I would be happy to answer any questions you may have.

Chairman ANDREWS. Thank you, Professor.

And we thank each of the four of you for very thoughtful statements. I have had the opportunity to read all four of the statements, and I found them to be very persuasive and very good for our record. We thank you.

Mr. Cohen, I wanted to ask you, I am well aware of the fact that not every meritorious claim is brought, not every meritorious claim is found to be meritorious because there can be some defects in the decision-making process. So I don't, for a moment, contend that the statistic I am about to use represents the entire universe of valid claims by workers against unions for coercive behavior in an organizing campaign.

But it is a fact that, in the more than 6 decades that we have had the labor statutes we are talking about today, there have been only 42 findings of coercive behavior by unions against potential members in organizing campaigns.

How do you explain the paucity of that record if—because I take it that your implicit concern is that a defect in the majority sign-up process would be potential abuse by unions in a coercive way. How do you explain the paucity of claims on the record for more than 60 years?

Mr. COHEN. Obviously, Mr. Chairman, you are making reference to the H.R. Policy Association——

Chairman ANDREWS. I am.

Mr. COHEN [continuing]. Work. And I, of course, had no role in the authoring of that.

It is my understanding that those 42 cases do not purport to be a total compilation of all the cases that raise that kind of issue.

Chairman ANDREWS. Are you aware of another document that would have cases——

Mr. COHEN. I am not aware of any reason for anybody, frankly, to have done that comprehensive a study on that issue.

But, more fundamentally, if I can——

Chairman ANDREWS. For a minute, you can.

Mr. COHEN. Thank you. [Laughter.]

There is little reason, in the normal situation, for anyone to challenge. If we had voluntary recognition and there has been something untoward with the cards, it would require an individual to go forward and bring that case. Usually, little reason to do that. An employer can do so; again, little reason for that employer to do it, in most instances.

Chairman ANDREWS. If I may, I want to explore this idea of what one of the witnesses called the democratic context—I think Professor Shaiken called the democratic context—and I want to be sure that the record reflects this. And I would ask Ms. Schiffer if she could answer these questions in the instance.

When someone tries to organize a union with an employer, does the employer have an obligation to give the organizers a list of the employees?

Ms. SCHIFFER. The employer has no obligation——

Chairman ANDREWS. Would you put your microphone on, please?

Ms. SCHIFFER. The employer has no obligation to provide the union with the list of the names of the employees or the addresses of the employees until right before the election.

Chairman ANDREWS. Does the employer have an obligation to provide access to the employer's property—shop floor, call center, store—prior to the election?

Ms. SCHIFFER. Absolutely no obligation to provide the union with access to the workplace at all.

Chairman ANDREWS. Is it legal, under present case law, for employers to call—is there a limit on the number of meetings an employer can call to discuss unionization before a vote takes place?

Ms. SCHIFFER. There is no limit. Workers are called in for one-on-ones with their supervisors, these kind of meetings, over and over. They can take a few minutes; they can take a few hours.

Chairman ANDREWS. Is there a limit on the number of people who have to be present for such a meeting?

Ms. SCHIFFER. Not at all.

Chairman ANDREWS. Can it be 10 supervisors and one worker?

Ms. SCHIFFER. Yes.

Chairman ANDREWS. Is there a limit on the amount of time that the meetings can take?

Ms. SCHIFFER. No, no limit.

Chairman ANDREWS. Is there a requirement that the union have equal time in that meeting?

Ms. SCHIFFER. No requirement at all for equal time in a meeting.

Chairman ANDREWS. Let's talk for a moment, either Dr. Lafer or Mr. Shaiken, about this concept of leverage. And perhaps Ms. Schiffer will want to chime in on this, as well.

Can you describe to us some instances of employer leverage over someone who is about to case a vote in a representation election that falls short of being violations of the labor law, so they are not actionable, but they are effective?

And, as my time is about to expire, you can supplement the record in writing. Can you give me an example of something that is, in your view, coercive without being illegal?

Mr. Shaiken, do you want to answer that?

Mr. SHAIKEN. Sure. I would like to give two very brief examples.

First, something that is legal. An employer can predict a consequence of a union being voted in—not threaten, but predict. So an employer has predicted—and this was viewed legal—that the plant would close and move to Mexico——

Chairman ANDREWS. Could you quickly give the second?

And I would invite the other witnesses to supplement in writing.

Mr. SHAIKEN. But the demonstration effect of actually closing the facility that unionizes, ostensibly for other reasons.

Chairman ANDREWS. The Wal-Mart meat-cutters.

Mr. SHAIKEN. The Wal-Mart meat-cutters had a huge impact, and still does.

Chairman ANDREWS. Thank you very much.

I yield to my friend from Minnesota, Mr. Kline, for 5 minutes.

Mr. KLINE. I thank you, Mr. Chairman.

Again, I want to thank the witnesses for being here today and for their testimony.

I wanted to just address for a moment the concern of the gentlewoman from New York about bias. And let me stipulate that all witnesses here come with a point of view, which I would argue might be biased. You know where you are on this issue. But I would hope that none of us would question your integrity or sincerity because of that possible bias.

I want to get a couple things on the record here, if I could.

Let me go to you, Mr. Cohen, make sure that I understand this correctly. And I have some notes here in front of me, so excuse me if I look down sometimes and make sure I have got this right.

I know that some supporters of this bill have tried to argue that even if the union conducts a card-check campaign, employees will still have the right to vote. I don't understand that here.

Can you make clear for all of us and for the record, simply and directly, under the bill, if a union organizer, an employee presents 50-percent-plus-one signed cards to an employer, the right to an election following that is extinguished, is that correct?

Mr. COHEN. That is right. There is no right to the election.

Mr. KLINE. Okay. And, now, you——

Mr. COHEN. And if I might supplement that for one moment, there is no reason for a union to ever file a petition for an election with less than a majority. It is common practice to go well over a majority, 60, 70, 80 percent, on the theory that there will be attrition as time goes forward.

So, functionally speaking, although if a petition were to be filed with 35 percent, that would not trigger the no-election provision. But, again, no reason to ever file that petition.

Mr. KLINE. Okay, thank you.

And, in your testimony—and I think I heard you say something about 56 days, but one of the claims we have heard repeatedly is that the NLRB process just takes too long. I think one of the witnesses in the earlier panel said something about 7 years, 8 years, and 12 years or something like that.

Could you again tell us, on average, how long it is from when a union files a petition before an election is held? Give us those numbers again. It is in there somewhere in the record.

Mr. COHEN. Surely. In fiscal year 2006, 94.2 percent of all initial representation elections were conducted within 56 days of the filing of the petition. During that same time period, the median time to proceed to an election from the filing of a petition was 39 days.

And these are numbers which don't come about accidentally. The NLRB is very diligent, and the regional director's performance is monitored in Washington to make sure that those days don't slip. In fact, it is a shorter period of time today than it was, for example, 15 years ago.

Mr. KLINE. Okay. Thank you.

And, again, just to get some clarification here, I think it was Professor Lafer—again, this is to you, Mr. Cohen—had said that, with an NLRB election, it is only management that has access to employees' addresses, phone numbers and the like. Is that true? And could you explain for us what an excelsior list is?

Mr. COHEN. Sure. An excelsior list is a list that the NLRB requires be furnished to the union, typically about 3 weeks before the election actually takes place. It is a list of the names and addresses of the electorate, if you will. And that is required by law, and it has been upheld by the Supreme Court.

Mr. KLINE. And it is furnished to the union?

Mr. COHEN. Absolutely.

Mr. KLINE. Okay, thank you.

Mr. COHEN. It is turned over precisely for organizing purposes.

Mr. KLINE. All right. Thank you very much.

And, Mr. Chairman, in the interest of time because I think we have got a vote coming up here pretty quick, I will yield back.

Chairman ANDREWS. Thank you very much.

The chair recognizes the gentlelady from California, Ms. Sánchez, for 5 minutes.

Ms. SÁNCHEZ. Thank you, Mr. Chairman.

I have enjoyed all of your testimony on the panel today and, in particular, Mr. Shaiken because he is from my alma mater. [Laughter.]

But you used a couple of phrases that I found very intriguing to describe the process of NLRB elections: the fact that a secret ballot needs to be meaningful in order for it to be free and fair, and the fact that the fear and coercion behind the vote often undermines the results of the vote.

And a lot has been made about the term "secret ballot" and how fundamental that is and how that protects workers.

Mr. Lafer, I would like to ask you, in a real NLRB election, how secret is the secret ballot really?

Mr. LAFER. In the American democratic tradition, the principle of the secret ballot is not simply the fact that you go into a voting booth and pull a curtain and nobody sees what you do. It is your

right to keep your political opinion private to yourself before, during and after the act of voting, that you can't be lured or coerced into a conversation that is designed to make you reveal your political preferences.

In the NLRB, while the vote does take place in a booth where nobody sees what you are doing, management is allowed to engage in a series of behaviors in the lead-up to the vote that force the vast majority of workers to reveal how they are going to vote long before they ever step into the booth.

It is illegal for a supervisor to ask a worker directly, "How are you going to vote?" And for that reason, the standard practice of employers and consultants is to coach supervisors to have intensive, what they call eyeball-to-eyeball conversations with every one of the people they oversee, the most intimidating kind of conversation, and ask them questions that avoid that explicit language but force them to reveal their preferences. They make provocative statements, they record what the worker says, they watch their body language. They go back and they rank them on a scale of one to five of where they stand.

And one consultant reports that he would regularly hold a poll among managers for $100 to see who could guess the correct number of votes that the election would be, and they were always astonishingly accurate, within a few votes.

So, under those conditions, under that intimidating condition, if you are a supremely skilled actor or liar, you can keep your opinion unknown. But for most normal people, you end up revealing where you stand. And the fact that you then go into a secret ballot, at the end of the day, doesn't change that.

Ms. SÁNCHEZ. So, technically, while they are not violating the rules by asking explicit questions, if I am understanding what you are saying correctly, they have grown very sophisticated at other ways in which they are able to get that information from workers before they actually step in and vote.

Mr. LAFER. That is right. And I think if we saw this happening in any other country, that workers were interrogated in this manor even though they ended up in a secret booth, we would say the secret ballot existed in name only.

Ms. SÁNCHEZ. Thank you.

I had an opportunity to read the testimony in writing, and I have a question for Ms. Schiffer.

You mentioned that one of the fears in moving forward with an NLRA complaint is the lack of effective remedies for those violations. Is it true that remedies for those violations on the part of employers are sometimes as cheap to remedy as the cost of a few pieces of paper?

And what do you think those penalties do, in terms of providing an effective deterrent against violations of the NLRA?

Ms. SCHIFFER. Well, most of the violations that we have listened to workers talk about today, the employer's remedy is to post a piece of paper on the bulletin board saying that it will not do these things again.

And when I ask workers to testify, to come face to face with their supervisor in an administrative hearing and say, "My worker interrogated me about how I felt about the union," these kind of viola-

tions, the worker will say, "Okay, what will happen to the employer if I testify and they are found guilty?" And I say, "Well, they have to post a piece of paper."

And they are just incredulous, just jaw-dropping, eye-opening incredulous that that is all the employer has to do.

And even if someone is fired and they lose pay, the remedy is back-pay; if the person gets another job that pays the same or more, the employer doesn't have to pay any back-pay for that amount of time. So the average back-pay award is somewhere between $3,500 and $4,000, and it is just a small price to pay.

Human Rights Watch did a study and issued a report in 2000, and their conclusion was the same, that employers view this as a small price to pay.

Ms. SÁNCHEZ. And I have often heard the term that employers who regularly violate the NLRA just factor it in as a cost of doing business, because there really isn't any big financial disincentive to continue acting as a bad actor.

Ms. SCHIFFER. That is what the Human Rights Watch report concluded.

Ms. SÁNCHEZ. Thank you.

And I yield back.

Chairman ANDREWS. I thank the gentlewoman.

The chair recognizes the gentleman from Illinois, Mr. Hare, for 5 minutes.

Mr. HARE. Thank you, Mr. Chairman.

Mr. Cohen, some people who don't like the Employee Free Choice Act indicate they don't like it because it is just a signing of card, they don't have the secret vote.

Isn't it true that an employer, if the employees present to that employer in writing a sufficient number of names, they could decertify that union without having an election?

Mr. COHEN. The term "decertification" connotes, as I understand it, an election having been held. So in order to decertify the union, there must be an NLRB election.

If you are talking about withdrawal of recognition of the union, which is a slightly different animal——

Mr. HARE. They can do that by merely giving a sufficient number of names to the employer, who is then, under law, required to proceed with the—not recognizing the union as a full bargaining agent.

Mr. COHEN. If, in fact, there has been a loss of majority support, that is correct.

Mr. HARE. Okay. I am just amazed, and I have to be very candid. In sitting here today, I see that the union is given 3 weeks to be able to contact the employees. Most organizing drives are months and months of preparation and work and contacting people and trying to go to their homes. You can't get them on the floor of the factory; you have got to do it at the home or you have got to do it outside. I mean, the deck is clearly stacked against this.

I wonder how many people running for public office, if we were under the same—if I was running for Congress and I was only given 3 weeks to contact my constituents, and my opponent had a year and a half to do it, and I couldn't talk to them, I would probably be going in decidedly at a disadvantage.

Plus, I am amazed, as you said, Ms. Schiffer, that the numbers of employees that are called in or can be called in under this law. And it is, to me, I think a basic violation of human rights. This whole question, it seems to me, of keeping this a secret ballot is to disguise, really, in my honest opinion, to make it more difficult for unions to be able to do what they do best, and that is represent people.

I would like to ask you this, if I could, Ms. Schiffer. In your experience on the NLRB, did you see a lot of violations from labor and coercion on elections and find them to be heavy-handed and ruled against them?

Ms. SCHIFFER. On the part of unions?

Mr. HARE. Yes.

Ms. SCHIFFER. No, that was not my experience.

In fact, there has been reference to this H.R. Policy Association report of cases of fraud and coercion. And the reason, actually, that we investigated that report was because a case that I had litigated was on there, and I knew there was no fraud or coercion found in this case, and here it was on this list of supposed cases involving fraud and coercion.

And so we looked at those cases, and we found that there were 42 out of the list where there was any evidence of fraud and coercion.

Mr. HARE. In 60 years?

Ms. SCHIFFER. In 60 years.

Mr. HARE. Forty-two. Not bad.

Let me just ask, maybe, you, Mr. Shaiken, in your opinion, if this bill were enacted into law tomorrow, would you see a tremendous movement of people wanting to have the basic right to have an election without fear? Do you think it would lessen the fear and the intimidation factor and it would give employees—balance that field a little bit?

Even since you can't even go on the property, which really, again, it bothers me a great deal that the playing field is not level here for the workers who want to try to join a collective bargaining union.

Mr. SHAIKEN. I think you have an excellent point here. In a way, it is not simply that the playing field isn't level. The union isn't allowed into the stadium, when it comes to this.

And I think what we are really looking at, were this act passed, in symbolic terms I think it would really recognize that workers can make a free and informed choice. Nobody has to join a union. And I think, given the polls that we have seen—and not a single poll, but a wide variety of polls—there really is a pent-up demand of people that say, "Look, we would like to join a union if we could." And that is totally at odds with the membership numbers.

A little common sense tells us this is a period where there is a strong squeeze on wages, that there are great fears about the global economy, where competitiveness is very fierce. Under those circumstances, the ability to have greater voice in a workplace is important to workers.

So I think what this act would do is restore choice. And the outcome, we will see.

Mr. HARE. Thank you.

One final question, I am running out of time.

Ms. Schiffer, would you agree that the $3,500 to $4,000 that an employer would have to pay, basically is paying on average, is a pretty good bang for the buck if you don't want a union in there and have to pay health care and pension benefits and the kinds of things that, you know, a union might very well try to negotiate for their workers?

Ms. SCHIFFER. It is the kind of bargain that encourages employers to do these things.

Mr. HARE. Thanks very much.

I yield back.

Chairman ANDREWS. I thank the gentleman.

I thank the witnesses for their excellent contribution to the record today.

I also want to express my appreciation to the staff on both sides of the aisle for their hard work in making this hearing a success.

And I understand my friend has no concluding statement?

Mr. KLINE. No. Thank you, Mr. Chairman.

Chairman ANDREWS. In which case, the committee stands adjourned.

[Whereupon, at 1:04 p.m., the subcommittee was adjourned.]

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