2008/2009
Public Forum Debate
Topic Analysis

Resolved:
That the Employee Free Choice Act of 2009 serves the best interest of the American people.

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TABLE OF CONTENTS

TABLE OF CONTENTS 1

TOPIC ANALYSIS BY NICK BUBB 4

TOPIC ANALYSIS BY CAROL GREEN 12

TOPIC ANALYSIS BY AMANDA LIVERZANI 18

TOPIC ANALYSIS BY SARAH SPIKER 26

EVIDENCE 33

THE EFCA INCREASES WORKERS RIGHTS. 33
THE MIDDLE CLASS IS KEY TO THE ECONOMY. THE EFCA EFFECTIVE PROTECTS THE MIDDLE CLASS. 33
THE EFCA ALLOWS COLLECTIVE BARGAINING TO OCCUR FREE OF REPRISAL. 34
ALLOWING UNIONIZATION AND COLLECTIVE BARGAINING IS AN INTERNATIONALLY RECOGNIZED HUMAN RIGHT. 34
EMPLOYER'S ARE ANTI-UNION IN THE STATUS QUO. 35
UNIONIZED WORKERS HAVE INCREASED SALARIES AND BENEFITS COMPARED TO NON-UNIONIZED EMPLOYEES. 35
USING EVERY MEASURABLE STATISTIC, THE EFCA WOULD INCREASE WAGES AND BENEFITS. 36
THE DECLINE IN UNIONS HAS LED TO A DECREASE IN WAGES AND BENEFITS. 37
THE EFCA SUPPRESSES EMPLOYER'S FREE SPEECH. 38
THE EFCA DOES NOT ALLOW THE EMPLOYER TO HAVE EQUAL RIGHTS BECAUSE THE UNION IS ALLOWED MANDATORY ARBITRATION. 39
FREEDOM OF ASSOCIATION PROVIDED FOR BY THE EFCA IS A FUNDAMENTAL HUMAN RIGHT THAT SHOULD BE PROTECTED. 39
THE STATUS QUO DOES NOT ALLOW ADEQUATE WORKER'S RIGHTS TO BE LEVERAGED AGAINST THE EMPLOYER. 40
PASSING THE EFCA IS A HUMAN RIGHTS IMPERATIVE. 40
THE EFCA WOULD STRENGTHEN PENALTIES FOR UNLAWFUL ANTI-UNION CONDUCT. 41

THE EFCA STILL ALLOWS EMPLOYER'S TO MOUNT AGGRESSIVE CAMPAIGNS AGAINST UNIONS AND ALLOWS EMPLOYER ORGANIZERS A CHANCE TO RESPOND TO THE UNION. 41

CARD CHECKS DO NOT REPRESENT WORKERS' FREE AND CONSIDERED CHOICES. 42

CARD CHECKS ARE SUBJECT TO POWERFUL UNION MANIPULATION. 42

THE EFCA LEADS TO EMPLOYEE MANIPULATION TO GET TO THE 50% THRESHOLD REQUIRED BY THE CARD CHECK REQUIREMENT. 43

THE EFCA ELIMINATES WORKER PROTECTIONS FROM UNION INTIMIDATION TACTICS. 43

THE EFCA TAKES THE POWER OF NEGOTIATION OUT OF THE HANDS OF THE EMPLOYER AND PUTS IT INTO THE HANDS OF AN ARBITRATION PANEL IF THE EMPLOYER DOES NOT AGREE TO THE UNION DEMANDS IN CONTRACTS. 44

PASSING THE EFCA AND PROMOTING UNIONS HELPS TO INCREASE THE MIDDLE CLASS AND SOLVE THE ONGOING ECONOMIC CRISIS. 45

THE EFCA PUTS 105 MILLION AMERICAN WORKERS AT RISK OF COERCIVE CARD CHECKS. 45

THE EFCA REDUCES SECRET BALLOT ELECTIONS WHICH ARE KEY FOR EMPLOYEES TO EXERCISE FREE CHOICE WHEN MAKING DECISIONS ABOUT UNION LEADERSHIP. 46

UNIONIZED COMPANIES CUT INVESTMENT SPENDING AND LEAD TO LESS JOBS. 46

UNIONIZATION WILL KILL SMALL BUSINESSES DUE TO UNION DEMANDS AND COSTS REQUIRED BY UNIONS. 47

CANADIAN UNIONS PROVE THAT UNIONIZATION LEADS TO A LOSS OF JOBS. 48

THE EFCA ENHANCES UNION POWER. 48

THE EFCA RESTORES BALANCE TO LABOR MARKETS. 49

AMERICAN WORKERS PREFER SECRET BALLOTING TO CARD CHECKS. 49

UNION DECLINE SQUEEZES THE MIDDLE CLASS, RAISES INEQUALITY, AND UNDERMINES DEMOCRATIC VALUES. 50

COLLECTIVE BARGAINING STRIKES AN EFFECTIVE BALANCE BETWEEN EMPLOYER AND EMPLOYEE DESIRES. 50

UNIONS ARE DISENFRANCHISED BY GOVERNMENTAL INVOLVING IN NEGOTIATIONS WHICH THE EFCA MANDATES. 51

THE EFCA CHANGES THE CURRENT SYSTEM IN TWO WAYS. FIRST, IT MAKES MANDATORY UNION REPRESENTATION WHEN THE MAJORITY OF EMPLOYEES WISH TO HAVE IT. SECOND, IT MAKES MANDATORY ARBITRATION MANDATORY IF A COLLECTIVE BARGAINING AGREEMENT IS NOT REACHED 130 DAYS AFTER A UNION IS NEWLY CERTIFIED. 52

THE PROPOSED EFCA RULES WOULD HAVE DETRIMENTAL EFFECTS ON THE UNEMPLOYMENT RATE AND JOB CREATION. 52

UNION DECLINE IS ENDEMIC TO ALL DEVELOPED ECONOMIES. EMPLOYEES SEEM TO LACK THE WANT TO JOIN UNIONS. 53
THE EFFECT OF ULPS IS INSIGNIFICANT 54
WHILE WAGES GO UP ON THE AGGREGATE WITH UNIONS, UNIONS ACTUALLY REDUCE THE WAGE DIFFERENCTIAL BETWEEN INDUSTRIES, BETWEEN FIRMS IN THE SAME INDUSTRY, AND ALSO BETWEEN WORKERS WITHIN A FIRM. 55
UNIONS LEAD TO LESS EMPLOYMENT OPPORTUNITIES. 55
UNIONIZED LABOR TRANSLATES INTO A $57 BILLION LOSS IN NATIONAL OUTPUT. 56
UNIONIZED FIRMS TEND TO INVEST LESS ON CAPITAL AND RESEARCH AND DEVELOPMENT BECAUSE THEY HAVE FEWER RESOURCES TO INVEST BECAUSE OF THE COSTS OF UNIONIZATION. 56
UNIONIZATION REDUCES THE NUMBER OF JOBS AND OVERALL GDP. 57
THE EFCA ALLOWS WORKERS TO EXERCISE BASIC HUMAN RIGHTS. 57
THE EFCA REQUIRES CARD CHECKS TO BE RECOGNIZED AND HONORED BY EMPLOYERS. 58
THERE IS NO PENALTY IN THE STATUS QUO FOR EMPLOYERS WHO FIRE PRO-UNION EMPLOYEES. THE EFCA CLOSES THIS LOOPHOLE. 59
WORKER'S RIGHTS ARE KEY TO VALUING CITIZENS EQUALLY AND PRESERVING DEMOCRATIC PARTICIPATION IN ALL SPHERES OF SOCIETY. 60

TOPIC ANALYSIS BY NICK BUBB

Interpreting the Topic

The good news for debaters and coaches is that this topic is relatively strait forward. Like previous topics, the topic is claim of fact. The act either does or does not serve the interest of the American People. But unlike previous topics, this is not a boring debate over facts. What is in the best interest of the American people is something that is certain up for much debate. Ultimately, I think that this is good for Public Forum debate because it will allow students, debaters, and coaches to debate and learn about these issues without venturing into weird LD-like truth-statement debates.

Each side is likely to define the interest of the American people as something that can only be achieved through their side of the resolution. The Affirmative/Pro side is likely to discuss the benefits of unions for the American people and the American economy. The Negative/Con is likely to discuss how unions unfairly disadvantage employers, and thus hurts the broader American economy (we will discuss why each side is likely to make these claims later on). The debate could be like two ships passing in the night. I strongly urge debaters to avoid this and engage in the terms of your opponents arguments (because, really, that's just good debating). This means that the internal link debate is going to be crucial – since most debaters will probably end up making economic arguments. Whether unions or business are key to the economy is probably the most important aspect of this debate.

In the event that the internal-link debate is not enough to completely sway your judge, you should be weighing the round at the impact level. Explain to the judge that your impact is (a) more likely (probability), (b) larger in scope (magnitude), (c) will happen sooner (timeframe). If you can make arguments that unions will benefit the American people faster or will have a more significant impact than maintaining the status quo for businesses, then it's likely that you'll win the debate. In the event that you aren't impacting to the economy, then you can use these weighing arguments as reasons as to why your impact is superior to your opponents.

The bad news for coaches is that while this topic brings Public Forum to all of the benefits of strong policy debate argumentation, it also brings with it some potential disadvantages. Some teams might be tempted to introduce

politics disadvantages because the Employee Free Choice Act is something currently under consideration by congress. If you are debating this topic for your state tournament or national qualifier, I strongly urge you to not engage in this kind of strategy unless you are completely sure that your judges are going to accept this (and even then – I'd still be extremely cautious using this line of argumentation). The rationale is as follows: Public Forum should be modeled after the debates that are of interest to the public. People do care about whether the proposed act is beneficial for them. On the other hand, not many people care about keeping Obama's political capital high. While political trade-offs are real, important and interesting – they are not germane to the discussion of public forum for 99.9% of the PF judging pool.

Somewhat related to politics disadvantages, but not entirely different – the employee Harry Reid has delayed the introduction of the Employee Free Choice Act until this summer. This means that there is no chance that the current bill will not be passed any time soon. This means that the topic should be germane for debate for the entire month. So don't worry about having to re-write your arguments based on what happens in Congress.

What is the Employee Free Choice Act?

The Employee Free Choice Act (EFCA) is a bill to amend the National Labor Relations Act (NLRA) to change the process for how workplaces create, establish, and recognize unions. To understand how the process is altered, it's important to understand the current law. Under current law, employees can request cards from an existing union. Once 30% of the employees at a workplace have signed a card, employers may hold a secret ballot election as to whether or not to unionize.

The problem with the current law, from the perspective of union organizers, is that the choice of whether or not to hold a secret ballot election resides with the employer. Employers can force the secret ballot as to whether or not to unionize even if the majority of the workplace has already signed a union car. This makes it increasingly difficult for employees to organize and form a union.

The Employee Free Choice Act changes this process and allows employees to chose how/if their workplace becomes unionized. Under the proposed law, unions can be certified as a bargaining unit if a majority of people

sign union cards or through the prior secret ballot method. Some people have incorrectly misunderstood this to mean the EFCA eliminates the secret ballot. This is not true. However, it is highly probably that if the act passes – the secret ballot will be used less frequently as a means of labor organization. The card check process presents a much lower threshold for unions to organize, because it does not require consent of their employer to decide to hold an election. Unions and supporters only have to convince workers to join the union, the employer is not required to participate in the process.

The EFCA also introduces stiff penalties for those employers who engage in illegal activities with regards to employee organization (intimidation/firings/etc). This will be important for when we turn our attention to the arguments of supporters of the EFCA.

What are Unions?

Alright, so you followed what the law changes. But you're still confused as to what the hell I'm talking about. Let me take you on quick one-paragraph overview of the labor movement from someone who doesn't remotely portent to be a labor expert.

Unions are collective bargaining units who represent groups of employees. These bargaining units use the leverage of many employees to negotiate for more a favorable working environment. This vauge notion of "a more favorable working environment" can include, but is not limited to: higher wages, increased benefits, better workplace rules, decisions on seniority/hiring practices, and many other aspects of a company that directly affect the experience of working. Collective bargaining may also mean a number of things, not just negotiations. Labor interruptions, such as strikes, walk-outs, and resistance to various goods are actions unions use to when negotiations with management fail.

Still don't get why unions might be necessary? Let's say you work in the storeroom/local warehouse of retail chain (Target, Wal-Mart, Kmart, ShopKo, or whatever – doesn't matter for the point of discussion. Also, ignore the fact that none of these places have a union). Your job frequently requires that you take heavy furniture out to customer's cars, take heavy goods to the sales floor, and unload heavy items from the delivery truck. This is very

tiring work and you think that you might be able to do your job better if you had an hour-long paid-lunch, rather than a half-hour unpaid lunch that you currently receive. Unless you have a generous boss, by yourself, you are unlikely to persuade management. However, if you have a number of people who agree with you, you are much more likely to succeed in pressing these concerns to management. This may not seem like much to most people, but often times its small improvements work place rules like these that can have a significant impact on a worker's quality of life.

Unions have existed in the United States since about the turn of the century and have been instrumental in establishing child labor laws, the eight-hour work day, the forty-hour work week, and – my favorite – the weekend, among other things. Unions are generally associated with labor and manufacturing related jobs, but they don't have to be. Two of the largest unions in the United States, are not directly related to manufacturing. AFSCME (American Federation of State, County, and Municipal Employees) and SEIU (Service Employee International Union). So do not make the mistake that we are always talking about labor and manufacturing.

Pro/Affirmative Arguments

The Pro/Affirmative line of argumentation is pretty strait forward. Affirmative teams will claim that the EFCA helps unions organize and that unions are good for American workers and the American economy. Benefiting the American workers and the American economy is in the United States' interest.

That's all well and good, but how do you establish that the employee free choice act is good for unions? Here are some helpful suggestions:

The NLRB reports that an average of 22,600 workers receive retribution from their employer for attempting to form a union (110th Congress, Report 110-23, Employee Free Choice Act of 2007, Committee on Education and Labor report to the House of Representatives. 2/16/2007). By making it easier to form a union and increasing the penalties on companies that engage in these illegal activities, it makes it less likely that these individuals will unfairly lose their job.

A Center for Economic and Policy Research report "Dropping the Ax: Illegal Firings During Union Election Campaigns", finds a steep rise in illegal employee firings for those who are attempting to organize. Moreover, the same report states that the current process and law give a significant advantage to the employer. This results in individuals having to risk their livelihood just to improve their quality of life at their workplace.

> "Starting at the end of 1970's, but especially by the early 1980's, American employers began to engage in the systemic and widespread use of illegal firings as a strategy to undermine the success of campaigns for union representation."
>
> Additionally, the report goes on to state:
>
> "Given these small penalties for illegal firings, the NLRA, in practice, has given employers a powerful anti-union strategy: fire one or more prominent pro-union employees – typically workers involved in organizing the union – with the hope of disrupting the internal workings of the union's campaign, while intimidating the rest of the potential bargaining unit in advance of the National Labor Relations Board supervised representation election."

Thus, by changing how unions are allow to be registered as the collective bargaining unit and increasing the penalties on these illegal activities the EFCA provides important benefits for unions. Allowing unions to recruit more members, can then allow for more American's to experience the benefit of unions. Debaters then need to argue that unions provide higher benefits/wages/more favorable workplace environments, than non-union environments. In so far as these improvements are in American's interests, so is the EFCA. (And I'm not sure what's more American than more money.)

This is particularly important for the American Economy. As it doesn't take much evidence to see, the American Economy is deeply troubled right now. Strengthening the manufacturing sector can help shore up good paying-middle class jobs. This can help those that are being hard-hit by the middle class.

Additionally, allow for more union organization can promote more stability in the American labor market, leading towards long-term improvements in the overall economy. Milton and Rose Friedmen argue in *Free to Choose* that if some industries are unionized, while others are not, wages will decline in the non-unionized industries. This may be a reason to support and push for further unionization because then we can halt wage decline in non-unionized industries. (However, this runs against the thesis of the authors. Their argument was that unionization produces higher wages, at the expense of employment – creating higher unemployment).

Con/Negative Arguments.

So if Union's are so good, how come this is a contentious issue in Congress? There are two main reasons.

First, there is concern that the bill awards too much political power to the unions. Unions are political organizations. If you watched some of the news coverage when the EFCA was introduced this term, you might have seen some headlines on TV such as "Union Power Grab?"
So while this is not a reason that would be in the interest of the American people, per se, it is a reason that political entities are using to block the bill. By making it easier for union's to recruit members, many people in congress (particularly Republicans) are concerned that expanding the membership of Unions will lead to a creep in the power that union's exert. Instead of making a more calculated objection to the political power of unions, one could oppose the influence of all groups who seek to influence the political process. Essentially, this stream of argumentation could argue that anything beyond the public financing of elections is detrimental to democracy.

There is one qualification I would like to make about this thread of argumentation. This argument assumes that union's have significant political power and are increasing that power. I do not think that this accurately reflects reality. Certainly union's have political influence, but that influence is not nearly as strong as it was. Additionally, debaters would be smart to consider the political influence of those who work on the behalf of employers and business – these are individuals and often carry as much of an advantage as the unions themselves. In order to make this line of argumentation work most effectively, debaters will have to be able to defend that balance of political power will be tipped from one side to the other. Essentially, while the union's political power may expand, is that really enough to outweigh the political power provided by big business.

Because, I don't think that many people will be interested in this line of argumentation as a reason to show that the EFCA is not in the American people's interest, I'll move on to another line of negative arguments.

The second line of argumentation is focused on the perceived negative implications that union's have on business. Before beginning this line of argumentation, it's important to get specific.

It's important to point out that EFCA and the NLRA do not apply to small businesses. Corporations with less that 500,000 employees are exempt from the EFCA's provisions – this doesn't mean that those places are immune from having a union, it just means that those business are not required to follow the same set of rules that the big ones do.

So we are talking about big business. For example, we'll talk about General Motors (GM) and the United Auto Workers (UAW). I know that GM and UAW already have a contract, but that's the point. If more contracts like theirs exist, then one may make the argument that the new contracts between unions and employees are likely to significant finical problems for employers. Why is this?

The UAW was successful in negotiating higher benefits. This means that GM and like companies have to spend more resources than they might in another country in order to produce American goods. This imbalance provides other countries with a comparative advantage in labor-intensive industries. This makes it more likely that in the long-run these jobs will not exist in the United States because other countries can provide the same jobs without paying the same amount that they do in the United States.

Negative teams can argue that this has detrimental affects for several reasons: first, increasing our commitment to higher benefits provided by union negotiations commits the United States to a negative long term out look for manufacturing jobs. In so far as these manufacturing jobs are important to the American economy, the EFCA might accelerate a future decline in the manufacturing industry.

This potentially isn't the best argument, because it's likely that manufacturing jobs are probably on the decline anyway. But if additional unionization would accelerate their decline, then there might be a reason to be concerned.

Second, big business is likely in trouble by over appreciating their assets prior to the economic down. Additional unionization in the elements of the economy that are not unionized, might require these industries to provide better benefit than they currently provide. Odds are that these businesses do not have the dollars to provide these resources and might risk failure in order to provide them. On the other hand, if employees are not receiving fair compensation for the activities that they are undertaking – then these corporations are undervaluing the work that they are receiving.

Third, Recall the reference to Milton Friedman earlier; if additional unionization created by EFCA creates higher levels of unemployment, then it might be more difficult to pull the United States out of its current economic recession.

Conclusion.

Debate this topic strait-up and focus on the effect of unionization on the economic well-being of Americans. If you are Pro, unions help workers and that is good for America. If you are Con, unions limit the growth of Big Business and that is bad. Make sure to make comparative claims about what the opposition is saying and outweigh their impacts.

<u>TOPIC ANALYSIS BY CAROL GREEN</u>

Definitions and Resolutional Analysis

Employee Free Choice Act (EFCA): There may be initial confusion when researching this topic because there have been various versions of this act floating around since 2003, and in fact while I am typing these words, this act has still not been passed by the Senate. That said, I would contend that teams should, in good faith, debate the merits of the piece of legislation currently being debated by Congress. Whether it passes or fails before you get a chance to debate the topic should not matter. What is important is the same debate going on in Washington right now. Is the act good or bad for the interests of the American People?

There are two primary components to the bills. The first gives workers the option of forming unions by getting the majority of workers to sign cards to join. This would eliminate the employer choice of a secret election or card checking process. Secondly, the EFCA mandates that if employers and workers cannot reach an agreement within 120 for contracts, then a government arbitrator will intervene and set the terms. You can find the full text of the legislation here: http://www.opencongress.org/articles/view/916-Employee-Free-Choice-Act-of-2009

Serves the best interests: This is where the topic wording committee has conveniently hidden the round's weighing mechanism. This is an "on-balance" criterion without using the words and allowing teams to get more specific if you choose. Essentially it is asking you to impact out your side of the debate. Is the EFCA more beneficial than harmful to the American people? If so then you should vote Pro. And if the EFCA is more harmful, then it would not serve the best interests of the American people and you could sign your ballot for the Con team.

What are the best interests of the American people? This is up for debate if you choose. I would contend that the best approach for a clean debate is a wholistic look at social and economic impacts on the American populous as a whole. This would allow both sides to weigh out impacts included free speech against monetary impacts. It is up to both teams to prove their thesis and why it is a bigger impact on the American people.

American people: Easy. The American public. The population living in the United States who are legal citizens. Don't get crazy with a definition, it isn't needed here.

There are four important questions that we need to examine in order to understand the complexity of the resolution and what it calls debaters to do when framing arguments.

Why are unions good?

Unions give employees a voice. In a 1918 New York Times article, there was a debate over whether unions were helpful or harmful to America. This has been a debate for over 100 years, and is the basic argument that debaters will need to win in order to win their side of the debate. If I can prove unions are beneficial to America, then I am on my way to a Pro ballot.

According to former Labor Secretary Reich, in 2007 a group of almost 12,000 janitors in the Northeast won a contract that raised their wages, guaranteed more work hours, and provided family health insurance. This is a major victory in an industry that is mostly made up of part time laborers who float in and out of the occupation. The Department of Labor claims that workers in unions can earn 30% higher wages, and are 59% more likely to have employer-provided health insurance than non-union employees. While we debated the merits of the U.S. healthcare system in November, the debate was never over whether insurance was important, and in a system that still relies on employer-provided health insurance, this is a huge impact in favor of unions.

Additionally, when Americans make more money, they are able to spend that money which feeds back into the economy. Because the higher wages are secured through unions, more unions could equate to more consumer spending and a stimulated economy.

However, unions aren't just good for the employees and the economy but the employers as well. A unionized workforce has a lower turnover rate, which means companies retain experience and save on training costs. There is a sense of stability that may increase productivity and respect in the workplace.

Why are unions bad?

Kevin Hassett, former policy advisor to John McCain, contends that a spike in unionizing in the 1930s caused companies to close down factories as labor costs rose. According to researchers at UC Berkeley and Princeton, there was a direct relationship between unions and company stock performance. The companies with stronger unions had lower shareholder returns than companies without unions.

Unions can also complicate business practices through demanding specific divisions in labor, threatening strikes, and protecting employees who may not be completing the job to the best of their abilities. Some union leaders have also been indicted of corruption, which begs the question of why unions are better than direct negotiations with the employer.

Why is the Employee Free Choice Act good?

One of the biggest arguments for the EFCA is that unions are good. If you win this fundamental argument, the next area to examine is the difficulty that employees have in forming unions. According to researchers at MIT in a study cited in the Los Angeles Times, employees who attempt to form unions have about a 1 in 5 chance of success. Former Secretary of Labor Reich argues that one of the primary reasons is that employers threaten and intimidate employees when union rumblings start. Reich contends that as Labor Secretary, he attempted to penalize employers that broke the law, but that the fines were not large enough to make a difference. Because now employers can no longer choose how unions are formed, this gives employees the freedom to choose how to approach the idea of unionizing.

Additionally, the second plank of the EFCA would force companies and employees to come to a compromise quicker instead of manipulating each other until one side gives up. In Stockton, California, it took 13 years to resolve a strike dispute between the Teamsters Local 601 and the Diamond of California nut plant. At the end of 13 years, many of the employees had found new jobs, the company had filled most of the positions of striking works and the union may not return to the company. The dispute was over the company refusing to honor a previous agreement about a reduction in pay the employees were willing to take to help the company out in 1985

that would be remedied when the company regained it's financial footing. This agreement would have been forced earlier and save the company money and the employees jobs had an arbitrator been brought in earlier.

Why is the Employee Free Choice Act bad?

According to CNN Money, Home Depot and other large companies have stood before Congress in opposition of the EFCA. Businesses contend that the bill would up the cost of doing business and hurt them further in an already struggling market. This is a key argument for the Con in a time when any change to the business model must be closely examined in relation to the state of the economy. If the EFCA is successful in increasing the number of unions that are formed and those unions begin negotiating for higher contracts, what impact does this have to lifting us out of the recession we are in?

Additionally, according to Chamber of Commerce president Thomas Donahue in the Washington Post, employers will be more likely to outsource, or even relocate their businesses if the EFCA passes. Industries that had higher numbers of unions like the automotive and steel industries have seen high rate of outsourcing and movement of complete companies overseas

But maybe the real problem with the EFCA is that it does not do enough to help employees be protected by employer intimidation. Now other employees into signing up for the union can intimidate employees. According to a 1961 AFL-CIO handbook, sometimes employees would sign pledge cards just to get their coworkers to let-up and stop harassing them. In 1965 the union noted that in order for it to get the hoped 50+ percent of needed votes in a secret ballot, it would need at least 75% of the workers to sign pledge cards. While union supports claim that the need for EFCA is because of employer intimidation, the truth may be the employees are just as intimidating.

Another concern of businesses is that it forces the government to intervene too soon with the 90-day rule. Bruce Josten, a lobbyist for the US Chamber of Commerce, contends that the changes are made by an arbitrator who knows nothing about the business they re entering into and that person will set the terms of employment, work rules and wages, and that these decisions are set for two years. This could hurt business practices, and additionally could fuel the outsourcing/relocation argument.

Conclusion

In the end, the Pro must prove that unions are beneficial to American and that the EFCA will increase the abilities of unions to form and achieve benefits for their members. Just proving that unions are good does not mean that the EFCA is beneficial. And the EFCA cannot be beneficial without affirming the positives of unions. Remember that as the Pro team, you do not have to defend every aspect of unions. Unions are not perfect, but you should be able to contend they are beneficial to America.

When debating on the Con, there are several opportunities to negate. You can prove the unions are bad, thus with or without the EFCA, we are in a bad world but the EFCA ups the number of unions and therefore increases the negatives. Or, you can choose to ignore the "unions bad" road and instead negate just EFCA. This can be done through the arguments of choice and democracy by secret ballot, or by addressing the government arbitrator portion of the legislation.

There is a fair amount of material that should be read and prepared before you enter the debate round. In doing initial research, there are also a number of sources that are easily accessible that are not the most credible. I want to take a moment to urge you to check the background of your sources. If it seems too good to be true, it probably is. Since the topic of unions has been up for debate for over a century, you will also want to ensure you are aware of what is currently allowed and required with relations to union and labor laws. Taking these steps will ensure a positive debate experience and hopefully a number of ballots in your favor. Good luck!!!

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TOPIC ANALYSIS BY AMANDA LIVERZANI

I. Introduction

This resolution is extraordinarily timely. As we debate about the Employee Free Choice Act (EFCA) in schools around the country, senators and representatives in Washington DC will also be debating the merits and potential pitfalls of the EFCA. Given the current economic crisis, it is resolution dealing with matters that may influence your parents, friends and possibly even you if you are entering the job market in the next few years. This means, of course, that you are likely to have judges that can relate strongly with the issues discussed in rounds. Your judges may currently be members of unions, work in companies considering unionization, or be non-union workers set on staying that way. Regardless of their specific position on unions, they are likely to have been touched in some way by the economic recession and interested, like most Americans, in a way of bringing relief to the struggling economy.

Debates on this resolution will take place at the forefront of American politics giving you a chance to talk about issues important to the future of our country with people directly impacted by them- that's pretty spiffy.

II. Interpreting the Resolution

A. The Employee Free Choice Act

The Employee Free Choice Act(EFCA) is a piece of legislation introduced in 2007 and up for revaluation by the 111th Congress. The purpose of the bill is to ease the process of forming unions by changing the method of union certification and imposing harsher penalties on employers who impede on union formation. According to Congress's Committee on Education and Labor the Employee Free Choice Act: "reforms the NLRA to provide for union certification through simple majority sign-up procedures, first contract mediation and binding arbitration, and tougher penalties for violations of workers' rights."[1] Let's take a closer look at the three mechanisms the EFCA employs to ease the process of unionization:

(1) Card Check

The EFCA eliminates the secret ballot vote for unionization and replaces it with a card check procedure. Currently to form a union at least 30% of employees at a company must sign cards from an established union. Once 30% of the workforce has signed cards the employer holds a secret ballot election. If the majority of workers vote to join the union the National Labor Relations Board certifies the union as the representative of the employees. The union may then bargain for the employees' wages, benefits, and working conditions. The EPCA modifies this process by eliminating the requirement of the secret ballot. If a majority of workers sign union cards then the National Labor Relations Board will certify the union without necessitating a vote.

(2) Binding First Contract Arbitration

Once a company's employees join a union the union enters into negotiations with the employer regarding wages and benefits. If the union and the employer are unable to come to an agreement and a contract after 90 days the matter may be referred to the Federal Mediation and Conciliation Service who will then attempt to create an agreement within 30 days. If mediation fails binding arbitration will be imposed in which a government arbiter determines the conditions of the contract. That contract is then binding for the next 2 year period.

(3) Tougher Penalties

The EFCA would impose harsher penalties on employers who violate employees' rights during the unionization process. Employers who wrongly terminate or discriminate against employees during union formation would be subject to more back-pay requirements and harsher civil penalties (increased fines).

B. Evaluative Phrase

The resolution asks us to determine if the EFCA "serves the best interests of the American people." The concept of "best interests" is very ambiguous. This has its advantages and drawbacks. The primary advantage is that it expands the scope of the debate to include impacts dealing with a variety of different kinds of interests.

One could argue that the EFCA promotes the economic interests of the American people or that it serves the promotion of American workers' rights. There are, of course, also drawbacks to the ambiguity. Because "best interests" is such a vague term including a variety of different kinds of interests it seems easiest to limit the scope of one's case to one kind of interest and the EFCA's impact on that interest. For example, an affirmative case that is surely to be popular could argue that the EFCA will bolster the economy. However, this position assumes a prioritization of economic interests over other kinds of interests. To argue this kind of position debaters must be prepared to defend economic interests as the most important kind of interests. Doing this is challenging enough but it becomes more complex if the opponent is defending a different kind of interest. For example, if the affirmative argues that the EFCA serves Americans' economic interests and the negative argues that it hinders Americans' liberty interests how do we resolve these competing claims of interests? The moral- you must be able to argue for the prioritization of certain interests over others or to defend the position that the EFCA is best for the American people's interests in general.

III. Affirming

A. Ground

The affirmative's burden is to prove that the EFCA serves the best interests of the American people. This requires doing precisely two things: (1) Define some conception of the American people's best interests and (2) demonstrate how the EFCA serves it. This burden is simple enough, keep it in mind when organizing your case and your rebuttals.

It is also worth noting that the affirmative is necessarily comparative. The term "best" is a superlative. In order for something to be "best" it must be better than all other options. The affirmative is comparing a world with the EFCA enacted with a world in which it is not (presumably the status quo- more on this under the negative).

B. Argumentation

1. Workers' Rights

One approach to the affirmative of the resolution is arguing that the EFCA protects the rights of American workers by protecting and enhancing their right to unionize. This right has precedent in domestic as well as international law.

In the United States the Constitution guarantees American citizens freedom of association under the First Amendment. This has been used to protect political association such as protests, but it also ensures the right of workers to rally together for better wages and conditions. The 1935 Wagner Act (also known as (the National Labor Relations Act) established the exist intense of "the right to employees to organize" creating the precedent for the right of American workers to come together to form labor unions in the private sector for the purpose of collective bargaining.

In addition to the establishment of the right to unionize in domestic law it is also securely rooted in international law. According to the United Nations Universal Declaration of Human Rights "[e]veryone has the right to form and to join trade unions for the protection of his interests." This right is also embraced by the International Labor Organization. In the ILO Declaration on Fundamental Principle and Rights at Work all people have a right to "freedom of association and the effective recognition of the right to collective bargaining."

Supporters of EFCA argue that the changes it makes to labor law will enhance workers' right to form unions by easing the process of union formation. The EFCA does this through its modifications to labor laws:

a. The EFCA substantially increases penalties for employers who illegally terminate or discriminate against workers during the union formation process or first contract bargaining. By increasing penalties for employers who violate the rights of workers, the EFCA is reinforce a conviction towards and protecting workers' rights.

b. The EFCA reforms the unionization process by eliminating the secret ballot vote which has become corrupt and ineffective. Many argue that the secret ballot process is undemocratic and serves the interests of employers rather than the employees. Employers have access to information about potential voters. By virtue of their status as employees, employers have access to workers' contact information. They may plaster the work place with anti-union propaganda and call workers in for one on one meetings to attempt to discern their votes. As a result employers can effectively count how many people are considering unionization prior to an actual vote. Conversely, union organizers have relatively little power. They cannot enter the workplace and receive employee information relatively late in the union formation

process. Eliminating the secret ballot and switching to a check card system equalizes the playing field between union organizers and employers.

If you choose to run a case based on this workers' rights approach you need to win the following two things to win the round (1) Establish that protecting the right to assembly serves the best interest of Americans and (2) Establish that the EFCA protects the right to assembly.

2. Economic Arguments

The primary justification behind the EFCA as it has been presented before Congress in 2009 is that it would serve as a mechanism for revitalizing the economy given the current recession. The EFCA eases the process of unionization which will lead to the formation of more unions which in term will increase wages. Theoretically, these increased wages will improve the economic conditions of workers as well as increase household spending and revitalize the economy. There are several deviations on the economic argument that can be used separately or in tandem.

a. Unions and the Middle Class

The middle class is currently suffering due to the economic crisis. Unemployment rates are high, many families are facing bankruptcy or mortgage foreclosure, wages are down, and a general sense of economic impairment has set in. Studies have shown that unions are an effective way to improve the economic situation of the middle class. Union workers generally are economically better off than nonunion workers. According to some estimates union workers make 30% more than their non-union counterparts. Additionally, union workers are more likely to receive benefits than non-union workers. For example, union workers are 62% more likely to have health care.

b. Unions and Disenfranchised Workers

Unions help to compensate for discriminatory practices in the workplace by providing a strong, unified body to bargain with employers on workers' behalf. This helps to protect minority workers from the subjective discrimination they may face from employers. Research shows that women in unions receive 31% higher wages than women who are not parts of unions. Similarly African Americans receive approximately 36% more and Latinos receive 46% higher wages.

c. Unions and Non-Union Workers

Strengthening unions also has an impact on non-union workers. Unions help to establish industry-wide standards that benefit all workers, not just union members. Employers who fear unionization will attempt to match union standards so that their workers do not have an incentive to unionize. The result would be higher average wages across the board.

IV. Negating

A. Ground

Because "best" is a superlative the negative must be comparative. It is not enough to simply say that the EFCA is bad. It may be bad but if it is the only option it is still the best of all possible options. As the negative you must advocate an alternative to the EFCA that is better than what the affirmative defends. There are two ways to do this. The first, and what will likely be the most common is, for the negative to defend the status quo as being better than the proposed changes that the EFCA would make. The second strategy, one that I think is entirely defensible, is to advocate some alternative to the EFCA such as reform of the secret ballot process or check cards without binding arbitration. Remember, the affirmative must advocate the EFCA in its entirety. It is completely within negative ground to advocate parts of the EFCA while criticizing others. So while the affirmative must defend all three prongs of the EFCA, if the negative can prove just one of them is flawed and should not be implemented that is sufficient to negate.

B. Arguments

1. The EFCA decreases workers' rights.

a. The EFCA grants the government too much power.

This argument is predicated on the idea that the American people are best served by a small, limited government. Increasing the scope of government power is dangerous to the interests of the American people because it increases the chance for abuse. The EFCA increases government power through the binding arbitration process. If a union and an employer cannot come to an agreement through collective

bargaining in 90 days the matter is referred to arbitration. Binding first contract arbitration gives government officials the ability to write the labor contracts of most newly unionized companies. As a result important matters such as wages, general benefits, promotion procedures, retirement plans, health benefits, work assignments, mergers and subcontracting could all be in the hands of the government for up to two years. This has several impacts (a) government arbiters don't know the nuances of a company so they are unlikely to know what is in the best interests of that company and its workers (2) arbiters aren't accountable to either employees or employers for mistakes or failures and (3) employees and employers forfeit control of the company for two years. During the time it is the government rather than the workers that has control over the company. This is the exact opposite of the intended effect of the EFCA as it deprives workers of free choice.

b. The EFCA grants too much power to unions

The EFCA allows unions the power to intimidate workers into signing check cards. Because the secret ballot was secret it prevented employers and union officials from being able to intimidate and coerce employees. Just using check cards allows for intimidation because workers who don't sign check cards would be fully known to union organizers. As a result unions could pester and influence workers to sign cards. Union organizers could repeatedly go to a persons house and harass them until they agreed to sign. The secret ballot protected people from such intrusions into their decision-making process.

2. The EFCA is bad for workers' economic interests.

a. The EFCA will result in fewer jobs.

To offset the costs that come with unionization, unionized companies cut investment spending by 15-25% according to some economists. They also create fewer new jobs and eliminate positions to offset the increases in wages for existing employees. As a result rather than revitalizing the economy some believe that the EFCA would lead to less growth by putting strains on already suffering companies. Since many affirmatives will argue that the EFCA will increase jobs it is good to well-versed in this particular argument. Similarly affirmatives running that the EFCA will increase jobs should be prepared to respond to this negative argument.

b. Unions are less flexible.

Some argue that unionized companies are less flexible and are subsequently less able to respond to changes in the market. Since unionized companies have to deal with unions when making business decisions it prevents management from simply doing what they feel is in the best interest of the company. Additionally binding arbitration imposes contracts on companies which potentially stifle creativity in corporate strategy. Arbiters may lack business savvy or knowledge of a specific company's situation making the contract they impose inconsistent with good business planning. The result would be a less prosperous business potentially unable to keep investors.

V. Concluding Remarks

The arguments in this topic analysis are derived primarily from the following sources. I would highly recommend each of them for topic research. If you have any questions feel free to email me at aliverzani10@amherst.edu. Good luck and happy debating!

- George Miller, "The Committee on Education and Labor Report on the Employee Free Choice Act of 2007" House of Representatives Report 110-23, Feb. 16, 2007.

- Human Rights Watch, "The Employee Free Choice Act: A Human Rights Imperative" January 2009.

- James Sherk, "How Union Card Checks Block Workers' Free Choice" The Heritage Foundation, February 21, 2007.

-James Sherk, "Employee Free Choice Act Would Disenfranchise 105 Million Workers" The Heritage Foundation, January 7, 2008.

TOPIC ANALYSIS BY SARAH SPIKER

In the early 1930s, Americans were facing industrial strife in the workplace. Employers were denying the right of their employees to organize into unions. Employees, on the other hand refused to engage in the often lengthy process of collective bargaining even when they had the opportunity,[1] leading to internal strife, pickets, and protests. In 1935, Congress found that it could ignore the situation no longer because the unrest interrupted regular commerce. The resulting legislation, the National Labor Relations Act (NLRA), sought to remedy the circumstance. According to the National Labor Relations Board, Congress passed NLRA "to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy."[2] However, a new piece of legislation, the Employee Free Choice Act of 2009 (EFCA), seeks to modify the NLRA, purporting to create a more efficient system to aid the formation of labor unions and provide legal protection when counter-union policies are enacted. Many are concerned that Democrats, the primary voice for the bill, will be unable to garner enough votes to pass EFCA in the current session of Congress. However, Public Forum debaters do not need to bother themselves with the current status of the bill's passage. Unless you are writing a policy disadvantage, and then I might cry out of grief. While the bill is still up for debate in Congress today, this month's Public Forum resolution asks debaters to engage in a fact-based evaluation of the EFCA and its implications in regards to the American work environment. Personally, the debate over unions "good" or "bad" is irrelevant simply because the legislation does not attempt to *eliminate* or directly promote union creation. EFCA merely attempts to streamline employer-employee interaction and provide for a fairer development process. The legislation fundamentally assumes that workers should have the right to form a union. The question then becomes: do these rules provide for a *fairer* work environment?

Officially, EFCA is known in the Senate as S. 560 and in the House as H.1409. This bill would change the rules that have run labor unions since the implementation of the NLRA. More specifically, OpenCongress.org explains:

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[1] Collective bargaining refers to the process through which union representative reach collective agreements with an employer regarding wages, work hours, and work environment among other issues.
[2] Text of the bill is also available at the National Labor Relations Board website: http://www.nlrb.gov/about_us/overview/national_labor_relations_act.aspx

> Under the bill, workers would be able to decide whether to hold a secret ballot vote on union formation after a majority of employees have signed union authorization cards, or to have the union certified based on the cards alone. Under the current rules, employers have the power to make that decision. The bill also designates a time line for first contracts to be drawn up between unions and employees and stipulates that if no deal is reached within 120 days, an arbitration panel will render a decision that will be binding for two years. Finally, it would increase the fines employers must pay if found guilty of violating their employees' right to unionize.[3]

Essentially, this bill would modify many of the NLRA guidelines regarding union creation, negotiations, and protection of worker's rights. Chad Halcom of *Crain's Detroit Business* explains that the legislation has caused an uproar among businesses.

> Several business lobbyists and media campaigns oppose the free choice act. The U.S. Chamber of Commerce has pledged to raise and spend $10 million on a campaign to defeat the legislation and has joined the Coalition for a Democratic Workplace, a group of 500 business groups. The Detroit Regional Chamber is a part of the coalition as well but plans an awareness-building campaign, not fundraising, on a local level.[4]

As per usual, the resolution retains a vague element because it does not define any particular interest of the American people that debaters should aim for. This leaves the "best" interest up to the debaters to determine. When constructing cases, debaters should be able to clearly define what this interest is: job security, social stability, ability to appeal for higher wages, protection of employment positions, etc. Debaters should be careful to limit the number of interests that they are trying to prove. Because Public Forum Debate provides a narrow timeframe for competitors to persuade the judge, no more than two or three (max.) should be used. Minimizing the number of interests that are present in the round will provide for greater depth and will allow debaters to better warrant their arguments instead of spreading them out across a number of topics. This does not mean that debaters

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[3] Open Congress, http://www.opencongress.org/bill/111-h1409/show

[4] Chad Halcom, *Crain's Detroit Business*, January 12, 2009, "Labor law changes look likely; First up in Congress may be Employee Free Choice Act," accessed via Lexis Nexis

are stuck with just the interests that they define in their case. Save arguments for rebuttals as the opposition team will inevitably try to define alternative interests that better suit their case. This method best maximizes time and arguments.

The landscape of the American workforce is very diverse, and one would immediately find the employed to be the primary focus of the debate. However, this does not have to be the case. The resolution asks debaters to evaluate the American people as a whole, giving both sides ground to debate the effect of union streamlining on the unemployed (and their chances of obtaining employment), the equality provided to those already employed, and the effect on commerce and price changes that effect the totality of the American populace.

While unions may be beneficial in some senses (remember, avoid the good, bad debate), EFCA significantly expands the ways in which unions are certified and the way in which they represent those in their organization.[5] In the status quo, individuals must prove that substantial support exists for the creation of a union to the National Labor Relations Board. Pro-union supporters can rally workers to sign a card supporting the creation of a union. After 30% approval has been achieved, a secret ballot election can be called by the employer to confirm this support. The resulting campaign lets employers and pro-union workers to face off, displaying and promoting opposing sides of union creation.[6] However, the EFCA destroys the campaign process and allows unions to circumvent the employer's voice. John Hollon explains that:

> That's why the Employee Free Choice Act is such a miserably misleading and flawed piece of legislation: It cavalierly dismisses the democratic principles of fair play, open debate and the secret ballot for a

[5] Iowa Defense Alliance, http://iowadefense.wordpress.com/2009/03/11/employee-free-choice-act-of-2009-compromising-employee-protections/

[6] John Hollon, *Workforce Management*, January 19, 2009, "A poor 'choice'; The Employee Free Choice Act cavalierly dismisses the democratic principles of fair play, open debate and the secret ballot," accessed via Lexis Nexis.

> system that instead would be heavily stacked in favor of a union gaining admission to a workplace simply by gathering signatures.[7]

The campaign preceding the secret ballot election is necessary to protect the opinions of the individual and avoid harassment in the work place. The card check policy would breakdown these safeguards and eliminates the importance of the campaign. EFCA specifically removes the need for a democratic vote altogether and allows unions to gain nearly instant authority based on a card check policy.[8]

The democratic process of campaigning in the workplace is necessary for an informed workforce. The federal National Labor Review Board provides for accountability in the process of the campaign by enforcing campaign rules, managing voting booths, and finalizing ballot counts.[9] However, the EFCA allows unions to bypass the campaign process entirely once they have gained 51% of an initial card check. This does not even require a majority of the workforce. They-literally-only need 51% even if the margin is very slim. Unions have their benefits and disadvantages. It is in the interest of the American workforce to have both sides be able to voice their concern, reservations, or support for union development instead of being rushed into a one-sided petition-turned-union. Even a short campaign season would be beneficial. However, bypassing the entirety of the campaign process is not in everyone's best interest.[10]

EFCA legislation would also allow for employee harassment by pro union supporters. A Boston Globe article explains:

> Union organizers could visit employees at their homes, take them out for drinks, or ask them to sign cards in front of co-workers. They could publish lists of who signed and who refused. The National Labor

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[7] John Hollon, *Workforce Management*, January 19, 2009, "A poor 'choice'; The Employee Free Choice Act cavalierly dismisses the democratic principles of fair play, open debate and the secret ballot," accessed via Lexis Nexis.

[8] John Hollon, *Workforce Management*, January 19, 2009, "A poor 'choice'; The Employee Free Choice Act cavalierly dismisses the democratic principles of fair play, open debate and the secret ballot," accessed via Lexis Nexis.

[9] Patrick J. Bannon, January 18, 2009, *The Boston Globe,* "BILL WOULD ALLOW UNIONS TO EXPAND AT ALL COSTS," accessed via Lexis Nexis.

[10] Chad Halcom, *Crain's Detroit Business*, January 12, 2009, "Labor law changes look likely; First up in Congress may be Employee Free Choice Act," accessed via Lexis Nexis

> Relations Board would be prohibited from holding an election to determine whether the cards reflected the employees' true preferences.[11]

These actions can result in borderline harassment and are detrimental to the principles of democracy because they infringe on the protection of the secret ballot. By publicly displaying the yeas and nays of union creation, this leaves individuals open to ridicule and harassment by the union supporter, co-workers, and even their employers. This fundamental protection of the individual's right to vote in secret is essential to a democratic election. Furthermore, the tactics allowed by EFCA removes safeguards for a true evaluation of an individual's support of a union. Without a secret ballot, individuals could be socially coerced into supporting the majority side to avoid the ridicule previously discussed. In the status quo, "employees feeling pressure can publicly appease the union (or management!) and then vote their conscience in the privacy of the ballot booth."[12] However, some argue that status quo policies result in a monopolization of information by the employer who generally has more resources available at their disposal. This results in a lopsided transmission of information. However, the EFCA counter proposal is hardly a solution.

EFCA also requires binding arbitration in the case that employees cannot come to a decision within 90 days. Under the legislation:

> Collective bargaining must also begin almost immediately under EFCA, and if the company and employees have unresolved issues after 90 days they go before a mediator. If the mediator cannot fashion an agreement between the parties within another 90 days, the remaining issues go before an arbitrator for a binding decision.[13]

For a newly formed union, first-time labor contracts can be difficult to negotiate. EFCA would prematurely force employees and employers into binding contracts, leaving neither side satisfied. However, new EFCA regulations

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[11] Patrick J. Bannon, January 18, 2009, *The Boston Globe,* "BILL WOULD ALLOW UNIONS TO EXPAND AT ALL COSTS," accessed via Lexis Nexis.
[12] Patrick J. Bannon, January 18, 2009, *The Boston Globe,* "BILL WOULD ALLOW UNIONS TO EXPAND AT ALL COSTS," accessed via Lexis Nexis.
[13] Chad Halcom, *Crain's Detroit Business*, January 12, 2009, "Labor law changes look likely; First up in Congress may be Employee Free Choice Act," accessed via Lexis Nexis

are meant to decrease the drawn-out process and force employers to bow to the needs of the union. Additionally, small businesses would be subject to union development as well.[14] This represents a unique obstacle in the face of economic crisis that could hinder small business growth. The ease of creating a union is not the only question at stake: "Do you really organize a mom-and-pop just because you can? No, there are still economic factors…Does the employer have the ability to pay higher wages? Is the employer in an industry where it can pass increased labor costs on to customers?"[15] The new timeframe bargaining requirement could be devastating to small businesses because forced arbitration would decrease the business' ability to bargain for lower wages or benefits, killing off the business itself. The manufacturing industry is worried that an increase in union numbers would significantly increase the cost of labor in a time of economic crisis.[16] This would not be in the best interest of Americans. A collapse of the industry could leave many more unemployed and drain social programs in the aftermath.

However, EFCA does have good intentions. In a country where unemployment is rising and jobs are being cut, "common sense would suggest that allowing more workers a free choice to join unions would be a good thing for the economy - which is what the Employee Free Choice Act does."[17] Additionally, the act does not stipulate that 51% card check approval is the *only* method to create a union. In fact, card check is more of a backup deal in case employers block the campaign process.[18] The legislation technically allows for employees and union organizers to choose the method of union creation. The main concern from those opposing the legislation is that individuals will always choose card check. However, this argument is largely unfounded. EFCA allows for choice, which is more democratic than the current process that is overshadowed by anti-union businesses. The current policies for forming unions are tilted in favor of the employer. "[E]mployers often threaten and intimidate their workers more

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[14] Christina Le Beau, *Crain's Chicago Business*, January 9, 2009, "A more union-friendly world; Even if 'card-check' bill doesn't become law, small-biz owners need to adjust to a new reality," accessed via Lexis Nexis.

[15] Christina Le Beau, *Crain's Chicago Business*, January 9, 2009, "A more union-friendly world; Even if 'card-check' bill doesn't become law, small-biz owners need to adjust to a new reality," accessed via Lexis Nexis.

[16]David Prizinksky, December 1, 2008, *Crain's Cleveland Business*, GAINING STRENGTH; The likely passage of the Employee Free Choice Act could be the elixir unions need to regain their stronghold," accessed via Lexis Nexis

[17] Andy Stern, January 18, 2009, *The Boston Globe*, "Unions can help close the income gap," accessed via Lexis Nexis.

[18] Jaime Contreras, January 1, 2009, Washington Times, "Choice for the workers," accessed Lexis Nexis.

than 90 percent of the time, and a quarter illegally fire union supporters."[19] EFCA gives employers a better bargaining chip in the formation of a union through card check. Employees maintain primary control over the process, not the companies. Under the current system, tens of millions of individuals would join a union if the persistent employer-based intimidation were not present; however, because of employer opposition, only one in five will actually succeed in forming a union.[20] EFCA would restore the middle class and close the rich-poor gap by strengthening job security and increasing worker's rights.[21] The likely rise in wages as a result of unionization would be seen as an economic stimulus for the American people.[22] Just like the Labor Relations Act improved working conditions for Americans as a centerpiece of the New Deal, so too will EFCA improve the living standards for Americans in the workplace and provide a necessary jolt to the economy.[23]

Given the abusive practices of both unions and business, labor reform is clearly needed. The EFCA challenges previously conceived notions regarding the place of the employer in the bargaining process and union formation as well as individual rights within the workplace. The interests of the American people are diverse and complex from job security, economic stability, and individual choice. The central focus of this month's debate comes down to a few simple questions: 1) Will EFCA destroy industries before improving worker conditions? 2) How important is individual choice in the unionization process? And 3) Which set of rules (EFCA or NLRA) decreases the intimidation that workers face? Ultimately, the avenue of achieving the American's people's best interest could lie within the text of the Employee Free Choice Act of 2009.

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[19] Andy Stern, January 18, 2009, *The Boston Globe,* "Unions can help close the income gap," accessed via Lexis Nexis.
[20] Andy Stern, January 18, 2009, *The Boston Globe,* "Unions can help close the income gap," accessed vi Lexis Nexis.
[21] Andy Stern, January 18, 2009, *The Boston Globe,* "Unions can help close the income gap," accessed via Lexis Nexis.
[22] David Prizinksky, December 1, 2008, *Crain's Cleveland Business*, GAINING STRENGTH; The likely passage of the Employee Free Choice Act could be the elixir unions need to regain their stronghold," accessed via Lexis Nexis
[23] Steve Early, *The Boston Globe,* December 6, 2008, "Unions to Obama: Don't Abandon Us," accessed Lexis Nexis.

EVIDENCE

THE EFCA INCREASES WORKERS RIGHTS.

George Miller, "The Committee on Education and Labor Report on the Employee Free Choice Act of 2007" House of Representatives Report 110-23, Feb. 16, 2007.

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

THE MIDDLE CLASS IS KEY TO THE ECONOMY. THE EFCA EFFECTIVE PROTECTS THE MIDDLE CLASS.

George Miller, "The Committee on Education and Labor Report on the Employee Free Choice Act of 2007" House of Representatives Report 110-23, Feb. 16, 2007.

The middle class is the backbone of this country's strong economy and vibrant democracy. A strong middle class is critical to the long-term prosperity and stability of the United States. The Employee Free Choice Act of 2007 is—in the final analysis— about saving the American Dream for millions of hard working families who struggle every day to pay for the basics, pay for health care when there is a family illness, to build a nest egg for their future, and to get their children to college in the face of skyrocketing college costs.

THE EFCA ALLOWS COLLECTIVE BARGAINING TO OCCUR FREE OF REPRISAL.

George Miller, "The Committee on Education and Labor Report on the Employee Free Choice Act of 2007" House of Representatives Report 110-23, Feb. 16, 2007.

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

ALLOWING UNIONIZATION AND COLLECTIVE BARGAINING IS AN INTERNATIONALLY RECOGNIZED HUMAN RIGHT.

George Miller, "The Committee on Education and Labor Report on the Employee Free Choice Act of 2007" House of Representatives Report 110-23, Feb. 16, 2007.

H.R. 800 addresses a human rights crisis that is a leading cause of the middle class squeeze. The freedom to form or join a labor union and engage in collective bargaining is an internationally-recognized human right. In the United States, the freedom of association is enshrined in the First Amendment of the Bill of Rights. While this freedom is often associated with political ventures, it is a long-standing American principle and tradition that working people may join together to improve their economic circumstances.

EMPLOYER'S ARE ANTI-UNION IN THE STATUS QUO.

George Miller, "The Committee on Education and Labor Report on the Employee Free Choice Act of 2007" House of Representatives Report 110-23, Feb. 16, 2007.

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

UNIONIZED WORKERS HAVE INCREASED SALARIES AND BENEFITS COMPARED TO NON-UNIONIZED EMPLOYEES.

George Miller, "The Committee on Education and Labor Report on the Employee Free Choice Act of 2007" House of Representatives Report 110-23, Feb. 16, 2007.

The Employee Free Choice Act featured prominently as a key solution to the middle class squeeze in this hearing. Witness Richard L. Trumka, Executive Vice President of the AFL–CIO, testified: ‘The best opportunity for working men and women to get ahead economically is to unite with their co-workers to bargain with their employers for better wages and benefits.’’ 29 He pointed out that unionized workers earn 30 percent more than non-union workers, are 62 percent more likely to have employer-provided health care coverage, and are four times more likely to have guaranteed defined benefit pensions. According to Mr. Trumka, while nearly 60 million workers say they would join a union if they could, the vast majority have not because of a broken system for forming unions and collective bargaining that does not protect workers’ fundamental rights.

USING EVERY MEASURABLE STATISTIC, THE EFCA WOULD INCREASE WAGES AND BENEFITS.

George Miller, "The Committee on Education and Labor Report on the Employee Free Choice Act of 2007" House of Representatives Report 110-23, Feb. 16, 2007.

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

THE DECLINE IN UNIONS HAS LED TO A DECREASE IN WAGES AND BENEFITS.

George Miller, "The Committee on Education and Labor Report on the Employee Free Choice Act of 2007" House of Representatives Report 110-23, Feb. 16, 2007.

Strong unions set industry-wide standards that benefit workers across an industry, regardless of their union or nonunion status. Moreover, the threat of unionization often leads employers to attempt to match or approach union pay and benefit scales in order to discouage unionization. A recent study found that, for example, a high school graduate who is not even a union worker but whose industry s at least 25 percent unionized will be paid 5 percent more than similar workers in less organized industries.31 A 2002 study found that ''more than half of the decline in the average wage paid to workers with a high school education or less can be accounted for by the decline in union density.'' 32 A 1999 study found that the drop in union density explained about 20 percent of the decline in the percentage of workers receiving employer-provided health insurance between 1983 and 1997.33 A 2005 report recently explained that ''further erosion of unionization is likely to coincide with an overall erosion in the percentage of workers with employment based health benefits.''

THE EFCA SUPPRESSES EMPLOYER'S FREE SPEECH.

Richard E. Epstein, "The Employee Free Choice Act is Unconstitutional," The Wall Street Journal, December 18, 2008.

It is commonly supposed that economic regulation is immune to constitutional challenge since the New Deal. That's not the case with this labor law. Consider card check and the First Amendment. Under the National Labor Relations Act (NLRA) today, an employer can insist upon a secret ballot after 30% of workers indicate by card checks their interest in a union. The campaign that follows lets the employer air his views about the downsides of unionization before the vote takes place. To be sure, the employer's free-speech rights are limited under the NLRA. He cannot threaten to move or shut down if workers vote for the union. Nor can he promise higher wages if they don't. But he can make predictions of what will happen if his firm is unionized, and he can point to the reversal of worker fortunes in other unionized firms. The Supreme Court (unfortunately, in my view) has held that the peculiar labor-law environment justified these abridgements of ordinary speech rights. But it hardly follows that if the government can curtail speech rights, the EFCA can eliminate them. There is simply no legitimate government interest in promoting unionization that justifies a clandestine organizing campaign which denies all speech rights to the unions' adversaries.

THE EFCA DOES NOT ALLOW THE EMPLOYER TO HAVE EQUAL RIGHTS BECAUSE THE UNION IS ALLOWED MANDATORY ARBITRATION.

Richard E. Epstein, "The Employee Free Choice Act is Unconstitutional," The Wall Street Journal, December 18, 2008.

The EFCA takes away the employer's right to walk. Now the successful union, backed by direct government power -- i.e., mandatory arbitration -- can force itself on the firm. Yet the proposed law does not let any court block the deal or ensure that the mandated terms offer a reasonable return on its invested capital. (Even modern rent control statutes require that much.) The government-chosen panel could well impose terms that might cripple the firm competitively. Consider that the takings clause surely prevents the government from forcing any person to buy real estate for twice its market value from a seller. That same principle applies to this labor law: No government should be able to force a firm to hire labor at $50 per hour when the company is not willing to pay half that much.

FREEDOM OF ASSOCIATION PROVIDED FOR BY THE EFCA IS A FUNDAMENTAL HUMAN RIGHT THAT SHOULD BE PROTECTED.

Human Rights Watch, "The Employee Free Choice Act: A Human Rights Imperative" January 2009.

Congress should pass the Employee Free Choice Act to help remedy glaring deficiencies in current US labor law that significantly impair the right of workers to freely choose whether to form a union. Workers' right to organize and bargain collectively is well established under international human rights law. As a member of the International Labour Organization (ILO) and party to several important international legal instruments, the United States is legally bound to protect this fundamental right. In practice, it falls far short, and failure by US employers to respect workers' right to freedom of association is rampant.

THE STATUS QUO DOES NOT ALLOW ADEQUATE WORKER'S RIGHTS TO BE LEVERAGED AGAINST THE EMPLOYER.

Human Rights Watch, "The Employee Free Choice Act: A Human Rights Imperative" January 2009.

US labor law currently permits a wide range of employer conduct that interferes with worker organizing. Enforcement delays are endemic, regularly denying aggrieved workers their right to an "effective remedy." Sanctions for illegal conduct are too feeble to adequately discourage employer law breaking, breaching the international law requirement that penalties be "sufficiently dissuasive" to deter violations. Unfair union election rules allow employers to engage in one-sided, aggressive anti-union campaigning while denying union advocates a similar chance to respond and banning union organizers from the workplace or even from distributing information on company property. If confronted with clear evidence of employee support for a union, employers can force a formal election and manipulate the often lengthy pre-election period to pound their anti-union drumbeat and, in many cases, violate US labor laws, confident that any penalties will be minimal and long delayed.

PASSING THE EFCA IS A HUMAN RIGHTS IMPERATIVE.

Human Rights Watch, "The Employee Free Choice Act: A Human Rights Imperative" January 2009.

Despite its clear obligations under international law to protect workers' right to freedom of association, the United States fails to do so. US labor law is weak and riddled with loopholes. Penalties for violations are minimal and further emasculated by systematic and lengthy enforcement delays. The Employee Free Choice Act, passed by the US House of Representatives in 2007 and likely to be considered by the US Congress in early 2009, would remedy many of the most pernicious legal shortcomings. Its passage, therefore, is a human rights imperative.

THE EFCA WOULD STRENGTHEN PENALTIES FOR UNLAWFUL ANTI-UNION CONDUCT.

Human Rights Watch, "The Employee Free Choice Act: A Human Rights Imperative" January 2009.

The Employee Free Choice Act would strengthen the penalties for unlawful anti-union conduct during organizing drives and first-contract negotiations. The Act would increase the amount due to workers fired, demoted, suspended, or otherwise discriminated against for their organizing activity, increasing the current "make-whole" remedy by requiring payment of "2 times that amount as liquidated damages."15 The Act would also institute civil fines, payable to the US government, of up to $20,000 per violation for willful or repeated illegal conduct. In addition, the Act would eliminate the discrepancy between the treatment of workers' and employers' alleged serious labor law violations by requiring the NLRB to seek a 10(j) injunction if it reasonably believes that an employer engaged in unlawful anti-union activity that "significantly interferes with, restrains, or coerces employees" in the exercise of their right to organize and bargain collectively as set forth in US law.16

THE EFCA STILL ALLOWS EMPLOYER'S TO MOUNT AGGRESSIVE CAMPAIGNS AGAINST UNIONS AND ALLOWS EMPLOYER ORGANIZERS A CHANCE TO RESPOND TO THE UNION.

Human Rights Watch, "The Employee Free Choice Act: A Human Rights Imperative" January 2009.

The Employee Free Choice Act would not ban employers from mounting aggressive anti-union campaigns or require them to allow union advocates and organizers an equal chance to respond, but it would significantly mitigate the negative impact of existing union election rules on workers' right to freedom of association. Under the Act, workers could opt to select union representation through card check or an NLRB election, and employers would be compelled to respect that choice. Upon NLRB confirmation that a majority of workers had signed valid union authorizations or "cards," employers would be required to recognize and bargain collectively with the union, rather than forcing an NLRB vote.27 As a result, employers would no longer be guaranteed a pre-election period during which to exploit weak US labor laws and practice "to delay or prevent" union formation or otherwise undermine workers' right to choose freely whether to organize.

CARD CHECKS DO NOT REPRESENT WORKERS' FREE AND CONSIDERED CHOICES.

James Sherk, "How Union Card Checks Block Workers' Free Choice" The Heritage Foundation, February 21, 2007.

Union activists argue that government-supervised secret-ballot organizing elections are "inherently and intensely coercive" and that publicly signing a union membership card in the presence of union organizers, known as card-check organizing, is the only way that workers can freely choose to unionize.[1] But due to union organizers' techniques, card checks often do not reflect workers' free and considered choice about union membership. Even when organizers do not illegally threaten workers, card checks expose workers to organizers' psychological manipulations and give them only one side of the story. Card checks lead many workers to make impulse decisions and expose workers who wish time to consider their decision to harassment by union organizers. Cards signed in public simply do not represent workers' free and considered choice.

CARD CHECKS ARE SUBJECT TO POWERFUL UNION MANIPULATION.

James Sherk, "How Union Card Checks Block Workers' Free Choice" The Heritage Foundation, February 21, 2007.

Publicly signed union cards do not reveal employees' free and considered choices. They allow unscrupulous organizers to threaten workers who refuse to sign up. Even when organizers obey the law, card-check allows organizers to manipulate workers psychologically, giving them only one side of the story and pushing them to make an impulsive decision to join the union with little time for reflection. Organizers can then return and repeatedly pressure holdouts to change their minds. Card checks reveal little about whether or not workers actually want to join a union, and the government should not take away workers' right to vote in privacy with a secret ballot when deciding to unionize.

THE EFCA LEADS TO EMPLOYEE MANIPULATION TO GET TO THE 50% THRESHOLD REQUIRED BY THE CARD CHECK REQUIREMENT.

Patrick J. Bannon, "Bill Would Allow Unions to Expand at All Costs," The Boston Globe, January 18, 2009.

If the Employee Free Choice Act becomes law, unions need only collect signed authorization cards from over 50 percent of a group of employees to be certified as representing the group. Union organizers could visit employees at their homes, take them out for drinks, or ask them to sign cards in front of co-workers. They could publish lists of who signed and who refused. The National Labor Relations Board would be prohibited from holding an election to determine whether the cards reflected the employees' true preferences.

THE EFCA ELIMINATES WORKER PROTECTIONS FROM UNION INTIMIDATION TACTICS.

Patrick J. Bannon, "Bill Would Allow Unions to Expand at All Costs," The Boston Globe, January 18, 2009.

Today, employees feeling pressure can publicly appease the union (or management!) and then vote their conscience in the privacy of the ballot booth. The Employees Free Choice Act would eliminate that protection. No less a friend to labor than former Democratic presidential nominee George McGovern calls the bill "a disturbing and undemocratic overreach" that could cost workers "the right to make a decision without anyone peering over their shoulder, free from fear of reprisal."

THE EFCA TAKES THE POWER OF NEGOTIATION OUT OF THE HANDS OF THE EMPLOYER AND PUTS IT INTO THE HANDS OF AN ARBITRATION PANEL IF THE EMPLOYER DOES NOT AGREE TO THE UNION DEMANDS IN CONTRACTS.

Patrick J. Bannon, "Bill Would Allow Unions to Expand at All Costs," The Boston Globe, January 18, 2009.

For decades, so long as a labor union and a business owner negotiate in good faith, the end result of their negotiations has been up to them. Under the bill, if an employer fails to sign a contract with a new union within 130 days, a panel of labor arbitrators would dictate contract terms binding for two years. Suppose, for example, the United Auto Workers obtained authorization cards from 51 percent of assembly line workers at a formerly nonunion Toyota plant and insisted that the labor contract for the plant mirror its standard Detroit Three contracts. If Toyota refused to agree within 130 days, a panel of labor arbitrators would impose an agreement. For two years, pay and benefits, work rules, and use of subcontractors at the plant would be decided not by Toyota but by the arbitrators. Saddling businesses with obligations imposed by labor arbitrators makes no more sense than taking secret ballots away from workers. Congress and Obama should not sacrifice core principles of American labor relations to promote union expansion at all costs.

PASSING THE EFCA AND PROMOTING UNIONS HELPS TO INCREASE THE MIDDLE CLASS AND SOLVE THE ONGOING ECONOMIC CRISIS.

Andy Stern, "Unions Can Help close the Income Gap" The Boston Globe, January 18, 2009.

American workers need a raise in order to generate the purchasing power needed to turn around the economy. Recent research shows that workers' reduced collective bargaining power and declining union membership are key contributors to declining middle-class incomes. Since workers in unions earn 30 percent higher wages and are 59 percent more likely to have employer-provided health insurance than their nonunion counterparts, less bargaining power means lower wages. Again, common sense would suggest that allowing more workers a free choice to join unions would be a good thing for the economy - which is what the Employee Free Choice Act does. It is a sensible, nongovernmental solution that would enable more workers to sit down with their employers and negotiate raises and benefits. The bill provides that when a majority of workers decide to join a union, they can do so by the method of their own choosing - by majority sign-up or holding an election. Ensuring that workers, not corporations, decide whether or not to form a union just makes sense.

THE EFCA PUTS 105 MILLION AMERICAN WORKERS AT RISK OF COERCIVE CARD CHECKS.

James Sherk, "Employee Free Choice Act Would Disenfranchise 105 Million Workers" The Heritage Foundation, January 7, 2008.

The Employee Free Choice Act (EFCA) would disenfranchise 105 million American workers. For union organizing elections, the legislation would replace the secret ballot with a system of "card checks," where union organizers pressure workers to publicly sign a card stating they want to join a union. Workers would never have the option of voting against union membership, and millions of workers could be forced into a union without ever getting the chance to vote on the matter. Congress should preserve a worker's right to vote in privacy on union membership.

THE EFCA REDUCES SECRET BALLOT ELECTIONS WHICH ARE KEY FOR EMPLOYEES TO EXERCISE FREE CHOICE WHEN MAKING DECISIONS ABOUT UNION LEADERSHIP.

James Sherk, "Employee Free Choice Act Would Disenfranchise 105 Million Workers" The Heritage Foundation, January 7, 2008.

A fundamental principle of American democracy is that votes are private choices. Secret ballot elections ensure that voters can choose the candidate who truly represents them, not the candidate whom their friends or neighbors want them to support. Millions of Americans cherish this freedom, but many Members of Congress want to take it from American workers. For more than 60 years, American workers have decided whether to form a union with a private vote. When enough workers at a company sign union authorization cards, the government supervises a secret ballot election. Workers vote "yes" or "no" on union membership. If a majority of workers vote "yes," a union is formed, but neither management nor union organizers know how each individual worker voted. The secret ballot lets workers vote their conscience without risking job loss or physical assault for making the "wrong" choice.

UNIONIZED COMPANIES CUT INVESTMENT SPENDING AND LEAD TO LESS JOBS.

James Sherk, "Employee Free Choice Act," The Heritage Foundation, January 12, 2009.

EFCA would enable unions to pressure and intimidate millions of workers into joining unions. Unionized companies cut investment spending by 15-25 percent and create far fewer jobs than nonunion companies. Passing EFCA means fewer jobs and less economic growth. Unionized companies are less flexible than nonunion companies because they must collectively bargain any changes to their labor contract. They are less able to innovate and respond to competition.

UNIONIZATION WILL KILL SMALL BUSINESSES DUE TO UNION DEMANDS AND COSTS REQUIRED BY UNIONS.

Richard A. Epstein, The Case Against the Employee Free Choice Act" The University of Chicago School of Law, January 2009.

Small businesses, which as a group are the largest source of new jobs in the country, will find themselves besieged with insistent demands for unionization, for which they are ill-equipped to cope. These businesses often operate on small budgets, without the assistance of full time lawyers. Under EFCA, their first exposure to unions could come at the conclusion of a secret campaign, which requires them to both hire and acquire expertise on contentious matters for which they are ill-equipped to deal, at a cost which they can ill afford to bear. These calls for unionization will divert management from the essential tasks of product development, marketing and sales, on which their business models necessarily depend. The likely consequence of EFCA will be to retard the formation of small businesses, as fledgling entrepreneurs will reassess their prospects of success to take into account the danger of derailment at an early stage in the process. In the long-term the EFCA will reduce the rate of firm formation, and thus deprive the economy of a central driver of new job creation and technology growth.

CANADIAN UNIONS PROVE THAT UNIONIZATION LEADS TO A LOSS OF JOBS.

Roy Adams, "The Employee Free Choice Act: A Skeptical View and Alternative" Labour Studies Journal, Winter 2007.

Since the early 1990s, Canadian unions have devoted significant new resources to union organizing with considerable success in terms of new union recruits. Jackson and Schetagne (2004) estimate that new organizing extended union coverage by between 1.4 and 1.8 percent annually. But, "the positive impact on union density has been offset by overall changes in employment in union and non-union workplaces" (Jackson and Schetagne 2004, 53). Moreover, the entry into Canada of aggressively anti-union employers such as Wal-Mart may have emboldened employers to take stronger positions on union-avoidance. Wal-Mart has been pushing for the end of card-check certification and the adoption in all Canadian jurisdictions of a vote in every certification case. The company argues that the current situation unfairly favors the interests of the established unions over those of the unorganized employer (Adams 2005).

THE EFCA ENHANCES UNION POWER.

Roy Adams, "The Employee Free Choice Act: A Skeptical View and Alternative" Labour Studies Journal, Winter 2007.

The Employee Free Choice Act purports to secure, apparently, the choice between collective and individual bargaining, thus legitimizing individual representation as a reasonable alternative to collective representation. That proposition affirms rather than denies the union-free paradigm's legitimacy, thus enhancing its credibility and power to shape behavior. So long as that paradigm continues to dominate, the continuing decline of the American labor movement is all but inevitable.

THE EFCA RESTORES BALANCE TO LABOR MARKETS.

Richard B. Freeman, Rank Levy, and Lawrence Mishel, "Noted Economists: The Employee Free Choice Act is needed to restore balance in the labor market," Washington Post, February 25, 2009.

A rising tide lifts all boats only when labor and management bargain on relatively equal terms. In recent decades, most bargaining power has resided with management. The current recession will further weaken the ability of workers to bargain individually. More than ever, workers will need to act together. The Employee Free Choice Act is not a panacea, but it would restore some balance to our labor markets. As economists, we believe this is a critically important step in rebuilding our economy and strengthening our democracy by enhancing the voice of working people in the workplace.

AMERICAN WORKERS PREFER SECRET BALLOTING TO CARD CHECKS.

US Chamber of Commerce, "Letter to Congress Opposing the "Employee Free Choice Act," US Chamber of Commerce, June 20, 2007.

Due to the inherent and long recognized problems with the card checks process, it should come as no surprise that Americans overwhelmingly prefer the time honored secret ballot process over card check schemes. In a recent poll by McLaughlin and Associates, almost 9 in 10 voters agree that workers should continue to have the right to a federally supervised secret ballot election when deciding whether or not to organize a union. Even union members themselves recognize that secret ballot elections are the fairest way to choose whether to form a union. In a poll by Zogby International, union members overwhelmingly (84% to 11%) indicated that employees should have the right to specifically vote on whether to join a union.

UNION DECLINE SQUEEZES THE MIDDLE CLASS, RAISES INEQUALITY, AND UNDERMINES DEMOCRATIC VALUES.

Harley Shaiken, "Unions, the economy, and employee freedom of choice," Agenda for Shared Prosperity: EPI Briefing Paper #181, February 22, 2007.

Shrinking union membership affects all Americans. Unions paved the way to the middle class for millions, pioneering benefits along the way such as paid pensions and health care. Now, labor's decline squeezes the middle class, raises inequality, and undermines democratic values. An effective way to address this "democracy deficit" is through the Employee Free Choice Act (EFCA). What the Act does is straightforward: it allows workers to form a union if a majority of people in a workplace sign up for one, short circuiting employer-dominated representation campaigns. In addition, it provides meaningful penalties for those who would violate workers' rights and ensures that, if workers choose a union, then collective bargaining actually results. The Act restores free choice and balance to a system that currently is driven by aggressive employers, anti-union consultants, coercion, and fear.

COLLECTIVE BARGAINING STRIKES AN EFFECTIVE BALANCE BETWEEN EMPLOYER AND EMPLOYEE DESIRES.

Peter J. Hurtgen and John S. Irving, "Don't Let Government Dictate Labor Contracts," The Wall Street Journal, March 13, 2009.

Collective bargaining strikes a balance between the normal desires of management to keep costs down and retain flexibility, and the union's desire to deliver on promises made to employees. Current law provides that bargaining parties are not required to make concessions. Thus, resolving these differences takes time, since sometimes their goals are unrealistic. But parties' goals and demands are tempered by other bargaining dynamics, such as the respective rights to strike and lockout, about which this bill is silent. Most often, the delays that do occur in reaching first agreements are due to these dynamics and the realities of collective bargaining -- not to unlawful "bad faith" by either party, for which prosecution and injunctions already are available.

UNIONS ARE DISENFRANCHISED BY GOVERNMENTAL INVOLVING IN NEGOTIATIONS WHICH THE EFCA MANDATES.

Peter J. Hurtgen and John S. Irving, "Don't Let Government Dictate Labor Contracts," The Wall Street Journal, March 13, 2009.

Despite what union leaders would have us believe, the system of collective bargaining in place since 1935 is not broken. Nor is the mechanism for determining union representation: In fact, unions currently win well over 50% of certification elections. (In the first half of 2008, they won 67% of the time.) There is simply no basis for depriving employees of free choice, and employers and unions of meaningful opportunities to shape their own private bargains without government interference. The proper role for government is to bring parties to the table for good-faith bargaining after employees have freely chosen union representation; it is not to dictate terms of employment.

THE EFCA CHANGES THE CURRENT SYSTEM IN TWO WAYS. FIRST, IT MAKES MANDATORY UNION REPRESENTATION WHEN THE MAJORITY OF EMPLOYEES WISH TO HAVE IT. SECOND, IT MAKES MANDATORY ARBITRATION MANDATORY IF A COLLECTIVE BARGAINING AGREEMENT IS NOT REACHED 130 DAYS AFTER A UNION IS NEWLY CERTIFIED.

Anne Layne-Farrar, "An Empirical Assessment of the Employee Free Choice Act: The Economic Implications," Social Science Research Network, March 3, 2009.

The Employee Free Choice Act (EFCA), which is pending before the US Congress, would deeply change labor relations and has the potential to fundamentally alter the landscape of the US economy. As currently drafted, the legislation contains two major provisions, the first of which would provide for union representation when an employee majority has signed union authorization cards and the second of which calls for a system of mandatory arbitration if a collective bargaining agreement is not reached approximately 130 days after a union is newly certified. In addition, the legislation would increase penalties against employers for certain unfair labor practices.

THE PROPOSED EFCA RULES WOULD HAVE DETRIMENTAL EFFECTS ON THE UNEMPLOYMENT RATE AND JOB CREATION.

Anne Layne-Farrar, "An Empirical Assessment of the Employee Free Choice Act: The Economic Implications," Social Science Research Network, March 3, 2009.

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

UNION DECLINE IS ENDEMIC TO ALL DEVELOPED ECONOMIES. EMPLOYEES SEEM TO LACK THE WANT TO JOIN UNIONS.

Anne Layne-Farrar, "An Empirical Assessment of the Employee Free Choice Act: The Economic Implications," Social Science Research Network, March 3, 2009.

EFCA supporters contend that the unions' steady decline in the US is the result of employer misconduct that has been improperly permitted under US labor law. Yet, the levels of unionized workers have declined everywhere in developed economies, regardless of the labor law regime in effect. For example, Visser analyzed data from 14 developed countries and concludes that private sector unionization across all countries has been strongly declining since the 1970s.4 A key factor in this trend has been the declining employment in heavily unionized industries – e.g., the US auto industry – which obviously has contributed to enormous decreases in union membership. Successful union organizing requires an underlying desire by employees to belong to a union, and there is ample evidence that modern employees have an array of likes and dislikes that differ significantly from past generations such that workers have found it less attractive to join unions than they have in previous years.

THE EFFECT OF ULPS IS INSIGNIFICANT

Anne Layne-Farrar, "An Empirical Assessment of the Employee Free Choice Act: The Economic Implications," Social Science Research Network, March 3, 2009.

Unions claim these employer ULPs have improperly dampened union support among employees.11 The findings in a 1985 study by Cooke call those claims in question. Cooke conducted an empirical analysis of campaign-related employer ULPs (defined generally as violations of section 8(a)(1) of the National Labor Relations Act, among other provisions).12 He found that, from the time unions produced a card showing of employee support (used to support an NLRB election petition) to the end of the union organizing campaign, the estimated effect of improper employer opposition was "insignificant and seem[ed] to have little impact on reducing the likelihood of a union victory". This finding is corroborated by a more recent study by Ferguson (2008), who concludes that during the union campaign "the effect of ULP charges were not statistically significant."13 This research casts doubt on the EFCA premise that unlawful employer conduct during post-petition conventional union organizing has been responsible for preventing unions from winning NLRB-sponsored secret ballot representation elections.

WHILE WAGES GO UP ON THE AGGREGATE WITH UNIONS, UNIONS ACTUALLY REDUCE THE WAGE DIFFERENCTIAL BETWEEN INDUSTRIES, BETWEEN FIRMS IN THE SAME INDUSTRY, AND ALSO BETWEEN WORKERS WITHIN A FIRM.

Anne Layne-Farrar, "An Empirical Assessment of the Employee Free Choice Act: The Economic Implications," Social Science Research Network, March 3, 2009.

The most immediate benefit workers can expect from joining a union is higher wages. Blanchflower, in a survey of US studies on wage differentials, concludes that union members earn on average about 15% more that their nonunion counterparts.15 Bookending this figure, Filer et al. place the union-nonunion differential at 8%-12% while Bratsberg and Ragan find that it reached 22% in the mid 1970s.16 While these studies present average differentials, it is important to understand that the union wage markup is not the same among all sectors of the economy or even among all unionized workers. Moreover, higher wages for union workers tends to compress the overall distribution of wages, such that the presence of unions significantly reduces the wage differential between industries, between firms in the same industry, and also between workers within a firm.

UNIONS LEAD TO LESS EMPLOYMENT OPPORTUNITIES.

Anne Layne-Farrar, "An Empirical Assessment of the Employee Free Choice Act: The Economic Implications," Social Science Research Network, March 3, 2009.

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

UNIONIZED LABOR TRANSLATES INTO A $57 BILLION LOSS IN NATIONAL OUTPUT.

Anne Layne-Farrar, "An Empirical Assessment of the Employee Free Choice Act: The Economic Implications," Social Science Research Network, March 3, 2009.

As union labor becomes more expensive and firms substitute away from it, the result can be an increase in allocative inefficiencies that in turn lowers national production. Economists have calculated the GDP loss as ranging from 0.14% (per Rees28) to 0.40% (according to a 1984 study by Freeman and Medloff).29 In today's terms, a reduction in GDP of 0.40% would translate into a loss of $57 billion in national output.

UNIONIZED FIRMS TEND TO INVEST LESS ON CAPITAL AND RESEARCH AND DEVELOPMENT BECAUSE THEY HAVE FEWER RESOURCES TO INVEST BECAUSE OF THE COSTS OF UNIONIZATION.

Anne Layne-Farrar, "An Empirical Assessment of the Employee Free Choice Act: The Economic Implications," Social Science Research Network, March 3, 2009.

Several studies consider the link between unions and technological change. Keefe concludes that although there is no direct union effect on the diffusion of advanced technologies in manufacturing plants, unionized plants possess more of the characteristics that affect technology usage.31 For instance, plant size, shift work, and training are related to unionism and to an increased likelihood of using advanced technologies. However, as Keefe points out, these characteristics may be independent of union status. In contrast, unionized firms tend to invest less on capital and R&D than nonunionized firms, likely because they have fewer resources to devote to such investments due to the reduced profits noted above. Acs and Audretsch, Connolly et al., and other scholars, conclude that unionization reduces spending on R&D.32 Hirsch concludes that nonunion firms invest roughly 10% more that union firms.33 At the firm level, Connolly et al. find that higher unionization reduces the return to R&D and thereby reduces firms' investment in R&D.34 Because R&D is a pivotal input in the innovation process, with less invested in R&D unionized firms can be expected to contribute less to advancing technology.

UNIONIZATION REDUCES THE NUMBER OF JOBS AND OVERALL GDP.

Anne Layne-Farrar, "An Empirical Assessment of the Employee Free Choice Act: The Economic Implications," Social Science Research Network, March 3, 2009.

Unionization can raise worker wages, but may reduce unionized jobs and tends to lower GDP. Greater bargaining coverage maintains real earnings growth, but increases unemployment and inflation. These mixed results do not attend to the differences, if any, across legal regimes, and none of them deal with the heightened level of government intervention posed by compulsory interest arbitrations. As a matter of basic economic theory, the studies in the literature therefore suggest, but in all likelihood underestimate, negative unintended consequences from passing EFCA.

THE EFCA ALLOWS WORKERS TO EXERCISE BASIC HUMAN RIGHTS.

Julie Martinez Ortega, "Why We Should Support the Employee Free Choice Act," Labour Studies Journal 31.4 (2006) 23-30.

EFCA identifies and improves three aspects of labor law that must be changed if U.S. workers and their unions are to fairly advance their interests at the workplace: card-check recognition, penalties for violations of the law, and mandatory first-contract arbitration. Without at least those critical changes to labor law, the ability of workers to exercise their human rights will continue to deteriorate. The changes would be an urgent stopgap to employer interference and would appropriately identify the real problem with labor law as practiced in today's workplace: employer interference. If EFCA achieved nothing more, it would have succeeded at moving our nation closer to workplace democracy.

THE EFCA REQUIRES CARD CHECKS TO BE RECOGNIZED AND HONORED BY EMPLOYERS.

Julie Martinez Ortega, "Why We Should Support the Employee Free Choice Act," Labour Studies Journal 31.4 (2006) 23-30.

One of the most important provisions of EFCA is the recognition of card check, or "majority sign up," as a legitimate means for determining whether [End Page 23] the workers want to form a union. Whereas employees can do this voluntarily at present, this provision would make recognition mandatory. Card check has become an increasingly popular mechanism for union growth, and NLRB-supervised elections are becoming much less common. Law Professor Jim Brudney (2005) documents that between 1998 and 2005 at least 80 percent of new union members joined without NLRB-supervised elections. Many of the new union members among that 80 percent used the card-check procedure to gain union recognition. At Cingular Wireless, by using card check, CWA has successfully organized tens of thousands of workers, even in worksites where Cingular's predecessor, AT&T, had previously squelched organizing.

THERE IS NO PENALTY IN THE STATUS QUO FOR EMPLOYERS WHO FIRE PRO-UNION EMPLOYEES. THE EFCA CLOSES THIS LOOPHOLE.

Julie Martinez Ortega, "Why We Should Support the Employee Free Choice Act," Labour Studies Journal 31.4 (2006) 23-30.

It is no secret that U.S. employers generally react negatively and object when workers form unions. A study commissioned by American Rights at Work, "Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns," documents that 30 percent of employers faced with an organizing drive fire pro-union workers and 49 percent threaten to close the plant if the union wins the campaign (Mehta and Theodore 2005). Yet these employers rarely pay any financial penalty when they are found guilty of violating labor law. If EFCA did nothing but provide for meaningful penalties when workers' rights are violated, it would at least place the violation of labor rights on the same level as the violation of other well-accepted human rights violations, such as race or gender discrimination, by causing employers to calculate the financial cost associated with violating the NLRA before deciding to break the law.

WORKER'S RIGHTS ARE KEY TO VALUING CITIZENS EQUALLY AND PRESERVING DEMOCRATIC PARTICIPATION IN ALL SPHERES OF SOCIETY.

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By elevating workers' rights and making them worthy of national legislation, we are acknowledging and validating in the most public of ways the value of workers' rights. EFCA is a statement about the critical role that the trampling of workers' rights is playing in our ability to sustain a real and vibrant democracy. EFCA reclaims the right of U.S. workers to dignity and respect at the workplace. EFCA insists that labor be valued at least as much as capital. The tenets of EFCA provide the foil against which to explain the many ways workers are denied their right to unionize to people who would come to the aid of unions if they knew more about labor's challenges. EFCA has allowed [End Page 25] workers' advocates to tell the story of workers' rights struggles, to engage allies, to talk about solutions, and to provide something positive that people can support. And this effort has been successful. This issue was nowhere on the public's radar screen ten years ago. Back then, no one would have believed that such a broad swatch of civil society would be putting their energy behind a workers' rights issue. Today, the NAACP, the Sierra Club, Human Rights Watch, and many others have publicly stated their support for EFCA. In addition, the proposed legislation has gathered support across party lines with elected leaders. And now, even the Democratic Leadership Council, led by Governor Tom Vilsack, supports the Employee Free Choice Act.