



Path to Prosperity

Why America Needs Employee Free Choice

January 2009



“Amid this country’s strong economic expansion, many Americans simply aren’t feeling the benefits.”

Treasury Secretary Henry Paulson, from remarks at Columbia University on August 1, 2006¹

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Executive Summary

As the new administration and Congress consider steps to lift the U.S. economy out of the economic crisis, analysis of America's previous recoveries since World War II shows that sustained economic success over time comes when rising wages, rather than debt, drive consumer spending – and when there is shared prosperity rather than concentration of wealth. Restoring the freedom of workers to form unions through the Employee Free Choice Act will play a central role in building a strong middle class to drive the next era of American economic strength.

The economic crisis facing the United States today is the worst since the Great Depression.

- More than 1.2 million workers lost their jobs from September to November 2008. Millions more are expected to lose their jobs in 2009, with unemployment that could exceed 9 percent.
- Workers' wages are stagnant—increasing just 0.2 percent from March 2001 to September 2008.
- Household debt hit record levels in 2007, averaging 129 percent of disposable income.
- One in 11 mortgages is delinquent or in foreclosure.

Visionary American leaders enacted policies in response to previous crises—such as the freedom to form unions—to provide working Americans a road to long-term opportunity.

- The National Labor Relations Act (NLRA), or “Wagner Act,” gave workers the freedom to form unions and bargain over wages, benefits and working conditions with employers.
- One-third of all American workers joined unions and shared in economic progress between 1947 and the early 1970s, one of the most prosperous periods in U.S. history.
- Between 1947 and 1973, median family income more than doubled, productivity grew 2.9 percent a year, America's economic output nearly tripled and income inequality declined.

The recession of 1973–74 marked the start of sustained assault on workers’ ability to form unions and negotiate with employers for shared success. Slower economic growth and increased income inequality characterize this period as well.

- The number of workers in unions fell precipitously since the early 1970s, when more than one-third of all workers formed unions, to just 7.4 percent of private-sector workers today.
- Real average weekly earnings for private production and nonsupervisory workers fell 6.5 percent from 1973 to 2005. Median family income, which doubled in the prior 25-year period, grew just 22.5 percent.
- CEO pay skyrocketed from 27 times more than worker wages in 1973 to 344 times higher today.
- Wealth concentrated into fewer hands, with the richest 10 percent of Americans getting nearly 50 percent more of the country’s income in 2006 than they received in 1973.



The debt-fueled economic growth of the latest business cycle—which has turned into the widespread disaster we face today—reveals the inherent weakness of an economy built on low wages rather than shared prosperity.

- Faced with stagnant wages and declining purchasing power, workers in today’s economy took on increasing debt to maintain living standards.
- Real median household income was \$1,175 less in 2007 than it was in 2000, while each family spent more than \$4,600 more for basic expenses (e.g. gas, mortgage, food, and healthcare).

Corporate CEOs and politicians hostile to the middle class have deprived working Americans of an effective tool to create shared prosperity—the freedom to form unions.

- The NLRA, originally intended to help workers form unions, is used today to hinder such efforts.
- The U.S. House Committee on Education and Labor declared that “the ineffectiveness of the NLRA has put workers’ fundamental freedoms at risk. These developments have spurred a human rights crisis with real economic consequences for America’s middle class.”
- Corporate CEOs routinely harass and intimidate workers who attempt to form unions: 49 percent openly threaten to close the worksite; 51 percent use bribery or favoritism to undermine union supporters; and 91 percent force employees to attend intimidating meetings with their supervisors.

The Employee Free Choice Act will help rebuild the middle class by allowing more Americans to share in the success of their companies and the economy.

- Workers in unions earn 14 percent higher wages than workers who are not, are 28 percent more likely to have health insurance, and 54 percent more likely to have a pension.
- The economic advantage for workers of color is even greater. African American workers in unions earn 18 percent more than their nonunion counterparts, while Latinos earn 22 percent more.
- Unions help all workers, not just union members, as nonunion employers often attempt to match union pay and benefits to help recruit employees.
- The Employee Free Choice Act restores the original intent of the law and is based on the recommendations of the Republican-led Dunlop Commission, which President Clinton appointed in 1993 to review the state of labor-management relations. The legislation:
 - Requires that employers accept workers' decision to form a union through majority sign-up or through an election, as the National Labor Relations Act did from 1935–1974.
 - Provides workers and employers optional access to commonly used mediation and binding arbitration when an initial agreement cannot be reached.
 - Toughens penalties against companies that violate their workers' rights.

The Employee Free Choice Act would strengthen millions of American families economically, and do so far more effectively than other commonly used policies.

- New research from the Economic Policy Institute estimates that if 5 million service workers join unions:
 - 5 million workers would get a 22 percent raise on average, or an additional \$7,000 a year;
 - \$34 billion in total new wages would flow into the economy;
 - 900,000 jobs would be lifted above the poverty wage for a family of four (\$10.22/hr); and
 - Between 1.8 million and 3 million dependent children would share in these benefits.
- The economic impact on individuals would be about four times as large as the recent federal minimum wage increase, and allow nearly six times more in new wages to flow into the economy.
- It would return almost as much money to workers as the federal Earned Income Tax Credit.

Introduction

The United States is at a turning point. As the incoming president and Congress look to enact measures early in 2009 to lift the U.S. economy out of severe recession and lay the groundwork for a new era of sustained economic success, it is essential to consider the forces that have driven the rise, stagnation, and fall of our economy in recent decades—and what they teach us about the path forward today.

Fundamentally, we have two options. We can choose the path set by visionary business leaders, who understand that workers need money in their pockets to buy products off the shelves. Henry Ford, for example, famously increased his company's workers' wages to \$5 a day so they could buy the cars they produced. Such an approach is good for workers, companies, and the economy. This path will allow us to build a high-wage, high-productivity economy where America's workers can share in the prosperity they help to create in their companies.

Or we can follow the model of Wal-Mart, a company that prioritizes the financial wealth of its executives over the economic health of the country. Wal-Mart's CEO Lee Scott recently articulated his company's opposition to the Employee Free Choice Act and shared prosperity in America this way, "We like driving the car and we're not going to give the steering wheel to anyone but us."

The decisions we make now to confront our economic challenges will help determine the country we will create for future generations.

A Tale of Two Economies

The story of the U.S. economy since World War II is really two stories. The period from 1947 to 1973 was a time of broadly shared prosperity, with productivity, profits, and wages all growing together. It included a remarkable decline in income and wealth inequality, which some analysts argue was a key pillar of America's general prosperity.²

By contrast, the period since the early 1970s is a story of relative economic stagnation characterized by weaker and less consistent productivity growth, stagnant incomes, and skyrocketing inequality.

It is no coincidence that the first period of economic success and stability was also a time when a large portion of the American workforce had input in their

employment conditions through union representation. By contrast, the large-scale undoing of workers' freedom to form unions and the erosion of workers' ability to negotiate with employers for shared success marks the second period.

This history shows that the fundamental freedom of workers to join together for a voice in their employment conditions without fear of reprisals is a key to rebuilding America's middle class and sustaining our consumer economy. The Employee Free Choice Act restores this fundamental freedom that has been under assault for the last 35 years.

America's Economic Crisis Today

The United States has been suffering an economic recession since December 2007 and all signs suggest that conditions will get worse before they get better.

Unemployment

In the three months from September to November 2008, more than 1.2 million workers lost their jobs, driving the unemployment rate to 6.7 percent. For Latino and African American workers, the employment situation is worse: nearly 9 percent of Latinos and more than 11 percent of African Americans are unemployed. Including discouraged workers and part-time workers who want full-time jobs, the overall unemployment rate is closer to 12.5 percent.³ In other words, approximately one in eight employable Americans does not have a job. In 2009, many economists expect unemployment to exceed 9 percent, meaning millions more workers will lose their jobs.

Stagnant Wages

The threat of job loss is particularly frightening when millions of workers have few resources to draw upon to weather the storm. Wages have been stagnant for years. Weekly real wages were just 0.2 percent higher in September 2008 than they were in March 2001.⁴

Receding Benefits

Just as employers are holding the line on wages, they are cutting back on health and pension benefits. Workers are paying more for healthcare than ever, and their retirement is receding into the future. The portion of private sector workers with a pension dropped from 50.3 percent in 2000 to 45.1 percent in 2007, and the share of people with employer-provided health insurance dropped from 64.2 percent to 59.3 percent over the same period.⁵

Foreclosures

For years, many workers could see their homes as a source of economic security, but the collapse of home prices has created yet another source of

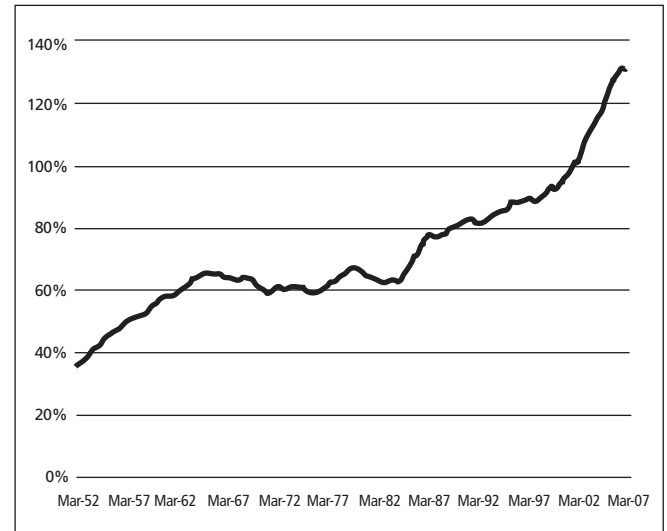
economic anxiety. One in 11 mortgages is delinquent or in foreclosure, and rates will get worse as unemployment rises.⁶

Debt

As if disappearing home equity and rising mortgage debt were not enough, millions of Americans are also being crushed by credit card and student loan debt. As a result, total household debt averaged 129 percent of disposable income in the second quarter of 2008, which is very close to the record high of 133.5 percent at the end of 2007, and much higher than previous years (see Figure 1).⁷

The deteriorating job market, the loss of health and pension benefits, the crippling debt burden, and falling home prices are taking their toll. The Conference Board's Consumer Confidence Index hit a record low of 38.8 in October 2008. The index ticked up slightly in November, but the Board's director still concluded, "consumers remain extremely pessimistic and the possibility that economic growth will improve in the first half of 2009 remains highly unlikely."⁸

Figure 1: Household Debt Relative to Disposable Income



Notes: Author's calculations based on BOG (2007). Household debt refers to credit market instruments.

Many observers have noted that the financial and economic crises facing the United States are the worst since the Great Depression of the 1930s, and indeed there are many parallels between the two periods. Most instructive, however, is an understanding of the economic and political changes that helped the country emerge from the Depression and embark on a long period of prosperity.

Shared Prosperity and Economic Strength: 1947–1973

It took the massive government spending of World War II to catapult the U.S. economy out of the Great Depression. But many of the New Deal policies adopted during the 1930s and 1940s laid the foundation for sustained economic strength for long after the war.

- The Securities and Exchange Act and the Investment Company Act instituted a regulatory regime that increased the transparency of the country's capital markets and protected investors from fraud, facilitating renewed investment in the country's businesses.
- The Glass-Steagall Act solidified the banking industry by establishing the

Federal Deposit Insurance Corporation, separating commercial and investment banking, and instituting strong government oversight of banking operations.

- The Social Security Act established a government-funded retirement program that lifted millions of elderly Americans out of poverty and allowed them to remain active consumers.
- The Federal Home Owners' Loan Corp. bought, modified, and then serviced millions of mortgages so homeowners could stay in their homes, becoming the model for an affordable mortgage industry for several decades.
- The National Labor Relations Act (Wagner Act) secured the freedom for workers to form unions to collectively bargain with their employers over conditions of employment, and more than one-third of American workers became union members.
- The Works Progress Administration put millions of people to work, built thousands of public buildings, and infused the country with the spirit of public service.

How the New Deal Delivered

- Together, the cornerstones of the New Deal delivered for America. The 25-year period after World War II was one of most prosperous periods in U.S. history.
- From 1947 to 1973, the country's economic output grew at an average annual rate of 3.8 percent, nearly tripling in size.⁹
- Productivity, which measures the amount of output for a given amount of labor input, grew 2.9 percent annually.¹⁰
- The rate of profit for nonfarm business averaged nearly 14 percent annually, which encouraged investment in the country's capital stock at an average rate of 3.5 percent each year.¹¹

Virtuous Circle of Economic Dynamism

Profit, investment and productivity gains produced employment and output growth. Unions helped ensure that this growth resulted in rising living standards and greater purchasing power, which in turn produced more profit, more investment and higher productivity. The freedom of workers to form unions proved to be a crucial cog in this virtuous circle of economic dynamism that drove the country's shared prosperity.

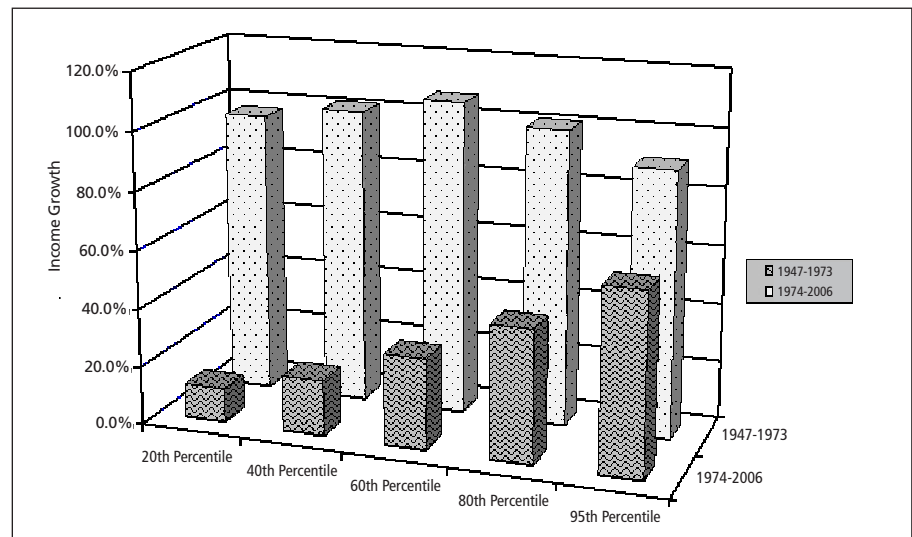
- Union collective bargaining agreements set wage and benefit patterns not only for unionized companies and industries but for nonunion employers who had to compete to hire workers.

- Collective bargaining gains—healthcare, pensions, vacations, sick days—rippled through the economy.
- Median family income grew 2.8 percent per year between 1947 and 1973, which meant that real median family income more than doubled — from \$23,433 to \$47,768 in 2007 dollars — in just 26 years.¹²

- Income inequality declined. As Figure 2 illustrates, from 1947 to 1974 cumulative income growth for the 20th, 40th, 60th, 80th, and 95th income percentiles was 97.5 percent, 100 percent, 102.9 percent, 97.6 percent, and 89 percent, respectively, meaning income grew faster at the bottom of the income distribution than at the top. As a result, the portion of income going to the top 10 percent of the population dropped slightly, from 33 percent to 31.9 percent.¹³

- The portion of Americans owning their own home rose from 43.6 percent in 1940 to 62.9 percent in 1970.¹⁴

Figure 2: Shared Prosperity 1947-1973 vs. Growing Income Inequality 1974-2006



The Draining of the Middle Class and Economic Fragility: 1970s-Today

Slowing Economic Growth

When we say that the story of the American economy since World War II is really two stories, the second begins with the recession of 1973-74. It was not just a recession but a broader turning point—the start of a 35-year period of relative economic weakness that continues to the present day. In the 35 years since 1973:

- The annual output of goods and services in the United States grew at an average rate of 2.9 percent per year, down from 3.8 percent during the postwar years. This means that the economy grew 31 percent faster from 1947 to 1973 than in the next three decades.¹⁵

- Productivity growth also slowed—from 2.9 percent per year during the postwar years down to 1.9 percent in the last three decades.¹⁶ This difference in productivity growth rates might seem small, but had productivity growth continued at the earlier rate, our economy today would be more than one-third bigger. We would have one-third more resources to confront our current national challenges.

Less Improvement in Living Standards

Weaker output and productivity growth since 1973 has meant less improvement in living standards.

- Median family income grew only 22.5 percent from 1973-2005. By contrast, it doubled in the 26 years after 1947. Virtually all of this income growth was due to an increased number of family members working longer.¹⁷
- Real average weekly earnings for private production and nonsupervisory workers actually fell 6.5 percent from 1973 to 2005, from \$581.67 to \$543.65, while hours worked per year grew 11 percent—from 1,679 to 1,864.¹⁸

Radical Redistribution of Wealth to the Wealthy

Not only has overall growth slowed, but the gains from growth we have seen have gone increasingly to the wealthy. The gap between the top sliver of the income scale and everyone else has been widening rapidly, unlike in the first postwar decades when inequality shrank.

- From 1974 to 2005, income grew six times as fast at the top of the income distribution as at the bottom. As Figure 2 illustrates, cumulative income growth for the 20th, 40th, 60th, 80, and 95th income percentiles was 10.3 percent, 18.6 percent, 30.8 percent, 42.9 percent, and 62.9 percent, respectively.¹⁹
- The portion of income going to the top 10 percent of the population grew to 45.2 percent from 1974 to 2006, meaning the richest 10 percent of Americans were getting nearly 50 percent more of the country's income in 2006 than they received in 1973.²⁰
- The top 1 percent of wage earners now holds 23 percent of all income—more than double the group's 1979 share of 10 percent and the highest inequality in income since 1928.²¹
- Economic rewards have been distributed particularly unequally over the last eight years. In 2007, the top 10 percent of income earners boosted their income to 7.9 times the rest of the population, up from 6.8 times in 2001

and the highest level since the Great Depression.²² “This makes President Bush the first president since 1917 (the first year for which data are available) under which the average income of the wealthiest Americans went up while the average income of everyone else went down.”²³

Fewer Workers in Unions and the Economic Slowdown

The dramatically shrinking proportion of workers in unions since the 1973-74 recession—from nearly a third of the workforce in the early 1970s to 7.4 percent²⁴ today—has been a major factor contributing to the economy’s slower growth and increasing income inequality.

The decline in workers’ ability to form unions and negotiate with employers for shared success over this period is in large part due to a concerted change in government policy and corporate behavior, including: the weakening of labor laws; lax enforcement of laws protecting workers; and accelerated opposition to union organizing by corporations, particularly since the permanent replacement of striking air traffic controllers by President Reagan in 1981.

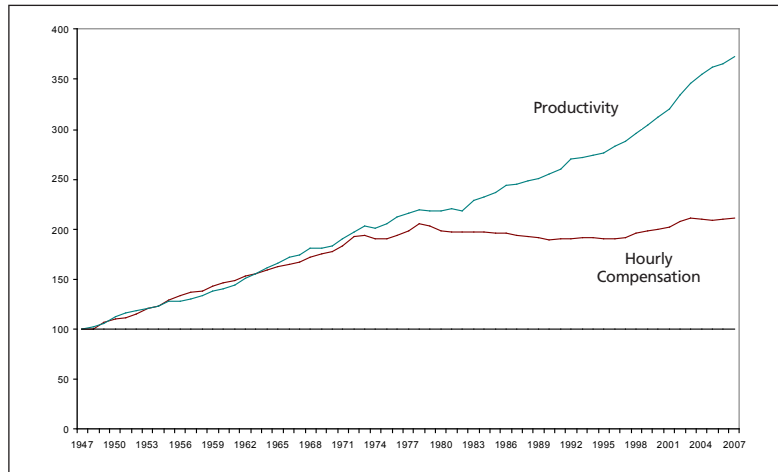
Attacks on workers’ efforts to form unions in industries such as meatpacking, mining, trucking, airlines, and food processing have transformed workers who were once part of the middle class into the working poor. This in turn has hurt the nation’s economy through the erosion of overall consumer purchasing power.

Result: Productivity-Wage Gap and Runaway CEO Compensation

This concerted effort to deny workers’ an ability to share in economic success through union representation and collective bargaining has had at least two results: the growing gap between workers’ productivity and their wages since 1973, and the shocking increase in CEO compensation relative to worker pay over this period.

- While much slower than during the postwar period, total productivity growth has been 83 percent since 1973, meaning workers produce far more goods and services in a given hour of work.²⁵ Yet workers’ compensation—which includes both wages and benefits—has risen only 9 percent during that time (with almost all of that gain occurring in the years 1995-2000).²⁶

Figure 3: Growth of Average Hourly Compensation and Productivity



- The disconnect between pay and productivity was larger during the 2002-07 recovery than in prior economic recoveries: the hourly compensation of both high school and college graduates, for example, failed to improve at all while productivity grew 2.2 percent annually.²⁷
- As Figure 3 shows, this gap between productivity and wages did not exist between 1947 and 1973, when a third of all workers were in unions.
- In 1973, the average CEO made 27 times as much as the average worker in America.²⁸ Today, S&P 500 CEOs aver-

aged 344 times the pay of typical American workers.²⁹ The New York Times recently described the relationship between unions and executive compensation in this way: “By giving employees a bigger say in compensation issues, unions also help to establish corporate norms, the absence of which has contributed to unjustifiable disparities between executive pay and rank-and-file pay.”³⁰

The Economic Consequences of Low Wages

American workers in the 35-year period since the 1973-74 recession have been significantly less able to secure wage and benefit improvements despite increasing worker productivity, rising CEO pay, and increasing wealth for the richest Americans.

Yet growth during the most recent business cycle has been supported by consumer spending to a greater extent than in the past, with 83.9 percent of economic growth from March 2001 to March 2007 coming from consumption spending.³¹

So how has it been possible for consumers to spend more when their incomes have been stagnant? The answer is debt based on inflated asset values.

Debt Bubbles

Household debt has been climbing steadily since the early 1970s, but it has accelerated rapidly since the turn of the century (see Figure 4), due in large measure to Federal Reserve policies that kept interest rates unsustainably low for a very long time.

Low rates encouraged home buyers to take out large mortgages and prompted

homeowners to use large home equity loans, stimulating demand for homes and other goods. Home prices went up. And homes, home building, and home remodeling became the engines of economic growth, providing income to homeowners through home equity loans and income to workers through employment.

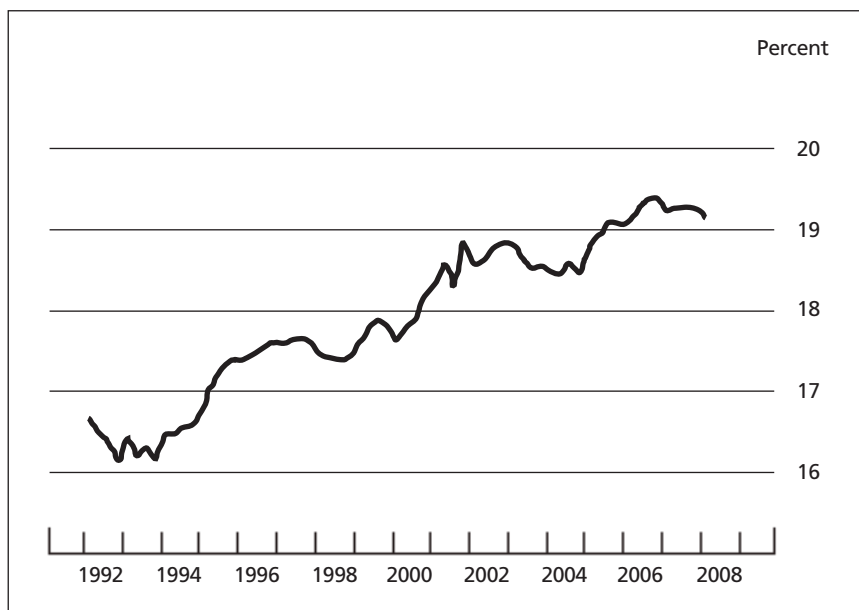
Consumers could handle the rising burden of debt as long as the value of their homes kept rising. If they needed to pay off a credit card, buy a car, or finance college they could tap into their home equity. Rising home values facilitated mortgage equity withdrawals, which added approximately \$700 billion to consumer spending during 2004, 2005, and 2006.³²

But once the prices of homes started to fall, consumers lost this source of income. As Figure 4 illustrates, the burden of debt grew heavier, taking up a large portion of disposable income and leaving less for spending on goods and services.

The consequences of debt-fueled economic growth are disastrous when downturn comes. “Earlier downturns followed strong booms, so families went into recessions with higher incomes and lower debt loads,” notes Harvard Law School professor Elizabeth Warren. “But the fundamentals are off for families even before we hit the recession this time, so bankruptcy filings are likely to rise faster.”³³

We are already seeing the hardship that rising debt burdens have caused so many Americans. The foreclosure rate is the highest it’s been since the Great Depression.³⁴ National average housing prices are down at least 20 percent and still falling. Some analysts predict another 20 percent drop, while certain hard-hit states such as California, Nevada, Michigan, and Florida could see 40 percent declines.³⁵

Figure 4: Household Financial Obligations Ratio, 1992-2008



NOTE: The data are quarterly and extend through 2008:Q1. The financial obligations ratio equals the sum of required payments on mortgage and consumer debt, automobile leases, rent on tenant occupied property, home owner’s insurance, and property taxes, all divided by disposable personal income.

SOURCE: Federal Reserve Board.

Restoring the Freedom to Form Unions to Restore Consumer Purchasing Power with Wages, Not Debt

The economic experience of the 60 years since World War II shows that workers need income based on wages, and our country needs broadly shared prosperity to build sustained economic strength based on consumer purchasing power. This history also reveals the central role workers' ability to form unions plays in making both of these possible.

Unions Help All Workers Do Better

Despite decades of hostile corporate behavior and government policy to eliminate workers' freedom to form unions, the unions' positive impacts show the promise for the future if workers' access to unions is restored.

- Workers who are in unions earn 14 percent higher wages than workers who are not, controlling for factors such as education, occupation, and experience.³⁷ They are also 28 percent more likely to be covered by employer-provided health insurance, and 54 percent more likely to have employer-provided pension coverage.³⁸
- Women in unions earn more than 11 percent-or about \$2 per hour-compared to nonunion women. They are also 19 percent more likely to have employer-provided health insurance and 25 percent more likely to have an employer-provided pension.³⁹
- The economic advantage for workers of color is even greater. African American workers in unions earn 18 percent more than their nonunion counterparts, while the premium for Latinos is 22 percent.⁴⁰
- Increased wages and benefits that union members win raise standards for all workers across an industry, as nonunion employers often attempt to match union pay and benefit scales in order in order to recruit employees. The additional income nonunion workers receive broadens the economic advantage access to union representation can have.⁴¹

Union Companies Are Industry Leaders

Numerous unionized firms have achieved strong performance. In testimony delivered to the House Subcommittee on Health, Employment, Labor, and

Pensions, noted University of California-Berkeley professor Harley Shaiken stated that, “An innovative employer working with a progressive union can achieve high levels of productivity and quality, pay high wages, and be competitive.”⁴² Shaiken cited several examples from various industries:

Manufacturing: “The New United Motor Manufacturing (NUMMI) plant—a joint partnership of General Motors and Toyota organized by the United Auto Workers—achieves strong results in a unionized environment ... NUMMI ranked third in 2005 for productivity among small truck assembly plants in North America. In fact, among car manufacturers overall, two of the top three assembly plants in North America were UAW in 2005 (they ranked one and two), and six of the top 10 were represented by the union ...

Retail: “In retailing, the high-road, partially unionized Costco outperforms the low-road Sam’s Club, a Wal-Mart affiliate. Costco’s labor costs are 40 percent higher than Wal-Mart’s, but nonetheless Costco produced \$21,805 in operating profit per hourly employee in the United States in 2005; almost double the \$11,615 generated at Sam’s Club. And, Costco sells \$866 per square foot compared to \$525 at Sam’s Club. How does Costco do it? “It absolutely makes good business sense,” CEO James Sinegal maintains. “Most people agree that we’re the lowest-cost provider. Yet we pay the highest wages. So it must mean we get better productivity.” Echoing Henry Ford, he points out “that’s not just altruism; it’s good business.”

Telecommunications: “Cingular, the largest wireless carrier in the nation, accepted a “neutrality agreement” with the Communications Workers of America (CWA). Both sides agreed not to attack each other, and the company agreed to majority sign up for its workers, a preview of how the Employee Free Choice Act might work... Lew Walker, vice president for human resources, says that the union provides a competitive advantage for the company. “They very much recognize that we are in a competitive environment.”

Hospitality: “In Las Vegas, Culinary Local 226, organizes 90 percent of the hotel workers on the Strip. As a result, unionized housekeepers earn 50 percent more than their nonunion counterparts in Reno, Nev., and enjoy fully paid healthcare. The union and the hospitality industry jointly put a heavy emphasis on training and operate the Las Vegas Culinary Training Academy, one of the most comprehensive training centers of its kind in the country. “Our union’s goal and the training center’s goal is you can come in as a non-English-speaking worker, come in as a low-level kitchen worker, and if you have the desire, you can leave as a gourmet food server, sous-chef or master sommelier,” according to D. Taylor, the secretary-treasurer of the local. The high wages and extensive training are a successful combination in the service industry, according to management officials such as J. Terrence Lanni, chairman of MGM Mirage.

Shaiken concluded that, “While it is true that short-sighted management can lead a unionized firm into the ground and a recalcitrant union can put a brake on productivity, the literature and case studies confirm that unionization can foster higher productivity.”

Of course these kinds of results are only being realized by a tiny fraction of the American workforce today. Without meaningful freedom to form a union, far too many workers lack the ability to collectively bargain for shared success with their employers. Workers need to earn more to sustain consumer spending and drive economic success. Restoring the freedom to form unions is the path to this prosperity.

Estimating the Economic Impact of the Employee Free Choice Act

The Employee Free Choice Act will play a central role in rebuilding a strong middle class that can drive the next era of American economic strength.

The Economic Policy Institute has estimated the economic impact of an additional 5 million unionized workers in the jurisdictions of the unions in the Change to Win federation, including: construction, healthcare, hospitality and property services, production, retail, and transportation.⁴³

These occupations pay less than the average and thus benefit more from unionization. Workers in them earn an average wage of \$13.21 per hour, 30 percent below the national average of \$18.68 per hour. One in three earns less than \$9 per hour. (By contrast, unionized workers in these occupations earn an average wage of \$17.27 an hour, and just one in seven earn less than \$9 per hour.)

If 5 million service sector workers form unions, the economic benefits will be:⁴⁴

- 5 million workers would get a 22 percent raise on average, or about \$3 per hour. This translates to an additional \$7,000 per year for full-time work. Workers would also have vastly improved health and retirement benefits.
- This would amount to \$34 billion in total new wages.

- 3 million to 5 million households and 1.8 million to 3 million dependent children would share in these benefits.
- 900,000 jobs would be lifted above the poverty wage for family of four (\$10.22/hr).

How the Benefits of the Employee Free Choice Act Compare to Other Policies and Practices Which Help Strengthen America’s Middle Class

- **Minimum Wage:** Total new wages generated by the 2007 federal minimum wage legislation (which covers 5 million workers) are \$6 billion. It will raise wages by 84 cents an hour, or \$1,200 annually. By contrast, the union wage advantage is four times as large.
- **Earned Income Tax Credit (EITC):** EITC generated \$37 billion in fiscal year 2008, compared to \$34 billion in total new wages that would be generated annually if five million service workers form unions.
- **Higher Education:** The extra wages of a union contract are about double those that a worker would receive for having an associate college degree rather than a high school diploma.
- **Lower Taxes:** The union wage advantage yields much more income than eliminating income tax liabilities for middle incomes families.

*Analysis by Larry Mishel and Heidi Shierholz,
Economic Policy Institute*

Workers Want Unions, But Cannot Get Them

According to public opinion surveys, a majority of workers in America would like to form a union. The percentage of workers who want to form a union has risen steadily since the 1980s and was estimated at 58 percent in 2006.⁴⁵ But employer behavior and the inadequacy of current labor laws have consistently frustrated this desire.

Employers' Pervasive Illegal Activity Suppresses Workers' Ability to Form Unions

For workers at many companies, trying to form a union means facing an aggressive campaign of intimidation, and threats designed to deny the freedom to form a union. In union organizing campaigns:⁴⁶

- 30 percent of employers illegally fire workers who support forming a union;
- 49 percent openly threaten to close a worksite when workers' start trying to form a union (but only 2 percent actually do);
- 51 percent use bribery or favoritism to undermine workers' support for forming a union;
- 82 percent hire consultants that specialize in running sophisticated campaigns to intimidate workers; and
- 91 percent force employees to attend intimidating one-on-one meetings with their supervisors.

Even when workers overcome employer intimidation and succeed in forming a union, companies often refuse to agree to a first contract:

- Only one in seven organizing efforts survives from filing an NLRB election petition through negotiating a first contract within the first year of certification.⁴⁷
- Only 38 percent of the unions certified through the NLRB process successfully bargain a first contract after one year, and only 56 percent after two years.⁴⁸

The Law, the NLRB, and the Courts Currently Allow Intimidating Employer Behavior

Under the NLRA, employers who break the law face few consequences. There are no fines assessed against employers who commit unfair labor practices. When the NLRB sanctions an employer for illegally firing a worker for union activity, the employer must simply pay back pay plus interest for the period the employee

was out of work (minus any interim earnings), and post a notice promising not to violate the law again. In contrast to almost every federal employment law,⁴⁹ in which employer violations can lead to fines or punitive damages, there is no financial penalty.⁵⁰

The NLRB and the courts have given employers considerable leeway to intimidate workers who try to form a union. The following are examples of permissible activities in which employers can engage, based on specific cases. Under current law, employers can:

- Predict that voting for a union will result in the employees losing their jobs;⁵¹ Tell employees that unions are linked to workplace violence, and then hire a security guard to patrol the workplace with a 100-pound Rottweiler, despite no actual security problem;⁵²
- Tell employees how a hypothetical employer can legally thwart its obligations to bargain in good faith by stalling negotiations with a union and “not really agreeing to anything;”⁵³
- Interrogate employees to find out whether or not they want union representation;⁵⁴
- Fire employees for leaving meetings held by supervisors designed to convince employees not to form a union;⁵⁵
- Ban pro-union employees from attending such meetings;⁵⁶
- Prohibit employees from discussing union organizing with their co-workers during work hours and in work areas;⁵⁷
- Eavesdrop on employees’ off-duty conversations about unions and interrupt their conversations to make anti-union remarks;⁵⁸
- Have managers talk to each individual employee and tell him to vote against the union right up until the election is held;⁵⁹ and
- Can monitor employees as they enter and exit the election site, checking employees’ names off a list as they vote.⁶⁰

Dunlop Commission and Congress Recognize Failure of Nation’s Labor Laws

The ability of employers to thwart workers’ rights has been well-documented and widely acknowledged. As early as 1994, a blue-ribbon panel of distinguished CEOs, academics, and union representatives diagnosed many of the problems that plague worker-management relations today. Commonly known as the Dunlop Commission, after its Republican chairman, it found that:

- 59 percent of workers believed that they would lose favor with their employer for supporting the union and 79 percent agreed that workers are “very” or “somewhat” likely to be fired for trying to organize a union, with 41 percent of nonunion workers believing “it is very likely that I will lose my job if I tried to form a union.”⁶¹
- “[R]epresentation elections as currently constituted are a highly conflictual activity for workers, unions, and firms,” causing “many new collective bargaining relationships [to] start off in an environment that is highly adversarial.”⁶²
- “[T]he probability that a worker will be discharged or otherwise unfairly discriminated against for exercising legal rights under the NLRA has increased over time.”⁶³
- “[T]he bulk of [unfair labor practice] charges found meritorious are for employer unfair practices.”⁶⁴
- These trends have continued. Indeed, in 2007, 88.4 percent of the unfair labor practice charges found to have merit were issued against employers; only 10.6 percent against unions.⁶⁵
- Based on this record, in 2007, the U.S. House Committee on Education and Labor declared that: “The ineffectiveness of the NLRA has put workers’ fundamental freedoms at risk. These developments have spurred a human rights crisis with real economic consequences for America’s middle class.”⁶⁶

The Employee Free Choice Act will Restore Choice, Fairness, and Integrity to Collective Bargaining

The Employee Free Choice Act has three important elements which are based on the findings of the Dunlop Commission:

1. It gives workers a fair and direct path to form unions through majority sign-up procedures, where the NLRB certifies a union once a majority signs authorization cards.
 2. It provides both sides access to mediation and first contract arbitration when an initial agreement cannot be reached.
 3. It toughens penalties against employers who violate workers’ rights.
- Each section of the Employee Free Choice Act would improve labor relations and facilitate unionization. Majority sign-up speeds the workers’ union recognition

decision and reduces the opportunities for employers to intimidate pro-union employees. Mediation and first contract arbitration ensure that both sides come to an initial agreement. Tougher sanctions encourage employers to respect workers' rights.

Majority Sign-Up Is a Well-Established Part of Our Labor Law and Widely Used

As originally enacted in 1935, the NLRA required employers to honor either majority sign-up procedures or elections.⁶⁷ This requirement lasted through 1974, when the Supreme Court backed the National Labor Relations Board's decision that employers, not workers, had total power to choose the organizing process and force workers into an NLRB election procedure.⁶⁸

However, even with that decision, majority sign-up has remained a lawful procedure for union recognition. The only thing that changed was that workers lost the choice of which union recognition procedure would be used. Instead of workers, that decision was granted to companies. The Employee Free Choice Act will restore that choice for workers. It will not eliminate NLRB elections. As the Dunlop Commission recognized in 1994, majority sign-up will promote harmonious labor relations. The Commission stated:

A Historical Perspective on Big Business' Opposition to Helping Workers

Big business groups such as the Chamber of Commerce are already voicing opposition to employee free choice—a view that is both short-sighted and wrong. In fact, big business made the same arguments against workers having a voice at work before the Wagner Act was passed—and were proven wrong when the country experienced the biggest economic expansion in its history.

The fight around the Wagner Act was an intensely public campaign, played out daily in news accounts of Senate hearings in which business representatives predicted economic bedlam while supporters testified about the need for collective bargaining to enhance economic recovery.

The fight against it was “the largest lobbying campaign in American history by business organizations” at the time.⁷³ Business argued

that the act would hamper economic recovery and deny workers' freedoms.⁷⁴ Five dozen steel titans sent a petition to Congress stating that “the menace of the [Wagner bill] hanging over the industry is resulting in a slowing down of industrial activities” and warned that it would “destroy existing harmonious relations and block progress toward recovery.”⁷⁵

Sen. Wagner and supporters argued for complementing economic recovery efforts with labor reforms. Wagner defended the bill “as a means of equalizing the bargaining power as between employer and employee and as a necessary step toward increasing purchasing power by raising wages.”⁷⁶

Today, many in the business community are making the same arguments—perhaps of the folly of their predecessors.

“We encourage employers and unions who desire a cooperative relationship to agree to determine the employees’ majority preference via a card-check ... Card-check agreements build trust between union and employer and avoid expending public and private resources on unnecessary election campaigns. Such agreements are a classic example of potential or former adversaries creating a win-win situation for themselves. The opportunity to gain representation rights via a simple majority sign-up gives the union an incentive to cooperate with the employer to make the workplace more efficient. In return, the employer gains the cooperation of the employee representative as partner in efforts to improve productivity and flexibility, and often improved morale and reduced turnover as well.”⁶⁹

Majority sign-up remains in use today. Since 2003, more than half a million American workers have formed unions through majority sign-up.⁷⁰

- These workers come from diverse professions, regions, and companies, including 64,000 hotel and casino workers, 46,000 home care providers, more than 30,000 janitors, 8,000 farmworkers jointly employed by Mount Olive Pickle and the North Carolina Growers Association, and 5,800 public school teachers and aides.
- Major companies have used majority sign-up, including AT&T, UPS, Kaiser Permanente, Alcoa, Anheuser-Busch, Levi Strauss, Safeway, U.S. Steel, and Xerox.
- Companies such as Liz Claiborne and Levi Strauss have defended the voluntary recognition system in the courts (in an amicus brief to the NLRB) because of its beneficial effect on labor-management relations.⁷¹

Majority sign-up has also been successfully used outside of the NLRB system. Currently, laws in 13 states grant some public and private employees the right to form unions using majority sign-up, including California, Connecticut, Illinois, Kansas, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, and Oregon.⁷²

Labor laws in four Canadian provinces and the federal jurisdiction also allow majority sign-up.

Responding to Employee Free Choice Critics

Majority Sign-Up Will Not Eliminate the Secret Ballot

The Employee Free Choice Act would restore the original intent and practice of the NLRA by giving workers the choice of how they form a union, whether by majority sign-up or election. Currently, employers make the choice for workers, a blatantly anti-democratic procedure.

Contrary to employer claims, the law will not eliminate NLRB-run elections. Workers can choose to form their union when a majority signs cards saying they want to do so or workers can choose to have an election. In either case, their company has to abide by that decision.

History shows that workers will utilize both methods. As an example, fully 75 percent of the unions formed during the first five years after the Wagner Act was passed were certified through NLRB-run elections; only a quarter of the certifications issued by the NLRB were based on majority sign-up.⁷⁸

Research Shows Majority Sign-Up Results in Less Intimidation in the Workplace

Research has demonstrated the superiority of majority sign-up in promoting employee free choice-and has debunked information promoted by big business groups.

Free Choice Opponents: Talking Out of Both Sides of Their Mouth?

While organizations such as the Chamber of Commerce and Wal-Mart predict catastrophe, others in the business community have acknowledged the positive role the Employee Free Choice Act could play in the country's economic recovery.

Bank of America recently published a report which argued that passage of Employee Free Choice Act will be a "de facto wage and benefit increase" that will result in the "increased spending power of lower income consumer[s]."⁷⁷

A recent survey of employees who went through either an NLRB election campaign or a majority sign-up procedure found significantly less coercion under the majority sign-up process.⁷⁹

Of those workers who signed an authorization card in the presence of the person who gave it to them during a majority sign-up, 94 percent said that the presence of this person did not make them feel pressured to sign the card. In contrast, during the election process, 46 percent reported that management pressured them to oppose the union, with half of that group indicating that there was a great deal of pressure.

The “problem” of union intimidation in the context of a majority sign-up process has little basis in reality and has been conjured largely to satisfy a public relations campaign. As an example, the Human Resources Policy Association testified before Congress in 2002 that union coercion “has been documented in numerous decisions over the years,” and submitted a document listing 113 supposed NLRB cases of union coercion during card signing that occurred over a nearly 50 year period.⁸⁰

A subsequent examination of the cases revealed union misconduct in only 42 of these cases, which occurred during a period in which millions of workers formed unions through hundreds of thousands of organizing campaigns. The best data on the so-called threat of union coercion during card signing revealed less than one case per year from 1938 to 1997.⁸¹ (Incidentally, the NLRB addressed misconduct through its unfair labor practice procedures in each case.)

If one compares this to the fact that the NLRB issued nearly 90 percent of meritorious unfair labor practice charges against employers, and just 10 percent against unions in 2007,⁸² one point that most American workers experience regularly becomes clear: employers, not unions, wield the fundamental power to intimidate, threaten, harass, and coerce workers.

The Employee Free Choice Act Will Not Make Companies Uncompetitive

As noted above, many high-profile and successful companies, including AT&T, UPS, Kaiser Permanente, Alcoa, Anheuser-Busch, Levi Strauss, Safeway, U.S. Steel, and Xerox, have allowed their employees to choose whether or not to form unions using majority sign-up. And as the earlier case studies of companies such as Costco and Cingular demonstrate, both corporations and workers can benefit when employees have a voice at work.

Many major American corporations prove everyday that they can compete on a playing field defined by high road competitiveness, in which performance, productivity, profits are married with workers having a voice in the workplace.

Opponents of the legislation argue instead for the preservation of a low-road economic strategy, the consequences of which we are experiencing today. They have raised the specter of job losses and failed firms that will result if America’s workers are given the right to choose. The evidence, though, simply does not support their claims.

While predicting doom for the economy, executives of some of the biggest retailers in America have recently made surprisingly sanguine remarks about the impact

of the legislation on their firms. In November 2008, Business Week reported that Target Corp.'s chief financial officer said, "the legislation wouldn't put the company at a competitive disadvantage because of the effect of organized labor at competitors such as Wal-Mart and Costco Wholesale Corp."⁸³

In the same article, Wal-Mart chief Lee Scott tempered his doomsday predictions with a rosier view of how it would affect his firm: "It'll be generations in the impact it has on this country. And it won't be positive. I guarantee you that. It will not be positive. But for Wal-Mart, in the short term, and in the longer term on a relative basis with our peers, we're going to run this business."⁸⁴

The Employee Free Choice Act Will Not Hurt Small Businesses

America built the strongest middle class and small businesses thrived in the decades workers had the freedom to choose to form a union after a majority signed cards saying they wanted to do so. There is no evidence that suggests that small businesses will fare any differently if the Employee Free Choice Act becomes law.

The Employee Free Choice Act makes no changes to current exemptions for small businesses in the National Labor Relations Act (NLRA). These exclude retail employers whose gross annual volume is less than \$500,000 and nonretail employers whose interstate commerce is less than \$50,000. In 2005, this exemption applied to nearly 4 million workers.

Several business-oriented publications have suggested that there is little to no evidence that the proposed legislation will have a negative impact on small business.⁸⁵ To the contrary, the editor of the MicroEnterprise Journal concluded that, "for the vast majority of small businesses, they are just too small to have to worry about this issue."⁸⁶

The Employee Free Choice Act Will Not Force Companies Into Economic Arrangements They Can't Afford

Arbitrators determine contract terms that are fair and equitable to both workers and their employers. Arbitrators tend to be conservative and shy away from imposing any innovations in an award. This has been the experience in Canada and in the Postal Service.

A company's ability to pay and its overall financial condition are factors arbitrators consider in reaching their decision. Other factors they consider include agreements made between workers and companies in similar industries, the cost of living, worker productivity and the reasonableness of the proposals the two parties offer.

In the 25 states and District of Columbia that have first contract arbitration already, wage increases and contract terms resulting from arbitration tend to be similar to those negotiated outside of the arbitration process.⁸⁷

The Employee Free Choice Act Will Not Allow “Government Bureaucrats” To Make Critical Business Decisions

The business community promotes arbitration as a popular, efficient and inexpensive way of settling many common disputes.

Yet corporate opponents of the Employee Free Choice Act have suggested that “federal bureaucrats” would determine the terms under which employees would work and a business would function. This assertion has no foundation in the bill.

The Federal Mediation and Conciliation Service, the agency charged with establishing the arbitration board, employs only mediators, not arbitrators. The FMCS will refer to parties requesting arbitration a panel of private-sector arbitrators from which the parties will select an arbitrator. This arbitrator, selected by the parties themselves, will determine contract terms.

Private arbitrators have substantial experience determining contract terms and apply well-developed standards to do so and often specialize in particular industries.

Conclusion

America is at a crossroads. The Obama administration faces many challenges, and must now decide which tools it will deploy to make the structural fixes our economy desperately needs. The Employee Free Choice Act is one such tool that will increase the bargaining power of American workers and thus the long-term spending power of American consumers.

Responsible policy-making demands that we evaluate facts and historical precedents as we consider any policy. Consideration of the Employee Free Choice Act as a part of our nation’s economic recovery must be put to such a test. Here’s what we know:

- America created sustained economic success, characterized by shared prosperity rather than concentrated wealth, which lasted from the end of World War II until 1973.
- The economy worked for the middle class—median family income more than doubled, income inequality declined, and America’s productivity and economic output grew consistently.

- Consumer spending was driven by rising worker wages rather than rising worker debt.
- Federal law functionally secured the freedom for workers to form unions and collectively bargain over wages, benefits, and working conditions with employers, and approximately one-third of all American workers chose to do so.

Opponents of the Employee Free Choice Act have made clear that they will marshal almost any argument against the legislation. They have:

- claimed that it will eliminate the secret ballot and open workers up to intimidation;
- predicted that companies will be uncompetitive and small businesses will be hurt; and
- warned that government “bureaucrats” will have the power to make critical business decisions.

The problem is that the facts do not support the claims.

In the end, when you strip away the unsupported assertions the opponents of the Employee Free Choice Act make, a single justification remains. As Wal-Mart CEO Lee Scott said: “We like driving the car and we’re not going to give the steering wheel to anybody but us.”

Opposition to the Employee Free Choice Act comes from corporate CEOs who want to maintain control. They do not want anyone looking over their shoulder as they set their own pay. They do not want anyone else to have a voice in establishing wage rates or workplace conditions.

But the era of blind trust in corporate CEOs and belief that they can be responsible for the overall health of our economy is over. For the past eight years, corporate CEOs have been “driving the car”, but they have driven it into a ditch. They have no plan to strengthen the economy, other than to continue the failed policies that have landed us in this crisis. CEOs have had their run of it and the experiment has failed.

We need to rebalance our economy to support working Americans. Restoring the freedom of workers to form unions will play a central role in rebuilding a strong middle class that can drive the next era of American economic strength. In this regard, the Employee Free Choice Act is a critical piece of our nation’s long-term economic recovery.

Endnotes

- 1 Weisman, Steven R. "Treasury Chief Sees Inequities in U.S. Economy." *New York Times* August 1, 2006. Available at: <http://www.nytimes.com/2006/08/01/washington/01cnd-treasury.html?pagewanted=print>
- 2 Bartels, Larry M. *Unequal Democracy: The Political Economy of the New Gilded Age*, Princeton, NJ: Princeton University Press, 2008; Lazonick, William, *Business Organization and the Myth of Market Economy*, Cambridge, MA: Cambridge University Press, 1991; Skocpol, Theda. *The Missing Middle: Working Families and the Future of American Social Policy*, New York: W. W. Norton, 2000
- 3 Bureau of Labor Statistics, "The Employment Situation: November 2008," Press Release. December 5, 2008. Available at: <http://www.bls.gov/news.release/emp/sit.nr0.htm>
- 4 Weller, Christian. "Economic Snapshot for November 2008." Center for American Progress. November 18, 2008. Available at: http://www.americanprogress.org/issues/2008/11/pdf/nov08_econ_snapshot.pdf
- 5 Ibid.
- 6 Ibid.
- 7 Ibid.
- 8 Franco, Lynn. "The Conference Board Consumer Confidence Index(tm) Improves Moderately, But Present Situation Weakens." Conference Board Press Release. December 30, 2008. Available at: <http://www.conference-board.org/economics/ConsumerConfidence.cfm>
- 9 Bureau of Economic Analysis, National Income and Product Accounts Table. Table 1.1.1. "Percent Change From Preceding Period in Real Gross Domestic Product," downloaded November 25, 2008.
- 10 Bureau of Labor Statistics. *Net Multifactor Productivity and Cost, 1948 - 2007*. Available at: <http://www.bls.gov/mfp/mpload.htm>.
- 11 Calculated from Bureau of Economic Analysis, National Income and Product Accounts, Table 1.14. Available at: <http://www.bea.gov/national/nipaweb/SelectTable.asp?Selected=Y>
- 12 Mishel, Lawrence, Jared Bernstein, and Sylvia Allegretto. *The State of Working America 2006/2007*. Ithaca: Cornell University Press, 2007.
- 13 Saez, Emmanuel and Thomas Piketty. "Income Inequality in the United States, 1913-1998" *Quarterly Journal of Economics*, 118(1), 2003, 1-39, tables and figures updated to 2006, revised July 2008.
- 14 U.S. Census Bureau. *Historical Census of Housing Tables*. Available at: <http://www.census.gov/hhes/www/housing/census/historic/owner.html>
- 15 Bureau of Economic Analysis, National Income and Product Accounts Table, "Table 1.1.1. Percent Change From Preceding Period in Real Gross Domestic Product," downloaded November 25, 2008.
- 16 Bureau of Labor Statistics, Office of Productivity and Technology. "Net Multifactor Productivity and Cost, 1949 - 2007." May 6, 2008. Available at: <http://www.bls.gov/mfp/#data>.
- 17 Mishel, Lawrence Mishel, Jared Bernstein, and Sylvia Allegretto. *The State of Working America 2006/2007*. Ithaca: Cornell University Press, 2007, p 47.
- 18 Ibid, p. 117, 119.
- 19 U.S. Census Bureau, *Current Population Survey, Annual Social and Economic Supplements*, BLS, Table F-1. *Income Limits for Each Fifth and Top 5 Percent of Families (All Races): 1947 to 2006*. Available at: <http://www.census.gov/hhes/www/income/histinc/f01ar.html>.
- 20 Ibid.
- 21 Ibid.
- 22 Madland, David and Jacob Pawlak. "A Tale of Two Conservatives: Comparing Bush and Hoover on the Economy." June 5, 2008. Available at: http://www.americanprogress.org/issues/2008/06/pdf/two_conservatives.pdf.
- 23 Ibid.
- 24 Hirsch, Barry and David Macpherson. "Union Membership and Coverage Database from the Current Population Survey: Note." *Industrial and Labor Relations Review*, Vol. 56, No. 2, January 2003, pp. 349-54 Annual update available at: www.unionstats.com,
- 25 Data from Mishel, Lawrence, Jared Bernstein, and Sylvia Allegretto, *The State of Working America 2008/2009*, forthcoming from Ithaca: Cornell University Press, 2009. Hourly compensation of nonmanagerial workers as measured in Figure 3B, and nonfarm business sector productivity as in Table 3.2
- 26 Ibid.
- 27 Mishel et al, 2009 Table 3.1
- 28 Ibid., Table 3.1.
- 29 See AP inter-active compensation survey at http://hosted.ap.org/dynamic/files/specials/interactives/_business/executive_compensation/index.html?SITE=YAHOO&SECTION=HOME. The compensation figures include salary, bonuses, perks, above-market interest on deferred compensation and the value of stock and option awards. Stock and options awards were measured at their fair value on the day of the grant.
- 30 "The Labor Agenda" Editorial. *New York Times* December 29, 2008: A24. Available at: <http://www.nytimes.com/2008/12/29/opinion/29mon1.html?ref=opinion>
- 31 Weller, Christian and Amanda Logan. "Ignoring Productivity at our Peril: Slowing Productivity Growth and Low Business Investment Threaten Our Economy" Center for American Progress August 2007: 16. Available at: www.americanprogress.org/issues/2007/08/pdf/productivity.pdf
- 32 Greenspan, Alan and James Kennedy. "Sources and Uses of Equity Extracted from Homes." Finance and Economics Discussion Series Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board, Washington, D.C. March 2007. Available at: <http://www.federalreserve.gov/pubs/feds/2007/200720/200720pap.pdf>.
- 33 Ricksen, John. "Downturn Drags More Consumers Into Bankruptcy." *New York Times* November 16, 2008. Available at: <http://www.nytimes.com/2008/11/16/business/16consumer.html>.
- 34 Levy, Dan. "Foreclosures Rose 53% in June, Bank Seizures Tripled." *Bloomberg News* July 10, 2008. Available at: <http://www.bloomberg.com/apps/news?pid=2061068&sid=aoF2SSDy4Ja4&refer=home>.
- 35 Grace, Kerry. "Case-Shiller Index Shows Sharpest Home-Price Declines in Sun Belt." *Wall Street Journal*. December 30, 2008; Healy, Jack. "Home Prices Fell at Sharper Pace in October." *New York Times* December 30, 2008; Whitney, Meredith, Kaimon Chung, and Joseph Mack. "Total Mortgage Debt Outstanding Declines in 3Q08." *Oppenheimer Equity*

Research Industry Update, December 11, 2008; Birger, Jon. "Whitney: Credit Crunch Far From Over." *Fortune*. August 4, 2008. Available at: http://money.cnn.com/2008/08/04/news/newsmakers/whitney_oppenheimer.fortune/index.htm

36 Strasser, David. "A Look at a Key Election Issue: 'Card-check Check' Legislation - The Market Really Needs to Understand This." October 16, 2008. Bank of America Equity Research.

37 Mishel, 2008.

38 Ibid.

39 Schmitt, John. "Unions and Upward Mobility for Women Workers." Center for Economic and Policy Research. December 2008. Available at: http://www.cepr.net/documents/publications/unions_and_upward_mobility_for_women_workers_2008_12.pdf

40 Mishel, 2008.

41 Farber, Henry. "Are Unions Still a Threat? Wages and the Decline of Unions, 1973-2001," Working Paper, Princeton University: 2002; Farber, Henry. "Nonunion Wage Rates and the Threat of Unionization," Working Paper, Princeton University: 2003. Both papers cited in Mishel, Lawrence, and Matthew Walters. "How Unions Help All Workers." Economic Policy Institute. 2003.

42 Shaiken, Harley. "Strengthening America's Middle Class Through the Employee Free Choice Act." Testimony to the House of Representatives Subcommittee on Health, Employment, Labor, and Pensions delivered on February 8, 2007. Available at: <http://edlabor.house.gov/testimony/020807HarleyShaikentestimony.pdf>

43 Examples of each occupation include: construction (e.g. laborers, carpenters); health care (e.g. nurses, aides, technicians, secretaries); hospitality and property services (e.g. janitors, housekeepers, security guards, food preparers); production (e.g. laborers, packers, forklift operators, meat cutters); retail (e.g. salespersons, cashiers, clerks); transportation (e.g. truck and delivery drivers, bus drivers, mechanics)

44 The union wage effect was estimated using ordinary least squares and a simple human capital regression on the Outgoing Going Rotation Groups Current Population Survey data (excluding observations with imputed wages). See Table 3.32 (http://www.stateofworkingamerica.org/tabfig/2008/03/SWA08_Wages_Table.3.32.pdf) in Mishel et al. (2009) for comparable results for the entire workforce. Annual wage impact based on the 38.7 hours worked weekly in the sample for a full year. The wage impact is scaled to compensation impact assumed using the ratio of compensation to wages in the private sector in 2007 (Table 3B in Mishel et al. 2009). This is an understatement as it is well established that unions have a greater effect on benefits than on wages. The number of households sharing in benefits is based on tabulations of the Current Population Survey ORG files. The number of dependent children sharing in benefits is based on tabulations of the Current Population Survey ORG files. The number of jobs lifted above poverty is based on a simulation using the Current Population Survey ORG files. The minimum wage impact is based on Bernstein and Eisenbrey, "EPI Policy Memorandum #118: Raising the minimum wage to \$7.25 is an important first step." December 7, 2006. Economic Policy Institute. Available at: <http://www.epi.org/content.cfm/pm118>. The EITC cost is taken from: <http://www.gpoaccess.gov/usbudget/fy08/pdf/hist.pdf>. The higher education

premium estimates are as presented in Mishel et al (2009, Table 3.14). The Federal income tax liabilities for middle income families are from the Congressional Budget Office and presented in Mishel et al. 2009, Table 1.11.

45 Peter D. Hart Research Associates. New Opinion Research on Unions and Employee Free Choice Act, report conducted for the AFL-CIO, Washington, D.C., December 2006.

46 Mehta, Chirag and Nik Theodore. "Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns." Center for Urban Economic Development, University of Illinois at Chicago. Report commissioned by American Rights at Work, December 2005.

47 Ferguson, John-Paul. "The Eyes of the Needles: A Sequential Model of Union Organizing Drives, 1999 - 2004." *Industrial and Labor Relations Review*, in press.

48 Ibid.

49 American Rights At Work. "The Inadequate Costs of Labor Law Violations." Available at: <http://www.americanrightsatwork.org/publications/general/the-inadequate-costs-of-labor-law-violations-20081121-679-116-116.html>

50 Ibid.

51 See *NLRB vs. Gissel Packing Co.*, 395 U.S. 575 (1969). The Supreme Court ruled that an employer is free to predict the economic consequences it foresees from union representation as long as the prediction is based on objective facts outside of the employer's control. But, see *Crown Bolt, Inc.*, 343 NLRB 86 (2004), where the Board reversed *Springs Industries, Inc.*, 332 NLRB 10 (2000), to hold that, while threats of plant closure are "very severe," they do not inherently warrant setting aside an election.

52 See *Quest International*, 338 NLRB No. 123 (2003). After the workers petitioned for an NLRB election, the employer hired a security guard with a Rottweiler to patrol the plant at shift changes and brought in an additional off-duty police officer on election day. Although the employer had asserted to employees on multiple occasions that electing a union would create a violent workplace, the Board did not find the employers' actions constituted coercion and grounds for overturning the election results.

53 See *Medieval Knights LLC*, 350 NLRB No. 17 (2007). The employer hired anti-union consultants who told employees that, "an employer, by giving into lesser items or addendums on the contract, would be able to stall out the negotiations because they would still be bargaining in good faith but not really agreeing to anything...not really getting anything done." The Board ruled that the statement was legal since it referred to a hypothetical company and did not describe the strategy of the employer. http://www.nlr.gov/shared_files/Board%20Decisions/350/v35017.pdf

54 See *NLRB v. Lorben Corp.*, 345 F.2d 346 (1964). An employer passed around a paper asking employees to check whether or not they wanted union representation. The court ruled that since there was no showing of hostility, the employer did not violate the law. Employer interrogation of employees as to their desire for union representation is not held to be coercive on its face.

55 See *Litton Sys., Inc.*, 173 NLRB 1024, 1030 (1968). The Board found the employer did not violate the law when it fired an employee for discretely leaving a captive audience meeting, affirming the administrative law judge's holding that workers have "no statutorily protected right to leave a meeting which the employees were required by management to attend on company time and property to listen to management's noncoercive antiunion speech designed to influence the outcome of a union election."

56 See *Luxuray of New York*, 185 N.L.R.B. 100, 101 (1970). Supervisors forced all employees to attend a series of captive audience meetings, with the exception of those known to be pro-union, who were forced to continue to work. The Board upheld the finding of the administrative law judge that while the employer "did its best to inhibit the free play of discussion," it still acted within the confines of the law.

57 See *NLRB v. United Steelworkers, CIO (NuTone, Inc.)*, 357 US 357 (1958). The employer in one case prohibited employees from distributing literature or discussing the union on company property during work hours, while it distributed anti-union material and interrogated employees about their union activity. The employer in the second case verbally prohibited employees from organizing while it carried out its own anti-union campaign, which included interrogations and threats of plant closure. The Supreme Court ruled that the employer bans on union activity, despite their own anti-union campaigning, were legal.

58 See *Aladdin Gaming*, 345 NLRB No. 41 (2005). On two occasions, supervisors listened in on private, lunchtime conversations between off-duty employees who were discussing forming a union. The supervisors interrupted the conversations to advise the employees against organizing, speaking against the union for two minutes in one case, and in the other case, the supervisor demanded to know what the employees were saying in Spanish. The Board held that the supervisors' presence in the employee dining area was routine and did not constitute illegal surveillance.

59 See *Peerless Plywood* 107 NLRB 427 (1953). The Board found the employer's anti-union speech to a group of employees coercive because of the "mass psychology" of the group, and announced a prohibition of "election speeches on company time to massed assemblies of employees" within the twenty-four hours preceding an election. Under this rule, employers can still campaign within the last twenty-four hours before an election, even addressing every employee individually, as long as they don't hold captive audience meetings.

60 See *American Nuclear Resources, Inc.*, 300 NLRB No. 62 (1990). The Board upheld an election where one company supervisor checked off the names of employees on a list as they entered the employer's van to ride to the polls, and another checked off their names as the employees entered the employer's facility housing the polls. The Board argued that the employees at this plant were accustomed to being monitored, and that listkeeping was a "normal security procedure."

61 *The Dunlop Commission on the Future of Worker-Management Relations. Final Report. December 1994*: 40. Available at: http://digitalcommons.ilr.cornell.edu/key_workplace/2/; *Commission on the Future of Worker-Management Relations. Fact-Finding Report: May 1994*: 75. Available at: http://digitalcommons.ilr.cornell.edu/key_workplace/429/

62 *Dunlop Final Report*, p. 38.

63 *Ibid.*

64 *Dunlop, Fact-Finding Report*, p. 79.

65 See NLRB, 2007 Annual Report, page 8. Available at: http://www.nlr.gov/nlr/shared_files/brochures/Annual%20Reports/Entire2007Annual.pdf

66 United States. Cong. House. Committee on Education and Labor. *Employee Free Choice Act of 2007. Hearings 110th Congress, 1st sess.* Washington, GPO: 2007.

67 The Wagner Act provided that the NLRB "...may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives." *National Labor Relations (Wagner) Act*, ch. 372, section 9(c), 49 Stat. 449, 453 (1935). This other suitable method was commonly the majority sign-up procedure.

68 *Linden Lumber Division, Summer & Co. v. NLRB*, 419 U.S. 301 (1974).

69 *Dunlop Final Report*, Page 42.

70 *American Rights at Work. "Half a Million and Counting," Issue brief, September 2008.* Available at: <http://www.americanrightsatwork.org/publications/general/half-a-million-and-counting-20080917-654-116-116.html>

71 Amicus briefs filed before the NLRB in *Dana Corp.* 6-RD-1518, 6-RD-1519 (2004). Available at: <http://www.nlr.gov/nlr/about/foia/DanaMetaldyne/DanaMetaldyneAmicusBriefs.html>.

72 State laws include: California Government Code, 3507.1; California Government Code, 3577; California Government Code, 71636.3; California Education Code, 92625.3; General Statutes of Connecticut, Chapter 561, Section 31-106; General Statutes of Connecticut, Chapter 166, Section 10-153b; Illinois Public Labor Relations Act, 5 ILCS 315/9; Kansas Statute, 72-5415; Maryland Code, Education, 6-405; Maryland Code, Education, 6-506; Massachusetts General Laws, Chapter 150E: Section 4; Massachusetts General Laws, Chapter 71, Section 89; Massachusetts General Laws, Chapter 50A: Section 5; Minnesota Statutes 179.16; New Hampshire Revised Statutes Annotated, Title XXIII, Section 273-A:10; New Jersey P.L. 2005, Ch. 161; New Jersey P.L. 2005, Ch. 161; Consolidated Laws of New York, New York State Labor Relations Act, Chapter 31, Article 20, Section 705; Consolidated Laws of New York, Chapter 18, Article 2, Section 12; North Dakota Century Code, 15.1-16-11; Oklahoma Statutes, 70-509.2; Oklahoma Statutes, 11-51-211; Oregon Revised Statutes, 243.682. The City of Duluth, Minnesota, has also passed a majority sign-up law, Ordinance 06-042-0.

73 Barenberg, Mark. "The Political Economy of the Wagner Act: Power, Symbol, and Workplace Cooperation." *Harvard Law Review* 106 (1993), 1379-1496.

74 "Chamber opposes Wagner Labor Bill", *New York Times*, March 25, 1934.

75 "Steel concerns assail labor bills", *New York Times*, March 21, 1934.

76 "Collective bargaining: the issue is joined", *New York Times*, March 25, 1934.

77 Strasser, David. *A Look at a Key Election Issue: "Card-check" Legislation - The Market Really Needs to Understand This"*. Bank of America Equity Research. October 16, 2008.

78 Becker, Craig. "Democracy in the Workplace: Union Representation Elections and Federal Labor Law." *Minnesota Law Review*. 77 (1993), 495.

79 Eaton, Adrienne and Jill Kriesky. "NLRB Elections vs. Card-check Campaigns: Results of a Worker Survey," *Industrial and Labor Relations Law Review*, forthcoming 2008.

80 Yager, Daniel V. Testimony to the Senate Committee on Health, Education, Labor and Pensions. 107th Congress. June 20, 2002.

81 American Rights at Work. "Evidence Indicates Union Coercion is Extremely Rare: Background on HR Policy Association Assertions," unpublished brief.

82 See NLRB, 2007 Annual Report, page 8. Available at: http://www.nlr.gov/nlrb/shared_files/brochures/Annual%20Reports/Entire2007Annual.pdf

83 D'Innocenzio, Anne. "Retail groups to lobby against pro-labor bill." *Associated Press*. November 5, 2008. Available at: http://biz.yahoo.com/ap/081105/election_retail.html

84 Ibid.

85 See Bandyk, Matt. "Employee Free Choice Act: From Beltway to Main Street." *Risky Business Blog*. May 19, 2008. Available at: <http://www.usnews.com/blogs/risky-business/2008/5/19/employee-free-choice-act-from-beltway-to-main-street.html>

86 Rivers Baker, Dawn, "Employee Free Choice Act: From Beltway to Main Street" *Risky Business Blog* comments, May 20, 2008. Available at: <http://www.usnews.com/blogs/risky-business/2008/5/19/employee-free-choice-act-from-beltway-to-main-street/comments/#89428>. Information about the *MicroEnterprise Journal* can be found at: <http://www.microenterprisejournal.com/>.

87 States with voluntary or compulsive arbitration include: AK, CT, DE, DC, HI, IL, IN, IA, ME, MA, MI, MN, MT, NE, NV, NH, NJ, NM, NY, OH, OK, OR, PA, RI, TX, VT. For studies that show arbitration has little effect on wage and benefit levels, see: Ashenfelter, Orley and Dean Hyslop. "Measuring the effect of arbitration on wage levels: The case of police officers," *Industrial and Labor Relations Review*, Vol. 54, No. 2 (2001): 316-328; Bloom, David E. "Collective Bargaining, Compulsory Arbitration, and Salary Settlements in the Public Sector: The Case of New Jersey's Municipal Police Officers." *Journal of Labor Research*, Vol. 2 (Fall 1981): 369-84; Feuille, Peter, John Thomas Delaney, and Wallace Hendricks. 1985. "Police bargaining, arbitration, and fringe benefits," *Journal of Labor Research*, 6(1985): 1-20; Feuille, Peter, John Thomas Delaney, and Wallace Hendricks. "The impact of interest arbitration and police contracts," *Industrial Relations*, 24: 161-181; Ichniowski, Casey, Richard B. Freeman, and Harrison Lauer. 1989. "Collective Bargaining Laws, Threat Effects, and the Determination of Police Compensation," *Journal of Labor Economics*, Vol. 7, No. 2, pp. 191-209; Katz, Harry C. and Thomas A. Kochan. An introduction to collective bargaining and industrial relations *An Introduction to Collective Bargaining and Industrial relations*. 3rd Ed.). Boston: McGraw Hill Irwin, 2004, 347; Lipsky, David B. and Harry C. Katz. "Alternative Approaches to Interest Arbitration: Lessons from New York City," *Public Personnel Management*, Vol. 35, No. 4 (2006); Weitzman, J.S. "Attitudes of arbitrators towards final-offer arbitration in New Jersey," *Arbitration Journal*, (1980) 35, 33.



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