

mayor of one of the major cities in America. I appreciate what he did last night, what he said last night. On foreign policy, he has the credentials to speak.

Yesterday, he gave voice to the growing sentiment among his Republican colleagues that we must change course in Iraq and change now—not in September but now. Senator LUGAR said:

Persisting indefinitely with the surge strategy will delay policy adjustments that have a better chance of protecting our vital interests over the long term.

I recommend and suggest to all Senators, Democrats and Republicans, that they read the brilliant speech given by DICK LUGAR last night. It was very good. It was, I am sure, prepared by him, every word. I understand it is not easy to speak out against the war. I can vouch for that. I also recognize how difficult it is for Republicans to speak out against the war. It has been hard enough for this Democrat to speak out against the war. Senator LUGAR's comments and those of a handful of other Republicans who share his view—to this point, two have said so publicly—takes real courage. Courage is the only way we will change course in Iraq.

Some floor speeches go unnoticed. Most floor speeches go unnoticed. Senator RICHARD LUGAR's speech last night is not one of them. When this war comes to an end—and it will come to an end—and the history books are written—and they will be written—Senator LUGAR's words yesterday could be remembered as a turning point in this intractable civil war in Iraq. But that will depend on whether more Republicans take the stand Senator LUGAR took, a courageous stand, last night.

I look forward to working with Senator LUGAR—and hope and believe a growing number of Republicans—to put his words into action by delivering a responsible end to the war that the American people demand and the American people deserve.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### EMPLOYEE FREE CHOICE ACT OF 2007—MOTION TO PROCEED

#### COMPREHENSIVE IMMIGRATION REFORM ACT—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume en bloc the motions to proceed to H.R. 800 and S. 1639, which the clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to H.R. 800, an act to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organi-

zations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

Motion to proceed to the consideration of S. 1639, a bill to provide for comprehensive immigration reform and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 11:30 will be equally divided between the Senator from Massachusetts, Mr. KENNEDY, and the Senator from Wyoming, Mr. ENZI, or their designees, with the time from 11:30 to 11:40 reserved for the Republican leader and the time from 11:40 to 11:50 for the majority leader.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield 15 minutes to the Senator from Pennsylvania.

Mr. GREGG. Mr. President, if the Senator will respond to an inquiry, would it be possible to have an order set up so that we could know when we are going? If I could get Senator KENNEDY's attention, would it be possible that Senator ALEXANDER be recognized and I be recognized, both for 5 minutes, at some point after Senator SPECTER, on Senator ENZI's time? Is that possible?

Mr. KENNEDY. That is agreeable. We will try to accommodate the time. Senator SPECTER wanted 15 minutes; others are 5 minutes. But we will be glad to accommodate, so if he goes for 15, you can go for 5.

Mr. GREGG. Senator ALEXANDER can be recognized for 5 and then I can be recognized for 5.

Mr. KENNEDY. That would be fine.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I thank the distinguished chairman for yielding time. I have sought recognition to speak on the legislation entitled the "Employee Free Choice Act." I have had numerous contacts on this bill, both for it and against it, very impassioned contacts. People feel very strongly about it. The unions contend they very desperately need it. The employers say it would be an abdication of their rights to a secret ballot. I believe there are a great many important issues which need to be considered on this matter, and that is why I will vote, when the roll is called, to impose cloture so that we may consider the issue. I emphasize that on a procedural motion to invoke cloture—that is, to cut off debate—it is procedural only and that my purpose in seeking to discuss the matter is so that we may consider a great many very important and complex issues. I express no conclusion on the underlying merits in voting procedurally to consider the issue.

In my limited time available, I will seek to summarize. I begin with a note that the National Labor Relations Act does not specify that there should be a secret ballot or a card check but says only that the employee representative will represent in collective bargaining where that representative has been "designated or selected" for that pur-

pose. The courts have held that the secret ballot is preferable but not exclusive.

In the case captioned "Linden Lumber Division v. National Labor Relations Board," the Supreme Court held that "an employer has no right to a secret ballot where the employer has so poisoned the environment through unfair labor practices that a fair election is not possible."

The analysis is, what is the status with respect to the way elections are held today? The unions contend that there is an imbalance, that there is not a level playing field, and say that has been responsible in whole or in part for the steady decline in union membership.

In 1954, 34.8 percent of the American workers belonged to unions. That number decreased in 1973 to 23.5 percent and in 1984 to 18.8 percent; in 2004, to 12.5 percent; and in 2006, to 12 percent. In taking a look at the practices by the National Labor Relations Board, the delays are interminable and unacceptable. By the time the NLRB and the legal process has worked through, the delays are so long that there is no longer a meaningful election. That applies both to employers and to unions, that the delays have been interminable.

In the course of my extended statement, I cite a number of cases. In Goya Foods, the time lapse was 6 years; Fieldcrest Cannon, 5 years; Smithfield—two cases—12 and 7 years; Wallace International, 6 years; Homer Bronson, 5 years.

In the course of my written statement, I have cited a number of cases showing improper tactics by unions, showing improper tactics by employers. In the limited time I have, I can only cite a couple of these matters, but these are illustrative.

In the Goya Foods case, workers at a factory in Florida voted for the union to represent them in collective bargaining. Following the election, the company refused to bargain with the union and fired a number of workers for promoting the union. The workers filed an unfair labor practices case in June of 2000, seeking to require the employer to bargain.

In February of 2001, the administrative law judge found the company had illegally fired the employees and had refused to bargain. But it was not until August of 2006 that the board in Washington, DC, adopted those findings, ordered reinstatement of the employees with backpay, and required Goya to bargain in good faith—a delay of some 5 years.

In the Fieldcrest Cannon case, workers at a factory in North Carolina sought an election to vote on union representation. To discourage its employees from voting for the union, the company fired 10 employees who had vocally supported the union. The employer threatened reprisal against other employees who had voted for the union and threatened that immigrant

workers would be deported or sent to prison if they voted for the union. The union lost the election in August of 1991. Although workers filed an unfair labor practice case with the NLRB, the administrative law judge did not decide the case until 3 years later, in 1994, and his order was not enforced by the Fourth Circuit until 1996—a lapse of some 5 years. In my written statement, I cite seven additional cases.

Similarly, there have been improper practices by unions. On the balance, I have cited nine on that line, the same number I cited on improper activities by employers.

At a Senate Appropriations subcommittee hearing, which I conducted in Harrisburg, PA, in July of 2004, we had illustrative testimony from an employee, Faith Jetter:

Two union representatives came to my home and made a presentation about the union. They tried to pressure me into signing the union authorization card, and even offered to take me out to dinner. I refused to sign the card . . . shortly thereafter, the union representatives called again at my home and visited my home again to try to get me to sign the union authorization card. I finally told them that my decision was that I did not want to be represented . . . despite that . . . there was continuing pressure on me to sign.

At a hearing of the House Committee on Labor this February, witness Karen Mayhew testified about offensive pressure tactics by the unions. I would cite some of my own experience with the issue. When I was an assistant district attorney in Philadelphia, I tried the first case against union coercive tactics to come out of the McClellan Committee investigation. The McClellan Committee had investigated Local 107 of the Philadelphia Teamsters Union, found they had organized a goon squad, beat up people, and exercised coercive tactics to form a union. That case was brought to trial in 1963 and resulted in convictions of all six of the union officials and they all went to jail. Without elaborating on the detailed testimony, it was horrendous what the union practices were in that case.

There is no doubt if you take a look at the way the National Labor Relations Board functions—it is not functioning at all—but that it is dysfunctional.

If you take a look at the statistics, on the one category of intake, it declined from 1,155 in 1994, to 448 in 2006. In another category, it declined from almost 41,000 in 1994, to slightly under 27,000 in 2006. On injunctions, where the NLRB has the authority to go in and get some action taken promptly, it is used very sparingly, and again there is a steep decline: from 104 applications for injunctions in 1995, to 15 in 2005, and 25 in 2006. The full table shows a great deal of the ineptitude as to what is going on.

So what you have, essentially, is a very tough fought, very bitter contest on elections, very oppressive tactics used by both sides and no referee. The National Labor Relations Board is

inert. It takes so long to decide the case that the election becomes moot, not important anymore. What they do is order a new election and they start all over again and, again, frequently the same tactics are employed.

If there is an unfair labor practice in a discharge, the most the current law authorizes the NLRB to do is to reinstate the worker with backpay. That is reduced by the amount the individual has earned otherwise, which is in accordance with the general legal principle of mitigation of damages. But there is no penalty which is attached. So when you take a look at what the NLRB does, it is totally ineffective.

Those are issues which I think ought to be debated by the Senate. We ought to make a determination whether the current laws are adequate and whether there ought to be changes and whether there ought to be remedies. We ought to take a look, for example, at the Canadian system. When I did some fundamental, basic research, I was surprised to find that 5 of the 10 provinces of Canada employ the card check; that is, there is no right to a secret election. One of the provinces had the card check, rejected it, and then I am told went back to the card check. So their experiences are worthy of our consideration.

In Canada, elections are held 5 to 10 days after petitions are filed. I believe this body ought to take a close look at whether the procedures could be shortened, whether there could be mandatory procedures for moving through in a swift way—justice delayed is justice denied, we all know—whether there ought to be the standing for the injured parties to go into court for injunctive relief. That is provided now in the act, but only the NLRB can undertake it.

This vote, we all know, is going to be pro forma. We have the partisanship lined up on this matter to the virtual extreme. There is no effort behind the debate which we are undertaking today to get to the issues. There is going to be a pro forma vote on cloture. Cloture is not going to be invoked. We are going to move on and not consider the matter. We know there are enough votes to defeat cloture. The President has promised a veto. So it is pro forma.

But that should not be the end of our consideration of this issue because labor peace—relations between labor and management—is very important, and we ought to do more by way of analyzing it to see if any corrections are necessary in existing law.

It is worth noting, in the history of the Senate, there has been considerable bipartisanship—not present today. But listen to this: In 1931, the Davis-Bacon Act was passed by a voice vote. In 1932, the Norris LaGuardia Act was passed by a voice vote. In 1935, the National Labor Relations Act, also known as the Wagner Act, was passed by a voice vote. In 1938, the Fair Labor Standards Act was passed, again, by a voice vote. In 1959, only two Senators voted against the Landrum-Griffin bill.

A comment made by then-Senator John F. Kennedy, on January 20, 1959, commenting on the Landrum-Griffin bill, is worth noting. I quote only in part because my time is about to expire, but this is what Senator John F. Kennedy had to say:

[T]he necessity for bipartisanship in labor legislation is a principle which should guide us all. . . . The extremists on both sides are always displeased. . . . Without doubt, the future course of our action in this area will be plagued with the usual emotional arguments, political perils, and powerful pressures which always surround this subject.

Madam President, I ask unanimous consent for 1 additional minute.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. SPECTER. In conclusion, it would be my hope we would take a very close look at this very important law in this very important field and recognize that harmonious relations between management and labor are very important. That is not the case today, with a few illustrations I have given in my prepared statement. We ought to exercise our standing, which we pride ourselves as the world's greatest deliberative body.

Although that will not be done today because cloture is not going to be invoked, I intend to pursue oversight through the subcommittee where I rank which has jurisdiction over the NLRB.

Madam President, I ask unanimous consent that my extensive statement be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR ARLEN SPECTER—  
S. 1041, THE EMPLOYEE FREE CHOICE ACT

Mr. SPECTER. Mr. President, I seek recognition today to discuss the legislation entitled the Employee Free Choice Act. The Senate will later today vote on Cloture on the Motion to Proceed to this important legislation. The Senate prides itself on being the world's greatest deliberative body, and I am voting for cloture to enable the Senate to deliberate on this legislation and the important issues it raises in an open and productive manner.

The Employee Free Choice Act is an issue of deep and abiding interest to labor organizations and to employers. There has been intense advocacy on both sides. At the field hearing in Pennsylvania in July 2004, and in the many discussions that I have had with labor leaders and employers since that time, I have heard evidence indicating that employees are often denied a meaningful opportunity to determine whether they will be represented by a labor union. There are many stories and cases about employers asserting improper influence over their employees prior to an election, and there are also many cases of unions attempting to assert undue influence over workers in an attempt to establish a union. I am talking about threats, spying, promises, spreading misleading information, and other attempts to coerce workers and interfere with their right to determine for themselves whether they wish to be represented by a labor organization. Based on what I have heard, I have concerns that we have lost the balance of the National Labor Relations Act's fundamental

promise—that workers have the right to vote in a fair election conducted in a non-threatening atmosphere, free of coercion and fear, and without undue delay. Workers should be assured that their decisions will be respected by their employer and the union—with the support of the government when necessary. The overwhelming evidence demonstrates that the NLRB is not doing its job and is dysfunctional.

In light of the numerous contacts I have had with constituents on both sides of this issue, and in consideration of the evidence that has been presented by both sides, I have decided to hold off on cosponsoring the Employee Free Choice Act in the 110th to give more opportunity to both sides to give me their views and to give me more time to deliberate on the matter. At a time when union membership is decreasing and when employers face increasing competition in a global economy, it is our duty in Congress to have a vigorous debate and to reach a decision on the issues that the Employee Free Choice Act purports to resolve.

The 1935 Wagner Act guarantees the right of workers to organize, but it does not require that unions be chosen by election. Instead, Section 9 provides more broadly that an employee representative that has been "designated or selected" by a majority of the employees for the purpose of collective bargaining shall be the exclusive representative of those employees in a given bargaining unit. The Act further authorizes the National Labor Relations Board to conduct secret ballot elections to determine the level of support for the union when appropriate. Since 1935, secret ballot elections have been the most common method by which employees have selected their representatives.

Labor organizations have experienced a sharp decline in membership since the 1950s. Unions represented 34.8 percent of American workers in 1954, 23.5 percent in 1973, 18.8 percent in 1984, 15.5 percent in 1994, 12.5 percent in 2004, and 12 percent in 2006. In Senate debate, we should consider whether labor laws have created an uneven playing field that has led to this dramatic decline.

We should also consider where the fault lies in deciding what changes, if any, should be made to our labor laws. There are certainly abuses by both unions and employers. The Supreme Court described the problem in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), noting that "we would be closing our eyes to obvious difficulties, of course, if we did not recognize that there have been abuses, primarily arising out of misrepresentations by union organizers as to whether the effect of signing a card was to designate the union to represent the employee for collective bargaining purposes or merely to authorize it to seek an election to determine that issue." The following cases and testimony are illustrative of this problem:

At a July 2004 Senate Appropriations Subcommittee I held in Harrisburg, Pennsylvania entitled "Employee Free Choice Act—Union Certifications," a letter from employee Faith Jetter was included in the record. In that letter, Ms. Jetter testified: "Two union representatives came to my home and made a presentation about the union. They tried to pressure me into signing the union authorization card, and even offered to take me out to dinner. I refused to sign the card . . . shortly thereafter, the union representatives called again at my home and visited my home again to try to get me to sign the union authorization card. I finally told them that my decision was that I did not want to be represented . . . despite that . . . I felt like there was continuing pressure on me to sign."

In testimony before the Senate Committee on Health, Education, Labor, and Pensions

on March 27, 2007, in a hearing entitled "The Employee Free Choice Act: Restoring Economic Opportunity for Working Families," Peter Hurtgen, a former chairman of the NLRB, testified that "in my experience, neutrality/card check agreements are almost always the product of external leverage by unions, rather than an internal groundswell from represented employees."

On February 8, 2007, at a hearing of the House Committee on Labor, Education and Pensions entitled "Strengthening America's Middle Class through the Employee Free Choice Act," Karen Mayhew, an employee at a large HMO in Oregon, testified that local union organizers had misled many employees into signing authorization cards at an initial question-and-answer meeting. She said: "At the meeting, employees asked the union agents questions about the purpose of the cards. The union agents responded by telling us that signing the card only meant that the employee was expressing an interest in receiving more information about the union, or to have an election to decide whether or not to bring the union in. It was made clear to all of us there in attendance that those authorization cards did NOT constitute a vote right there and then for exclusive representation by SEIU."

A May 22, 2007 National Review article by Deryo Murdock entitled "Union of the Thugs" quoted Edith White, a food-service worker from New Jersey who recalled being visited by a union organizer who told her that she "wouldn't have a job" if she did not sign the authorization card and that "the Union would make sure" that she was fired.

A June 29, 2006 Boston Globe article by Christopher Rowland entitled "Unions in Battle for Nurses" reported that organizers at a local hospital had told nurses that signing an authorization card would "merely allow them to get more information and attend meetings." The nurses were quoted as saying that the process "left [them] feeling deceived and misled."

On February 8, 2007, at a hearing of the House Committee on Labor, Education and Pensions entitled "Strengthening America's Middle Class through the Employee Free Choice Act," Jen Jason, a former labor organizer for UNITE HERE, testified that she was trained to create a sense of agitation in workers and to capitalize on the "heat of the moment" to get workers to sign union support cards. She compared the American system of free ballots to the check card system in Canada, where she also worked as a union organizer, noting "my experience is that in jurisdictions in which 'card check' was actually legislated, organizers tend[ed] to be even more willing to harass, lie, and use fear tactics to intimidate workers into signing cards." She also noted that "at no point during a 'card check' campaign is the opportunity created or fostered for employees to seriously consider their working lives and to think about possible solutions to any problems."

At that same hearing before the House Committee on Labor, Education and Pensions, a former union organizer, Ricardo Torres, testified that he resigned because of "the ugly methods that we were encouraged to use to pressure employees into union ranks." He testified that "I ultimately quit this line of work when a senior Steelworkers union official asked me to threaten migrant workers by telling them they would be reported to federal immigration officials if they refused to sign check-off cards during a Tennessee organizing drive . . . Visits to the homes of employees who didn't support the union were used to frustrate them and put them in fear of what might happen to them, their family, or homes if they didn't change their minds about the union."

Enactment of the Landrum-Griffin Act in 1959 followed extensive Senate hearings by the McClellan Committee on union abuses. Based on evidence compiled by that Committee, where Senator John F. Kennedy was a member and Robert F. Kennedy was General Counsel, I secured the first convictions and jail sentences from those hearings for six officials of Local 107 of the Teamsters Union in Philadelphia. That union organized a "goon squad" to intimidate and beat up people as part of their negotiating tactics. Their tactics were so open and notorious that my neighbor, Sherman Landers, with whom I shared a common driveway, sold his house and moved out, afraid the wrong house would be fire-bombed. The trial, which occurred from March through June 1963, was closely followed by Attorney General Kennedy who asked for and got a personal briefing on the case and then offered me a position on the Hoffa prosecution team.

Similarly, there are many examples of employer abuses during campaigns and initial bargaining. Each of the following cases illustrates the principle often attributed to William Gladstone: "Justice delayed is justice denied."

In the Goya Foods case, 347 NLRB 103 (2006), workers at a factory in Florida voted for the union to represent them in collective bargaining negotiations. Following the election, the company refused to bargain with the union and fired a number of workers for promoting the union. The workers filed an unfair labor practices case in June of 2000, seeking to require the employer to bargain. In February of 2001, the Administrative Law Judge found that the company had illegally fired the employees and had refused to bargain. It was not until August of 2006, however, that the Board in Washington, D.C. adopted those findings, ordered reinstatement of the employees with back pay, and required Goya to bargain in good faith—six years after the employer unlawfully withdrew recognition from the union.

In the Fieldcrest Cannon case, 97 F.3d 65 (4th Cir. 1996), workers at a factory in North Carolina sought an election to vote on union representation in June of 1991. To discourage its employees from voting for the union, the company fired at least 10 employees who had vocally supported the union, threatened reprisal against employees who voted for the union, and threatened that immigrant workers would be deported or sent to prison if they voted for the union. The union lost the election in August of 1991. Although workers filed an unfair labor practice case with the NLRB, the Administrative Law Judge did not decide the case until three years later, in 1994, and his order was not enforced by the Fourth Circuit until 1996—five years after the election.

In the Smithfield case, 447 F.3d 821 (D.C. Cir. 2006), employees at the Smithfield Packing Company plant in Tar Heel, North Carolina filed a petition for an election. In response, the employer fired several employees, threatened to fire others who voted for a union and threatened to freeze wages if a union was established. The workers lost two elections—one in 1994 and one in 1997. Workers filed an unfair labor practices case. The administrative law judge ruled for the workers in December of 2000, but the NLRB did not affirm that decision until 2004, and the Court of Appeals did not enforce the order until May of 2006—twelve years after the first tainted election.

In another case involving the Smithfield Company, 347 NLRB 109 (2006), employees at the Wilson, North Carolina location sought an election for union representation. Prior to the election, the company fired employees who were leading the union campaign and threatened and intimidated others. The

union lost the election in 1999. The workers filed an unfair labor practices case and the Administrative Law Judge found in 2001 that the employer's conduct was so egregious that a Gissel bargaining order (which mandates a card check procedure instead of an election) was necessary because a fair election was not possible. However, by the time the NLRB affirmed the ALJ's decision in 2006, it found that the NLRB's own delay in the case prevented the Gissel bargaining order from being enforceable and—7 years after the employer prevented employees from freely participating in a fair election—the remedy the Board ordered was a second election.

In the Wallace International case, 328 NLRB 3 (1999) and 2003 NLRB Lexis 327 (2003), the employer sought to dissuade its employees from joining a union by showing its workers a video in which the employer threatened to close if the workers unionized and the town's mayor urged the employees not to vote for a union. The union lost an election in 1993. The Board ordered a second election, which was held in 1994, that was also tainted by claims of unfair labor practices. The employees brought unfair labor practice cases after the election. In August 1995, the ALJ found against the employer and issued a Gissel bargaining order because a fair election was impossible. However, as in the Smithfield case, by the time the NLRB finally affirmed the ALJ's decision, in 1999, the Gissel order was not enforceable. In subsequent litigation, an ALJ found that the employer's unlawful conduct, including discriminatory discharge, had continued into 2000—7 years after the first election.

In the Homer Bronson Company case, 349 NLRB 50 (2007), the ALJ in 2002 found that the employer had unlawfully threatened employees who were seeking to organize that the plant would have to close if a union was formed. The Board did not affirm the decision until March 2007, again noting that a Gissel order, though deemed appropriate by the NLRB General Counsel, would not be enforceable in court because of the delays at the NLRB in Washington, D.C.

The National Labor Relations Board found unlawful conduct by employers in a number of recent cases in my home state of Pennsylvania:

In the Toma Metals case, 342 NLRB 78 (2004), the Board found that at least eight employees at Toma Metals in Johnstown, PA were laid off from their jobs because they voted to unionize the company. In addition, David Antal, Jr. was terminated because he told his supervisor that he and his fellow employees were organizing a union. He was laid off the same evening the union petition was filed.

In the Exelon Generation case, 347 NLRB 77 (2006), the Board found that the employer in Limerick and Delta, PA threatened employees during an organizing campaign that they would lose their rotating schedules, flex-time, and the ability to accept or reject overtime if they voted for union representation.

In the Lancaster Nissan case, 344 NLRB 7 (2005), the Board found that the employer failed to bargain in good faith following a union election victory by limiting bargaining sessions to one per month. The employer then unlawfully withdrew recognition from the union a year later based on a petition filed by frustrated employees, automotive technicians.

In addition to showing employer abuses, these cases demonstrate the impotency of existing remedies under the NLRA to deal effectively with the problem. Further, the convoluted procedures and delays in enforcement actions make the remedies meaningless.

In 1974, in Linden Lumber Division v. NLRB, 419 U.S. 301 (1974), the court made it clear that an employer may refuse to recognize a union based on authorization cards and insist upon a secret ballot election in any case, except one in which the employer has so poisoned the environment through unfair labor practices that a fair election is not possible. In those cases involving egregious employer conduct, the Board may impose a "Gissel" order that authorizes card checks. This remedy takes its name from NLRB v. Gissel Packing Co., which I cited earlier.

Most often, however, when the Board finds that an employer improperly interfered with a campaign, it typically only orders a second election, often years after the tainted election, and requires the employer to post notices in which it promises not to violate the law.

The standard remedy for discriminatory discharge, the most common category of charges filed with the NLRB, is an order to reinstate the worker with back pay, but any interim earnings are subtracted from the employer's back pay liability, and often this relief comes years after the discharge.

The other common unfair labor practice case involves an employer's refusal to bargain in good faith. The remedy is often an order to return to the bargaining table.

In relatively few cases each year, the NLRB finds that the unfair labor practices are so severe that it chooses to exercise its authority under Section 10(j) of the NLRA to seek a federal court injunction to halt the unlawful conduct or to obtain immediate reinstatement of workers fired for union activity. The NLRB too rarely exercises this authority, and the regional office must obtain authorization from Washington, D.C. headquarters to seek injunctive relief.

Additionally, under the procedures of the Act, after the union wins an election, the employer may simply refuse to bargain while it challenges some aspect of the pre-election or election process. The union must then file an unfair labor practice charge under Section 8(a)(5), go through an administrative proceeding, and ultimately the matter may be reviewed by a Federal court of appeals, since a Board order is not self-enforcing. All of this takes years.

The following tables reflect that from 1994 to 2006 the number of cases handled by the NLRB regional offices declined steadily from 40,861 cases in 1994 to 26,717 in 2006. Yet, despite this decline in workload, in 2005 the median age of unresolved unfair labor practice cases was 1232 days, and for representation cases the median age was 802 days. In 1995, the NLRB sought 104 injunctions; in 2005, it sought 15; and in 2006, 25 injunctions. In Washington, D.C., the Board's caseload declined from 1155 cases in 1994 to 448 cases in 2006.

The number of decisions issued declined from 717 in 1994 to 386 in 2006. The backlog hit a peak of 771 cases in 1998 and declined to 364 in 2006, but that decline must be viewed in the context of a case intake for the Board that had fallen to only 448 cases in 2006.

TABLE 1: REGIONAL OFFICE STATISTICS

	1994	1995	1996	1997	1998	2003	2004	2005	2006
Case Intake	40861	39935	38775	39618	36557	33715	31787	29558	26717
ULP (Case Age in Days)	758	893	846	929	985	1030	1159	1232	—
Representation (Case Age in Days)	152	305	369	370	473	473	576	802	—
Section 10(j)	83	104	83	45	17	14	15	25	—

TABLE 2: WASHINGTON OFFICE STATISTICS

	1994	1995	1996	1997	1998	2003	2004	2005	2006
Case Intake	1155	1138	997	1084	1083	818	754	562	448
Decisions	717	935	709	873	708	543	576	508	386
Case Backlog	585	459	495	672	771	673	636	544	364

What has the Board been doing? Although many cases are resolved at earlier stages out in the regions where the NLRB may be generally effective, one must ask why it took years for the Board to order reinstatement in the cases cited earlier?

During the Senate's debate on the Employee Free Choice Act, it is important that we focus on the employees' interests, not on the employers' or the unions' interests. We must protect employees from reprisals from either side. We must ensure they have an environment in which they may make a free choice. We must ensure that employees' decision, whether it is for or against representation, is respected. And we must ensure that if the employees do choose to be rep-

resented, they can have confidence that their employer will bargain with the union, and that the employer will not try to undermine the union by threatening the employees during bargaining for an initial agreement.

And finally, we must ensure that the Federal statute designed to provide this protection of employees—and the government agency tasked with the statute's enforcement—are effective. If the statute needs to be modified to provide stronger remedies or more streamlined procedures, then that should be addressed. If the NLRB itself is causing delay and confusion as to what the law is, then that should be addressed. We do not need symbolic votes. We need meaningful debate and careful consideration of these

important issues. America's workers deserve nothing less.

It is worthwhile to look at the experience of our neighbor, Canada, where five of the ten provinces use the card check procedure instead of secret ballot elections. In hearings this year before the Senate and the House concerning the Employee Free Choice Act, witnesses testified that unions are more successful in their organizing campaigns under the card check system—perhaps an indication that card check prevents employers from exercising undue influence over workers to prevent unionization. On the other hand, there was testimony suggesting that the Canadian card check system has allowed

unions to exert undue influence on employees in order to obtain their signatures on union recognition cards.

In a 2004 study of the gap between Canadian and U.S. union densities, an economics professor from Ontario found that simulations suggest that approximately 20 percent of the gap could be attributed to the different recognition procedures—card check or secret ballot elections—in the two countries. She further noted that the election procedures in Canada are not identical to those of the U.S. I am intrigued by the fact that union elections in Canada must take place within 5 to 10 days after an application or petition is filed, depending on the province. In the U.S. there is no such statutory time limit between petition and voting, and it may be several months before the election is held. This creates a wider window of opportunity for the employer to influence workers, using legal or illegal means. The professor also notes that when unfair labor practices occur, the differences in procedures and the role of the courts in the two countries mean that it is faster and less expensive to process complaints in Canada than in the U.S.

In 2001, another economics professor published a study in which he noted that in the previous decade, an increased number of Canadian provinces had abandoned their long-standing tradition of certification based on card check by experimenting with mandatory elections. In British Columbia, for example, legislation requiring elections was enacted in 1984 and then abandoned in 1993. In examining the impact of union suppression on campaign success in British Columbia, the professor tested whether the length of an organizing drive had an impact on organizing success. The evidence demonstrated that the probability of a successful organization of employees decreased by 1 percent for every two days of delay when an unfair labor practice was involved. The unfair labor practice itself decreased the probability of success even further. The professor observed that mandatory elections, as compared with a card check system, were detrimental to unions' success. He found that not only did success rates fall, but the number of certification attempts fell substantially as well. He concluded that unions believe organizing will be more difficult under mandatory voting as so are less willing to invest in it. He concluded his paper with this observation:

It seems more likely, however, that the recent trend towards compulsory voting represents a shift in beliefs towards elections as a preferable mechanism for determining the true level of support within the bargaining unit. . . . If governments are opting for a more neutral stance towards unions, our results suggest that stricter employer penalties should be considered. Currently even when an [unfair labor practice claim] is found to be meritorious, penalties for illegal employer coercion are largely compensatory. . . . Furthermore, our evidence shows that strict time limits form a useful policy tool in encouraging neutrality in the organizing process since the combination of union suppression and a length certification process is quite destructive.

I also note a 2006 study published in the *Industrial Law Journal* by an Oxford professor who has studied the statutory recognition procedures in England's Trade Union and Labour Relations Act of 1992. He compares the English, Canadian and American systems, and states at page 9: "Indeed, the law itself has erected the most substantial barriers to unions' organizational success, and this is manifest in the dilatoriness of legal procedures. Delay erodes the unions' organizational base by undermining workers' perceptions of union instrumentality." These

studies of the Canadian and the English experiences are instructive if we are to carefully consider the many aspects of the secret ballot election process.

Since 1935, there have been two major substantive amendments to Federal labor law. In 1947, Congress passed the Taft-Hartley Act and, in 1959, it passed the Landrum-Griffin Act. These additions to the law strengthened workers' right to refrain from union activity and regulated the process of collective bargaining and the use of economic weapons during labor disputes, but Congress has not amended the provisions of federal labor law that protect the right of self-organization.

On July 18, 1977, President Carter asked Congress for labor law reform legislation. His proposals were incorporated into H.R. 8410, which was introduced on July 19, 1977. An identical bill, S. 1883, was introduced that same day by Senators Williams and Javits. Ten days of hearings by the Subcommittee on Labor-Management Relations began on July 25, 1977.

UNIONS, FORMER SECRETARIES OF LABOR, CIVIL RIGHTS AND THE RIGHT TO WORK COMMITTEE TESTIFIED AGAINST H.R. 8410

In the House alone, from 1961 through 1976, over 60 days of hearings were held on the National Labor Relations Act. Nineteen days of hearing were held between July 15, 1975 and May 5, 1976, concerning, among other bills: H.R. 8110, to expedite the processes and strengthen the remedies of the Labor Act with respect to delegation and treble damages; H.R. 8407 to include supervisors within the protection of the Act; H.R. 8408, to improve the administration and procedures of the Board in terms of technical amendments; H.R. 8409, to strengthen the remedial provision of the Act against repeated or flagrant transgressors; and H.R. 12822, to amend the National Labor Relations Act to expedite elections, to create remedies for refusal-to-bargain violations, and other purposes. In 1978, H.R. 8410 was debated for 20 days in the Senate. After failing 5 cloture votes on the bill and amendments, the bill was returned on June 22, 1978 to the Senate Committee on Human Resources, and there it died. We should try again to address the problems raised during these extensive hearings and debates.

The National Labor Relations Act created a system of workplace democracy that to a large extent has served our nation well for more than 70 years. American labor unions, with a strong history of social progress and accomplishments in improving the workplace, have made America and the American economy strong. Yet, despite these successes, the NLRA is too often ineffective at guaranteeing workers' rights in the face of bad conduct by some employers and some unions.

The essential plan and purpose of the Wagner Act was described by President Franklin Roosevelt when he signed the measure into law:

"This act defines, as part of our substantive law, the right of self-organization of employees in industry for the purpose of collective bargaining, and provides methods by which the government can safeguard that legal right. It establishes a National Labor Relations Board to hear and determine cases in which it is charged that this legal right is abridged or denied, and to hold fair elections to ascertain who are the chosen representatives of employees.

A better relationship between labor and management is the high purpose of this act. By assuring the employees the right of collective bargaining, it fosters the development of the employment contract on a sound and equitable basis. By providing an orderly procedure for determining who is entitled to

represent the employees, it aims to remove one of the chief causes of wasteful economic strife. By preventing practices which tend to destroy the independence of labor it seeks, for every worker within its scope, that freedom of choice and action which is justly his . . ."

It has been too long since the Senate has fully and freely debated whether our labor laws continue to adequately safeguard workers' rights. It is important that we focus on the real problems with the NLRA and try to achieve a result that can garner bipartisan support. Just take a look at the bipartisan support that has been a necessary basis of any successful labor legislation:

In 1926, only 13 Senators voted against the Railway Labor Act.

In 1931, the Davis-Bacon Act was passed by voice vote.

In 1932, the Norris-LaGuardia Act was passed by voice vote.

In 1935, the National Labor Relations Act (also known as the Wagner Act) was passed by voice vote.

In 1936, the Walsh-Healey Public Contracts Act was passed by voice vote.

In 1938, the Fair Labor Standards Act was passed by voice vote.

In 1947, the Taft-Hartley Act was passed when 68 Senators voted to override President Truman's veto.

In 1959, only 2 Senators voted against the Labor-Management Reporting and Disclosure Act (also known as the Landrum-Griffin Act).

In 1965, the McNamara-O'Hara Service Contract Act was passed by voice vote.

In 1974, not a single Senator voted against the Employee Retirement Income Security Act.

On January 20, 1959, Senator John F. Kennedy introduced a section of the Landrum-Griffin Act. His remarks in his floor speech were instructive and prophetic:

"[T]he necessity for bipartisanship in labor legislation is a principle which should guide us all. . . . So let us avoid . . . unnecessary partisan politics or uninformed or deliberate distortions. This is particularly true in the controversial field of labor—which is precisely why no major labor legislation has been passed in the last decade. The extremists on both sides are always displeased. . . . [But] in the words of *Business Week* magazine . . . 'wise guidance in the public interest can be substituted for concern over wide apart partisan positions.' I wish to mention the key provisions of the bill introduced today—the basic weapons against racketeering which will be unavailable in the battle against corruption if such a measure is not enacted by the Congress this year: . . . Secret ballot for the election of all union officers or of the convention delegates who select them. . . . This is, in short, a strong bill—a bipartisan measure—a bill that does the job which needs to be done without bogging down the Congress with unrelated controversies. Without doubt, the future course of our action in this area will be plagued with the usual emotional arguments, political perils, and powerful pressures which always surround this subject."

I am voting for cloture today because I believe that it is time for Congress to thoroughly debate this issue and to address the shortcomings in the National Labor Relations Act in a bipartisan and comprehensive manner.

Mr. SPECTER. Madam President, I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Madam President, I yield 5 minutes to the Senator from Tennessee.