Statement on the Employee Free Choice Act
Catholic Scholars for Worker Justice
Approved by a Unanimous Vote of the Steering Committee
May 22, 2008

"Among the basic rights of the human person must be counted the right of freely founding labor unions. These unions should be truly able to represent the workers and to contribute to the proper arrangement of economic life. Another such right is that of taking part freely in the activity of these unions without fear of reprisal." (no. 68)

Gaudium et Spes (The Church in the Modern World)," Second Vatican Council, 1965

"The Church fully supports the right of workers to form unions… No one may deny the right to organize without attacking human dignity itself. Therefore, we firmly oppose organized efforts, such as those regrettably now seen in this country, to break existing unions and prevent workers from organizing…. U.S. labor law reform is needed to meet these problems as well as to provide more timely and effective remedies for unfair labor practices." (no. 104)

Economic Justice for All, Pastoral Letter of the United States Bishops, 1986

"The Magisterium recognizes the fundamental role played by labor unions, whose existence is connected with the right to form associations or unions to defend the vital interests of workers employed in the various professions... Such organizations, while pursuing their specific purpose with regard to the common good, are a positive influence for social order and solidarity, and are therefore an indispensable element of social life." (no. 305)

Compendium of the Social Doctrine of the Church, Pontifical Council for Justice and Peace, 2004

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As the various statements sampled above indicate, support for the right to join a union has been central to Catholic Social Teaching for the past century and more. Pope Leo XIII's 1891 encyclical *Rerum Novarum* made this point explicitly and it has been reinforced in the documents of Vatican II, the 1986 US Bishops' Pastoral Letter on Economic Justice, and in Pope John Paul II's encyclical *Laborem Exercens*, among many other places. Catholic scholars also have a long history of activism in promoting worker rights and respectful, productive labor-management relations, as witnessed in the work of Dorothy Day and labor priests such as John A. Ryan, George Higgins, John Egan, Mortimer Gavin, SJ and Edward Boyle, SJ.

It is to carry on this mission and to encourage leaders to support these doctrines that led to the formation of Catholic Scholars for Worker Justice. Our mission statement calls for us to:

> Promote Catholic Social Teaching on the rights of workers and the indispensible role that unions play in securing justice (1) for workers and their families, (2) in the workplace, and (3) for the universal common good.

Consistent with this mission, we feel the need to speak out about what may prove to be, as an editorial in the Jesuit magazine *America* called "the most important piece of labor legislation of the past 72 years."[1]

Our hope is the coming debate over labor law will break what has now become a quarter-century ideological impasse. The failure to pass labor reforms has denied a growing number of unorganized workers the ability to act on their desire to join a union and gain access to collective bargaining. Surveys in the 1970s, for example, found that about 30 percent of non union workers would join a union if offered the opportunity; today the number that would do so has grown to 50 percent or more.[2] Clearly, there are large numbers of workers who want to exercise their right to join a union.

But today workers face enormous obstacles and very low odds of being able to gain access to representation and collective bargaining. Consider the following simple facts:

- In 2005 the National Labor Relations Board awarded over 33,000 workers either back pay or reinstatement because they were illegally fired or disciplined by their employer for exercising their right to form or participate in a union.[3]

- The chance a union supporter or activist would be fired for attempting to organize rose in the 1980s compared to the 1950s through the 1970s, then declined somewhat in the late 1990s and once again rose between 2000 and 2005. Today about two of every 100 union supporters get fired for exercising their legal rights. Those who actively campaign in support of their rights face substantially higher odds of discipline or discharge.[4]

- Recent analysis shows that less than twenty percent of organizing drives where a substantial number of workers, usually well over a majority, have signed statements indicating they want representation end up getting a labor agreement. If an employer resists by committing an unfair labor practice—firing union supporters for example--the chance of getting a labor agreement goes down to

[1] "Restoring Worker Choice," *America*, August 27, 2007.
[2] See Seymour Martin Lipset and Noah M. Meltz, *The Paradox of American Unionism*, Ithaca, NY: Cornell/ILR Press, 2004.
[3] 2005 Report of the National Labor Relations Board, Table 4, p. 116.
[4] John Schmidt and Ben Zipperer, "Dropping the Ax: Illegal Firings during Union Organizing Campaigns, Center for Economic and Policy Research, January 2007.

about one in ten.[5] Even in cases where a majority of workers vote to be represented by a union, there is only a little more than 50-50 (56 percent to be exact) chance that workers will get a first contract.

- Today there is a booming business for union avoidance consultants. Firms hire and devote resources to these consultants in over three fourths of all organizing campaigns.[6]

These are indicators of a failed policy. America is effectively denying workers a voice at work, contrary to Catholic social teaching, stated public policy, and widely shared values and expectations of the American public.

It is facts like these that led a national bipartisan Commission on the Future of Labor-Management Relations to conclude a decade ago that "labor law is not achieving its stated intent of encouraging collective bargaining and protecting workers' rights to choose whether or not to be represented at the workplace."

We agree with the Commission's conclusion.

The Employee Free Choice Act attempts to remedy these problems and therefore deserves careful consideration.

The Act provides for union certification if a majority of workers sign cards indicating that they want a union, strengthens the weak penalties for violating workers' legal rights, and provides for arbitration of an initial contract if the parties cannot negotiate one on their own.

The bill's proponents draw on evidence like that reviewed above to argue that the election process is so badly broken that it no longer gives workers a fair chance to organize; hence the need for card-check recognition. In support of this approach others cite research evidence showing that workers experience less stress and conflict and gain just as much information to make an informed choice in card check processes as is the case in contested elections.[7]

The bill's opponents ignore or discount this evidence and instead argue that "free elections" are a bulwark of democracy and that card checks will free unions to intimidate workers. They also strongly oppose first contract arbitration on the grounds that it violates the principle that parties should be able to freely decide their terms and conditions of employment and on the argument that arbitrators might impose settlements that are unworkable because they lack sufficient knowledge of the conditions facing the

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[5] John Paul Ferguson, "The Eyes of the Needle: A Sequential Model of Union Organizing Drives, 1999-2004, forthcoming, *Industrial and Labor Relations Review*.

[6] Kate Bronfenbrenner, "Employer Behavior in Certification Elections and First Contracts: Implications for Labor Law Reform," in Sheldon Friedman, Richard Hurd, Rudy Oswald, and Ronald Seeber, (eds.), *Restoring the Promise of American Labor Law*, Ithaca: Cornell/ILR Press, 1994, 75-89.

[7] Adrienne Eaton and Jill Kriesky, NLRB Elections versus Card Check: Results of a Worker Survey, Rutgers University School of Management and Labor Relations, 2006.

parties.

Those who believe in the Catholic social teachings cannot in good conscience ignore the strong evidence that the current law and procedures are not working. In particular, we cannot ignore the fact that employers can and have resisted union organizing efforts to keep a majority of workers who have expressed their interest in being represented from even getting to an election and that employer resistance after a majority of workers vote for union representation again blocks nearly half of the units from obtaining a collective bargaining agreement. Nor can we ignore the empirical evidence that workers feel less pressure and stress in card check processes than they experience in contested elections. Nor should we ignore the many years of experience with what actually happens when arbitration by a neutral expert is present in collective bargaining negotiations. The evidence consistently shows that arbitrated contract awards very closely mirror collectively bargained settlements reached with comparable employers and employees.[8] There simply is no evidence to support the claim that arbitrators will impose unworkable or un-informed awards. Moreover, there are a variety of ways to design the arbitration process to safeguard against this potentiality.

For these reasons we support the Employee Free Choice Act.

We also believe it is time to hold labor policy to the same evidence-based standards as other economic and social policies. We, therefore, suggest adding three simple provisions to the bill. First, federal agencies should be instructed to gather the data needed to track the effects of both card checks and elections, to see how each meets the law's objectives and promotes the cooperative and productive labor relations that workers and employers want and that the economy needs. Second, the bill should instruct the Secretary of Labor to make these data available for independent evaluation and to report the results (say, three years from now) to Congress for its assessment. In both cases, the bill should ensure the agencies the resources they would need to do this. Finally, because we see these reforms as only the first, necessary steps in a longer run effort to update labor management relations to better conform to the changing nature of work, economic conditions, and societal needs, the bill should further instruct the Secretary of Labor to engage in experimental and demonstration projects in conjunction with industry and labor leaders to test promising approaches for improving the quality of labor management relations.

[8] See Thomas A. Kochan, "Negotiating under Arbitration: The Taylor Law after 40 Years," paper presented at the 40th Anniversary Conference of the Taylor Act, May 15, 2008. paper available at http://web.mit.iwer.edu.