This legislation represents a dramatic departure from previous labor law.

The Ominous Employee Free Choice Act

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The history of American labor law, to date, can be broken into two broad periods, animated by fundamentally different world views. The first period was marked by the ascendancy of common law principles, which dominated American labor law from the late 19th century until it was fully displaced by passage of the Wagner Act in 1935. The second period runs from that time to the present, and has as its two main landmarks the Taft-Hartley Act of 1947 and the Landrum-Griffin Act of 1959. In between those periods lies a short but important transition that runs, roughly speaking, from the Railway Labor Act of 1926 through the Norris-LaGuardia Act of 1932 — a Herbert Hoover confection — and Franklin Roosevelt's ill-fated National Industrial Recovery Act of 1933. Today may prove to be the dawn of a third broad period, defined by the oft-proposed Employee Free Choice Act (EFCA) that passed the U.S. House of Representatives in 2008 only to fall prey to a Republican blockade in the Senate.

In broad outline, I will summarize the salient features of these three approaches as a progression from markets, to politics, to dictatorship. The earliest period, which is uniformly discredited today in polite circles, adopted a basic free-market approach to labor relationships. The second period attempted to introduce a version of union democracy into labor markets, in which organization campaigns were followed by secret ballot elections under the supervision of the National Labor Relations Board (NLRB) . The third period, should it come to be, would introduce a system of dictatorial union and arbitral workplace decrees implemented through a lethal one-two punch. The first blow comes from allowing a union to substitute, at its option, a card-check selection for the current secret ballot elections in recognition disputes. The second blow is the introduction of compulsory interest arbitration that authorizes a panel of arbitrators under a set of procedures as yet to be determined to hash out an initial two-year "contract" — i.e. arbitral award — binding on the parties, who have no recourse to judicial review.

The initial legislative rejection of the common law during the pre–New Deal Progressive Era was stymied by judicial action before 1920, only to be blown away in the United States Supreme Court in the post-1926 period. It is my unrepentant view that earlier judges had it right when they rejected, on constitutional grounds no less, the collective bargaining system subsequently enshrined in the Wagner Act. I review those developments in part for theoretical completeness, knowing that a return to the common law regime has zero political traction in Congress. Understanding that history is critical, however, for setting the stage for a different constitutional indictment of the EFCA that I believe is valid *under current law.*

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Accordingly, the first part of this article examines the common law system that was displaced decisively by the Wagner Act. The second section then looks at the Wagner Act synthesis. The last section examines the EFCA and the constitutional challenges that can be raised against it.

THE COMMON LAW APPROACH

The rise of labor law as a separate branch of law is a creature of the first half of the 20th century. Prior to that time, labor disputes were governed by general principles that common law courts (including the courts of equity that could issue injunctive relief) applied to all business conflicts. Those principles can be briefly summarized as follows: First, the parties had to keep their promises. Except for the usual prohibitions against force and fraud, the parties were left to devise for themselves on the critical matters of wages, termination, discipline, and other terms and conditions of contract. The ostensible imbalance of economic power between the rich employer and the poor employee — a stereotype that is true in some instances, but not in all — was of no moment to the legal system. The key protection for workers was the right to quit and to seek employment elsewhere from other employers who were prepared to bid up wages for productive labor. Freedom of contract was a constitutional norm.

Within this system, the dominant constraints on private conduct came from the law dealing with interference with prospective advantage, inducement of breach of contract, and the antitrust laws. The first body of law followed the general principle that no person should be able to apply force or fraud to disrupt the voluntary arrangements of other individuals. That principle received its most severe challenge in labor picketing cases that surfaced in the 1890s, when union members sought to prevent nonunion workers from taking jobs below union scale. The hard factual questions in those cases were whether the pickets were merely "informational," in which case their behavior was protected, or whether it involved an express or implied threat of the use of force, which was never entitled to legal protection. The common law courts, rightly in my view, started from the presumption that pickets did intend to disrupt relationships, and therefore struggled to find ways to allow the informational component to survive while stripping unions of their coercive power. That task was not easy then, just as it is not easy today when courts grapple with the proper limits, for example, on abortion protesters who congregate around the entrances to abortion clinics. But in one sense the cause of industrial peace — one of the favorite tropes of Wagner Act supporters — depended on controlling pickets (and, of course, the employer forces — think Pinkertons) who were deployed against them. Clearly, state regulation intended to prevent force or the threat of force on either side is a proper government function, given the difficulty of sorting out the disputes after the fact. I do not know of any so-called conservative thinker, on or off the courts, during the Progressive Era who would have disagreed with that assessment.

The much more contentious set of issues surrounded the complementary application of the tort of inducement of breach of contract and the antitrust laws once all questions involving the use of force were set off to one side. The operative question now was the proper role of combination or collective action by either firms or unions — the use of so-called economic weapons of strikes, boycotts, and lockouts in labor disputes. On this point, the basic principles of antitrust law treated with deep suspicion any horizontal arrangement whereby potential competitors got together in order to restrict output and raise prices — or wages. One response to such horizontal arrangements was to criminalize them, as was done for business combinations under the 1890 Sherman Act. Yet the criminal sanction had long been off the table for labor unions by that date. Instead, the key issue was whether unions should be subject to either the civil sanctions of the antitrust law or to the defensive actions of the employers.

On the first of those points, the Clayton Act of 1914 contains this ringing endorsement: "The labor of a human being is not a commodity or an article of commerce." From that bold premise, the astute commentator might assume that labor could not be bought and sold at all. Not so. The next sentence reveals a different program. "Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agriculture, or horticulture organization, instituted for the purposes of mutual help." In plain English, the antitrust laws could no longer be used as a way to block the formation of unions, as they had been used previously. This made a big difference. Previously, secondary boycotts (against firms that do business with any company that is targeted for unionization) were subject to treble damage actions that could result in judgments levied against union members.

With the antitrust law neutralized, the question remained whether employers could engage in acts of self-help against unionization. The key employer tactic was the so-called yellow-dog contract, whereby for the duration of their employment workers agreed not to join unions. These arrangements were often demanded by employers and often welcomed by employees who wanted ways to fend off union organizers. The explanation for their decision is not hard to find. Unions do offer some workers the prospect of higher wages. But organization also requires current workers to take real risks. Higher wages could mean fewer jobs, and those jobs need not be allocated to current workers, who might have to yield their places to current union members after a successful organization campaign. It is quite rational for present workers to prefer low risk/low return strategies to the high risk/high return strategy associated with unionization.

The legal system supplied the needed tools to offer protection to both the employer and its employees. The tort of inducement of breach of contract, developed initially in the 1850s in connection with a dispute over the great soprano Johanna Wagner's singing contract, provides that no person shall offer benefits to lure someone away from an existing contract of which the inducer has knowledge. As applied in the labor context, it meant that a union could not ask workers to promise to become members at its beck and call so that it could organize, in secret, mass walkouts for maximum economic effect. There is little doubt that the 1917 decision in *Hitchman Coal & Coke v. Lewis* (as in John L. Lewis, the union organizer) was cor-

rect on technical grounds when it enjoined the union from asking employees to honor these promises to join unions while still working for their employer. The effect of the much despised yellow-dog contract was entirely benevolent from a social point of view because it reduced the disruptions from the union exercise of monopoly power, thereby stabilizing the operation of competitive markets. It was precisely for this reason that the Norris-LaGuardia Act banned injunctions in these circumstances, as part of a conscious Progressive effort to bolster the bargaining position of union organizations.

The last part of the pre–New Deal picture involved the efforts of the federal government and the states to reject the common law rules by imposing obligations on firms to bargain collectively with unions. The federal government had passed such laws for interstate railroads, and the states had done the same with employees generally. These initiatives were repulsed in *Adair v. United States* (1908) and *Coppage v. Kansas* (1915) respectively, on the ground that the forced association they required was inconsistent with the principles of freedom of contract that allowed all persons to decide whether or not to do business with another individual. Freedom of association did not then (and does not now) have as its correlative the duty of any third person (an employer) to deal with parties (multiple coworkers) who choose to associate with each other. It only requires that they not disrupt the relationships by force, fraud, or inducement of breach of contract. Quite simply, neither the federal government nor the states could force employers to bargain with unions in what would otherwise be a competitive market. A categorical refusal to bargain with a union was never a wrongful act under common law.

THE AGE OF COLLECTIVE BARGAINING

Those early rules could not survive the sustained wrath of progressives like Felix Frankfurter. As pillars of the common law system, the requirements for collective bargaining were first upheld under the Railway Labor Act, and then under the Wagner Act, on the grounds that the inequality of bargaining power made collective action on the union side a social imperative. The preamble of the Wagner Act encapsulates its major misunderstandings about the operation of law by insisting "full freedom of association or actual liberty of contract" — "full" and "actual" are weasel words — requires workers to be able to mass on one side of the arrangement, while having the right to impose a duty to bargain in good faith on the other. But those tropes exerted enormous power during the New Deal era so that the statutes were eagerly sustained because the system of collective bargaining supposedly introduced a much needed level of balance into the labor market.

Yet note this key limitation: The relevant committee report makes it clear that Senator Wagner's act was not designed to impose agreements from without:

> The committee wishes to dispel any possible false impression that this bill is designed to compel the making of agreements or to permit governmental supervision of their terms. It must be stressed that the duty to bargain collectively does not carry with it the duty to reach an agreement because the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory.

The state itself would only change the rules of the game under which labor disputes were resolved. It would not seek to resolve them itself. The hopes of industrial peace under this arrangement, however, were quickly dashed by a rise in strikes, which led, after World War II, to efforts under Taft-Hartley to impose greater restrictions on union power.

The Supreme Court triumphantly overturned *Adair* and *Coppage*. But union democracy and collective bargaining did not introduce any form of labor law utopia. The older questions of coercive pickets still remained. Union democracy with regular rotation of officers was a rarity, not the norm. Worker solidarity that held strong in good times was harder to achieve in bad times, when two-tier contracts offered lower wages to new union members in order to keep higher ones for older members. Organizational campaigns were a source of immense tension as both sides marshaled formidable resources to persuade the members of a bargaining unit (whose contours were often the subject of litigation) to side with them. Charges of intimidation and coercion have flowed profusely from both camps, and the NLRB has faced, and continues to face, serious administrative and logistical burdens in running secret-ballot elections.

As a very rough generalization, the judicial interpretation of the National Labor Relations Act (NLRA) and the administration of the secret ballot system have done about as well as could be expected. There has been virtually no drift in the legal system for the past 50 years. The flaws in the current labor law regime all stem, in my view, from the flawed institutional design that treats protected monopolies, complicated by the difficulties of democratic union politics, as superior to the common law system that relies on competitive forces, not administrative fiat, to raise wages and improve working conditions. It is not surprising that union membership in the private sector has trended downward since it reached its peak in the mid-1950s at around 35 percent of the workforce. Today it stands at about 8 percent. Employers have learned to adapt to the new system and don't make many public relations gaffes that open themselves up to unionization. The phasing out of huge plants, the rise of global competition, and the increasing mobility and fragmentation of the workforce have resulted in a decline in union influence not only in the United States, but everywhere in developed countries, including those that have very different union governance structures. I have no doubt that a return to the common law rules would release productive forces that would raise wages and expand opportunities. I am even more certain that this grand experiment will not be tried soon.

THE EMPLOYEE FREE CHOICE ACT

The slow and inexorable decline of union penetration in the private sector sparked the union campaign for the EFCA. Union leaders' chief claim is that employer resistance and delaying tactics have prevented successful organization drives.

The supporters of the statute tend to overlook the key point that the rapid decline in union representation is more a factor of the attrition of union ranks in established businesses where organization is not an issue. The United Auto Workers union had lost over 500,000 dues-paying members since 2000, even before the current bloodletting. On the organization side, unions win more elections than they lose, albeit more frequently in smaller units. But when the number of workers who participate in elections over that eight-year period is around 1.25 million, of whom about half opt for unions, the unions could not offset their losses from attrition even by winning all the contested elections, which they don't.

Frustrated by their failures, unions, led by Andy Stern and the resurgent Service Employees International Union, often engage in various scorched-earth tactics to discredit firms publicly or subject them to regulatory review in order to secure "neutrality agreements" with two features: the employer does not campaign against the union and the selection procedure is by card check, not secret ballot. But even here, the numbers do not add up and many firms' workforces decline to unionize.

The clear union perception is that the stronger legislative medicine of the EFCA is needed to reverse the decline in private employer unionization. Accordingly, the EFCA allows a union to demand as of right the card check substitute for the secret ballot election. The card check rules allow unions to collect the cards at any location in whatever manner they see fit. They may do so in secret, so as to avoid an employer anti-unionization campaign and any discussion among workers as to the desirability of accepting union representation. The EFCA contains no provision for NLRB supervision of the card-check — e.g., signatures before an NLRB representative or storage in neutral hands. Workers are not allowed to pull their cards (which are valid for six months) from the union and the employer is not allowed to challenge any card on the ground that it was obtained under duress, misrepresentation, or false promises.

The compulsory interest arbitration — a repudiation of the central feature of the Wagner Act — is little better. The EFCA establishes an impossibly rapid timetable for negotiations. A new small business has only 10 days to get ready for collective bargaining negotiation, which scarcely gives it time to hire a lawyer, let alone negotiate all the preliminaries on the disclosure of financial and other information to the union or prepare a schedule for meetings. Thereafter, the entire process calls for 90 days of negotiation followed by 30 days of mediation. If the parties do not reach agreement then, the entire range of mandatory issues of bargaining are resolved by an arbitral panel that operates under no time deadlines, has no duty to issue an opinion, and is not subject to any form of review by appellate courts.

This dual transformation that the EFCA promises is sure to provoke significant constitutional challenges. The initial assumption of most modern scholars is that after the 1937 constitutional revolution, Congress has a carte blanche on labor regulation, so that any detailed analysis is wholly beside the point. That assumption is no doubt correct with respect to ordinary legislation, but the EFCA is no ordinary statute. Its expansive reach cries out for constitutional review of the card check and the compulsory interest arbitration, both separately and in tandem.

CARD CHECK The secretive and coercive nature of the card-check system infringes on the ordinary rights of political association that are guaranteed to workers, and perhaps their employers, under the First Amendment protections of freedom of speech. Justice Harlan set out the basic position some 50 years ago:

> It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious, or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

In this connection, recall that the 1935 Wagner Act guaranteed workers full participation in the selection of unions by secret ballot (after hearing employer speech) and in the ratification of labor contracts by a vote of all bargaining unit members. The act was deemed constitutional because those democratic mechanisms supposedly offered a sufficient quid pro quo for the loss of individual associational rights, given the added power that workers could obtain with a union as their exclusive bargaining representative. But the EFCA would do away with the vote and block the initial campaign period. The EFCA offers no substitute protections that justify abridging those associational freedoms for dissident workers.

The First Amendment issues here are knotty. It would be a mistake to insist that any use of the card check device is per se unconstitutional. Right now, the law allows a card check when the employer has agreed to that device under a so-called neutrality agreement, whereby the employer agrees not to oppose the union's card check drive — itself a questionable waiver of the rights of all workers to determine whether or not to join a union. The distinctive First Amendment issue arises, however, because the EFCA does not take the simple expedient of saying that union cards will count for certification only after it makes a public declaration of its intention to organize a firm, which gives both dissident workers and the employer a chance to communicate their views to workers.

Under the current law, this concern with political association expresses itself both on the matters of political campaigns and union dues. On the first issue, the current law places restrictions on employer speech that are tolerated nowhere else under the Constitution. Employers are forbidden to make certain promises or threats to workers that could lead them to abandon the union. But they are still allowed to point out, truthfully, the consequences of unionization on other firms, and to make predictions (not threats) as to what would happen if the workers accept a union. These campaigns transmit information and turn out to be effective in many settings. The effectiveness of this limited form of speech is a social

good because it allows workers to gather more information to make a critical decision in their lives. And it is worth noting that, under the law, unions — out of earshot of anyone else — can say exactly what they want and make whatever promises they please to workers.

As a matter of first principle, it hardly follows that the statutory limits on employer speech in the current setting should justify the total neutralization of employer speech in a secret card check campaign. The general view we have of political debates is that they work better with more, rather than less, information. I see no social justification whatsoever for a system that silences both the employer and dissident workers in order to facilitate union organization drives that could easily result in trapping workers who have not had the opportunity to express their preferences. Indeed, even if one takes the dangerous and dubious substitution of card check for a union election, it should be simple enough to require the public announcement of a card check campaign, coupled with some institutional safeguards to insure that cards are not signed when subject to undue union influence. But the utter lack of any movement in this direction is, I think, a source of constitutional concern.

The general view we have of political debates is that they work better with more information, rather than less.

This conclusion is supported by a second line of First Amendment cases that protect dissident workers from having to contribute to the political activities of unions. Everyone accepts that union dues can be used to run collective bargaining negotiations and resolve individual grievances. But the courts have rightly held that unions cannot run roughshod over dissident members who do not want their dues to advance the political agenda of the union. That same concern with dissident workers suggests that they should have a right to state their case in an organized forum on the vital question of union election. And it hints strongly that no union should be able to push a binding settlement with no input whatsoever from its members. To be sure, in some cases, the workers may benefit from these deals. But the motivations for unions in individual cases are so complex that it is easy to envision situations where a union will shortchange one group of workers in order to maintain its position with another group. The total lack of any worker participation in these affairs will surely enhance union power, but it does not comport with any coherent associational right on both the political and economic dimensions of unionization.

INTEREST ARBITRATION The EFCA's interest arbitration provisions are even more vulnerable to constitutional attack. The initial, but limited, attack on the statute is that it creates an impossibly broad delegation of lawmaking authority to the Federal Mediation and Conciliation Service, which can constitute arbitral panels in whatever way it sees fit. Worse still, the EFCA invites the biased selection of arbitrators whose decisions are not reviewable on their merits by any independent party. It is important to remember that the EFCA has proved to be a highly divisive bill. In the 2007 House Report, every Democrat in the House Labor Committee signed on to the bill; every Republican dissented on its each and every provision. It seems abundantly clear that if the bill passes, it will only be with large Democratic majorities and signed by a Democratic president who also controls all appointments within the Department of Labor. Perhaps future regulations under the EFCA will clearly articulate how the arbitral panels will be selected and organized, and thus undercut the serious due process objections that relate to bias, the opportunity to be heard, vagueness, and the denial of any judicial review on the merits. But the current law contains no such clarifications. Nor does the EFCA contain some transitional period that allows these regulations to be developed by notice and comment prior to the law's taking effect. Normally, courts tend to wait until an actual dispute arises on these economic issues before finding that it is "ripe" to intervene in the context of some particular dispute. But with a potential of thousands of discordant negotiations and arbitrations, it only makes sense, as a bare minimum, to enjoin the operation of the statute until parties know the legal framework for negotiations.

Issuing regulations will not, however, blunt the remaining serious challenges to the EFCA under the Constitution's takings and due process clauses. For the purposes of this analysis, it is critical to orient the discussion. Initially, we can assume that government regulations that "merely" restrict the *use* of property are subject to far lower standards of judicial review than those orders that allow the government to *occupy* real property or to authorize private individuals to do so. That distinction, roughly speaking, gives the government enormous sway with "regulatory takings," such as laws that impose zoning regulations or to adopt landmark preservation statutes. But the distinction *does* subject government to a near-automatic obligation to compensate for "physical takings" if the government, for example, orders a private marina to open its waters to the boating public in exchange for gaining access to public waters.

The key insight is to carry over this framework to the evaluation of labor statutes. The main conclusion is that so long as the exit right is preserved to the firm under the NLRA, it passes constitutional muster under the forgiving tests for regulatory

takings that apply to land-use regulations. Indeed, it was on just that ground that the statute was sustained. Nonetheless, it is wholly inappropriate to use that lax framework to excuse the far greater intrusions of the EFCA, which should be evaluated under the per se takings rules used for physical takings under the current law. After all, the union can force itself on the employer, and thus has the equivalent of a lien on its assets to the extent dictated by an unreviewable arbitral decree. This move requires no flights of constitutional fancy but relies on the aforementioned distinction between restrictions on use and government occupation that is embedded in modern constitutional law. That distinction can, of course, be challenged as a matter of general property theory on the ground that it affords insufficient constitutional protection from restrictive covenants that limit the uses a landowner may make of his property. Yet note that this criticism raises the level of review for regulatory takings. It does not lower it for physical ones.

For these purposes, however, this perceived weakness in the current constitutional structure is beside the point. What is critical is that the distinction between occupation and use maps perfectly into the difference between the original Wagner Act, as modified by the Taft-Hartley Act, and the EFCA. The current NLRA regime limits the right of an employer to walk away from negotiations with the union, but does not force it to accept any particular contract that it finds unacceptable. Under the NLRA, therefore, the union cannot impose on the firm a losing arrangement that makes it impossible for the firm to work with the union. That level of employer self-protection is what saves the NLRA from constitutional invalidation on grounds of simple expropriation. Hence the parallel to land-use restrictions. In stark contrast, the EFCA, by imposing a mandatory first-contract arbitration scheme, forces the employer to accept a deal that is in no part of its making and, in so doing, to open its entire business (and trade secrets) to the union.

There is a vast difference between having to negotiate and being forced to accept a result that could create a disadvantageous contract, including one that could lead to bankruptcy. To use a simple analogy, the government violates the takings clause when it forces a landowner to sell property worth $100 on the open market to the government's designated buyer at the $75 price the government fixes. The forced sale leaves the owner short by $25, which the government must make up if the transaction is to pass constitutional muster. Otherwise, the willingness to pay a dollar to force the sale of the Empire State Building to a private party would insulate the government from paying the full value to its owner. Likewise, it is a taking — here, of $25 — to demand that an individual employer hire a worker for $100 per hour when the employer thinks that the labor is worth only $75. Yet the EFCA proposes to do just that, since its compulsory arbitration provision offers no protection against the expropriation risk of forcing employers to pay far more for workers after the card check than they would voluntarily agree to do. Stated otherwise, the difference here is as follows: The state may, without compensation, set a minimum wage for workers. But it cannot, without compensation, force the employer to hire some arbitrary workers at that wage when it does not wish to do so.

In response to this line of argument, defenders of the EFCA could point to other statutes that force property owners to do business. The most common illustrations involve a variety of regulated network industries, such as railroads, electricity, and telecommunications, for which the need to create an integrated framework makes pure competitive solutions impossible. But these cases are clearly distinguishable from the EFCA by two features: rate restrictions are intended to restrain monopoly power, and rate-of-return rules protect the firm against the confiscation of invested capital. Rent control statutes are a closer case because they do not involve network industries. But when these have been held constitutional, the implicit understanding is that the rates set have to cover the acquisition and operating costs of the business. In the extreme case, it is surely unconstitutional to devise a rent control statute that would allow the tenant to live on the premises for no rent at all. That rule does not result in a per se invalidation of the EFCA, but it manifestly does imply that some rate-of-return protection is needed. Currently, the EFCA has no such protection as the legislation expressly prohibits judicial challenges to excessive arbitral awards. At this point, the only possible escape from the EFCA is bankruptcy, about which the legislation says nothing.

The clear purpose of the EFCA is to force shotgun weddings, which would not be allowed if the resulting associations were subject to any constitutional scrutiny. The law must afford greater protection than bankruptcy or liquidation.

CONCLUSION

The ultimate conclusion is easy to state. There is today no constitutional obstacle against the rejection of competitive labor markets for the structure administered under the NLRA. But the current NLRA carefully preserves the exit option to protect against union domination. The EFCA removes that critical protection, which makes it a constitutional pariah, even for those who accept the New Deal constitutional synthesis that sustained the original Wagner Act. Rights of association and property clearly must count for something.

And so where do we stand, as of this writing? I think that Congress should avoid the huge constitutional fights that will follow by backing off the EFCA entirely, at least until its conspicuous features are excised by radical surgery. The huge economic dislocations that the EFCA would bring to modern labor markets represent true peril. And the risk of passage is high given that the adverse consequences of the bill are not in its budgetary implications but in its economic consequences for large and small firms alike.

The economic dynamite in the EFCA's short paragraphs should prompt Congress to exercise prudential caution in light of the huge social uncertainty and administrative costs it will generate at a time when unemployment is already a massive problem. We need not fear epithets of judicial activism when opposing a statute whose basic conception is so extreme that it should never see the light of day. The very theories of democratic governance in the workplace that insulate the NLRA from constitutional attack should doom the misnamed Employee Free Choice Act. R