

Employee Free Choice Act



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Workers, not corporations, should choose whether and how they form a union.

The Employee Free Choice Act

- Guarantees that, if a majority of workers want a union, they can have one, allowing them to form unions by petitioning for union representation;
- Provides mediation and arbitration for first contract disputes; and
- Establishes stronger penalties for violations of employee rights when workers seek to form a union and during first contract negotiations.

Process to Determine Representation

National Labor Relations Act (1935)

30% or more of workers petition to form union.

Then the employer decides on the process to form a union:

Petition or Election.

Proposed in Employee Free Choice Act

A simple majority petition is required to form a union. More than 30% but less than a majority may go to an election. The law, the petitioners and the union decide on the process.

The Process is Broken

Today, CEOs get contracts that protect their wages and benefits. But some deny their employees the same opportunity.

Although U.S. and international laws are supposed to protect workers' freedom to belong to unions, employers routinely harass, intimidate, coerce and even fire workers struggling to gain a union so they can bargain for better lives. And U.S. labor law is powerless to stop them.

Employees are on an uneven playing field from the first moment they begin exploring whether they want to form a union, the will of the majority often is crushed by brutal management tactics.

Employer Interference by the Numbers

- 1. Companies that illegally fire at least one worker for union activity during organizing campaigns: **34%**
- 2. Chance that an active union supporter will be illegally fired for union activity during an organizing campaign: **1 in 5**
- 3. Companies that hire consultants, attorneys and union-busters to help them fight union organizing drives: **75%**
- 4. Companies that force employees to attend one-on-one meetings with their own supervisors against the union: **77%**

The Secret Ballot Myth

Conditions for Election - Employer Intimidation

Employer Interference by the Numbers

- 5. Companies that threaten cuts in benefits or wages if the union wins the election: **47%**
- 6. Companies that threaten to close the plant if the union wins the election: **57%**
- 7. Companies that actually close their plants after a successful union election: **15%**
- 8. This doesn't even touch issues difficult to track and prove such as; changes in hours and assignments, threats of demotion, promised promotions, manipulation of the distribution of overtime, falsely representing potential contract language and benefits, distortion of the frequency of strikes, amount of dues etc.

The Secret Ballot Myth

Conditions for Election - Employer Intimidation

Employers have a disturbing record of intimidating workers related to exercise of their protected rights to participate in a union.

NLRB Annual Report	Employer Coercion related back pay awards
2003	23,144
2004	30,784
2005	31,358
2006	26,824
2007	29,559

Source: Two Studies of NLRB Cases With Very Similar Results

- **Source:** Kate Bronfenbrenner, "No Holds Barred: The Intensification of Employer Opposition to Organizing," May 20, 2009.
- A study of Chicago area NLRB representation elections by University of Illinois-Chicago professors Chirag Mehta and Nik Theodore reported similar findings. They found that workers were fired illegally during **30%** of organizing campaigns, employers force workers to attend one-on-one anti-union meetings with supervisors during **91%** of NLRB representation election campaigns, and employers hire consultants or union-busters to help them fight **82%** of union organizing drives. See "Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns," report for American Rights at Work, December 2005.

So how do Unions measure up in terms of coercion in petitioning?

Given that Union's are proposing the majority sign-up petition process as an avenue to avoid placing workers in "harm's way" when they want a union, it is fair to ask:

"How many NLRB cases indicate unions used coercion in the petitioning process?"

42 in 74 years or

1/2 worker a year in organizing campaigns involving tens of millions of workers!

Election Process Far From Fair

- The employer hires professional campaigners and uses supervisors at its discretion, the union's professional's are barred from the workplace.
- The employer controls the campaign in almost every way in the workplace including time, place and mandatory nature of meetings.
- Workers who have the courage to campaign are prohibited from using work time or location.

Imagine if you were running for City Council

Your opponent:

- 1. can campaign freely throughout the City with the best consultants money can buy and all the City's supervisors.
- 2. can fire your campaign manager, field director, communications director and your key activists.
- 3. can hold in-city gatherings and one-on-one discussions threatening & misrepresenting facts.

Note: 2 & 3 may be found to be illegal after years of litigation. The fired employees might get back pay minus any earnings they made elsewhere while waiting for litigation. Minor cost of doing business.

Still imagining you are running for City Council

You are free to:

1. Campaign in the city in non-work locations (lunch room) at non-work times without professional help with a high probability of observation and more firings.
2. Campaign outside the city but you better be cautious not to expose your supporters to coercion because your opponent may videotape your supporters from across the street or send informants into your meeting.

So you are among the few to survive the election, now try to negotiate a first contract.

Your opponent still has the power to delay, obstruct, coerce and continues to enjoy the unequal access to employees. A sampling from that playbook:

1. Countless legal delays that bar you from taking office for years,
2. Continue coercing and firing your supporters,
3. Outsource and eliminate concentrations of your supporters,
4. Refuse to allow the city council to meet, or meet but never address important items while sufficiently satisfying weak and subjective standards that define bargaining.
5. Continue with dishonest rumors of a plant closing.
6. Withhold, disclose at a snails pace, or disclose in a form impossible to use information the union needs to intelligently bargain.

You will file charges with the NLRB. The process slows further. The company encourages it's supporters to blame the union for the snails pace and lack of progress. All of which is intended to set conditions for the employer to withdraw recognition after a year to force another petition and election.

The NLRA Explicitly Promotes Collective Bargaining as A Worker Right and Key to US Labor Management Relations. It's promise is broken

Of 22,000 petitions for election filed with the NLRB between 1999 and 2004, only 12.9% resulted in a first contract within 1 year. The 2008 Study analyzed from the whole process from petition to first contract.

A 1994 study looked at post-certification first contract settlements from 1960-1980. The percentage of settlements declined from 86% to 63%.

A recent study found only 38% success in settlement in the first year of certification and only 56% ever completed a settlement.

FMCS data show 46% of certifications never complete a first contract.

The Dunlap Commission found that only 55.7% of certifications resulted in a first contract.

Failure At This Magnitude Deserves Legislative Action.

What is so important about reaching an agreement within 1 year?

- Under NLRA law and policy, if a settlement isn't reached in a year, employers are usually allowed to withdraw recognition of the union for the purpose of representing the workers .
- The workers must then re-petition for an election and endure another chance to be coerced or even fired.
- This system sets up an incentive for employers to avoid settlement. Arbitration of first contracts would remove that incentive.

Mediation and Arbitration for First Contract Disputes

Business Supports Arbitration of Disputes in

- Consumer disputes
- Real estate transactions
- Personal injury claims
- Credit card disputes
- Banking disputes
- Home construction contracts
- Health insurance claims
- Nursing home injuries
- Auto Accident Disputes
- Intellectual Property Disputes
- Many Business Contracts

The Chamber Wants It Both Ways

“.... Arbitration has helped Americans settle disputes fairly, quickly and inexpensively...”

—U.S. Chamber of Commerce, 4/2/08

“Virtually any type of dispute... can be addressed by arbitration.” —U.S. Chamber Institute for Legal Reform

“Arbitration is anathema.” —U.S. Chamber of Commerce, 4/13/09

Does Arbitration Work?

- In Canada arbitration is used to settle first contract disputes and in much of the US Public Sector arbitration is used to settle contract disputes beyond the first contract, particularly in public safety.
- Several studies suggest that the parties immediately begin settling on their own 60-70% of the time and rely on arbitration less and less over time. New York Police negotiators are now settling about 90% of contracts without arbitration. With decades of experience, in seven Canadian jurisdictions, the use of arbitrators has dropped to a range of 8% to less than 1%.

Does Arbitration Work?

- Mediation prior to arbitration appears to encourage settlement prior to the use of arbitration.
- Multiple studies of wage levels consistently conclude that settlements derived through arbitration don't vary significantly from settlements reached by the parties.

Increased penalties

- Back pay plus two times that amount in liquidated damages
- Multiple or repeated violations militate a \$20,000 fine per violation.

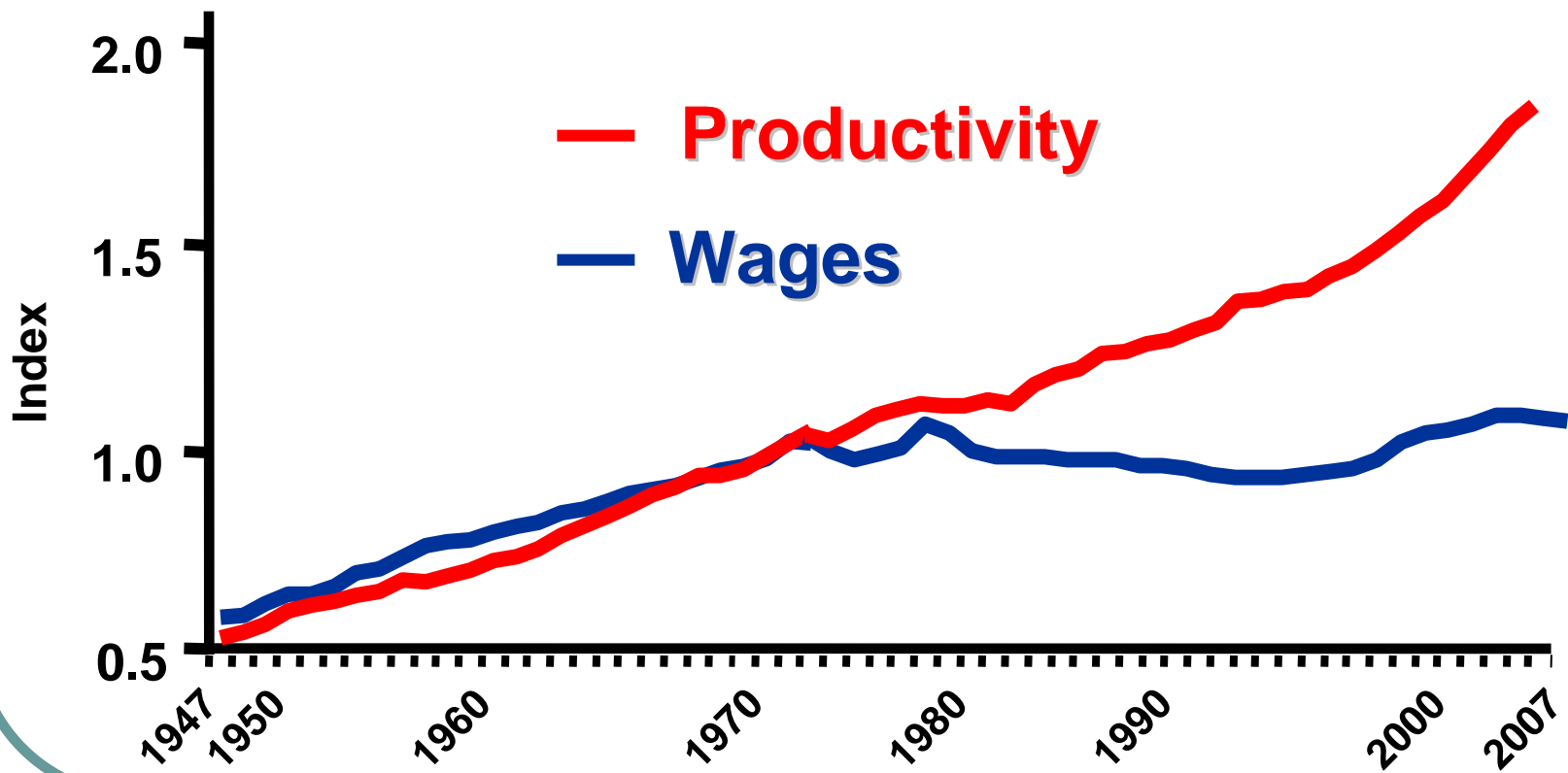
Why does it matter?

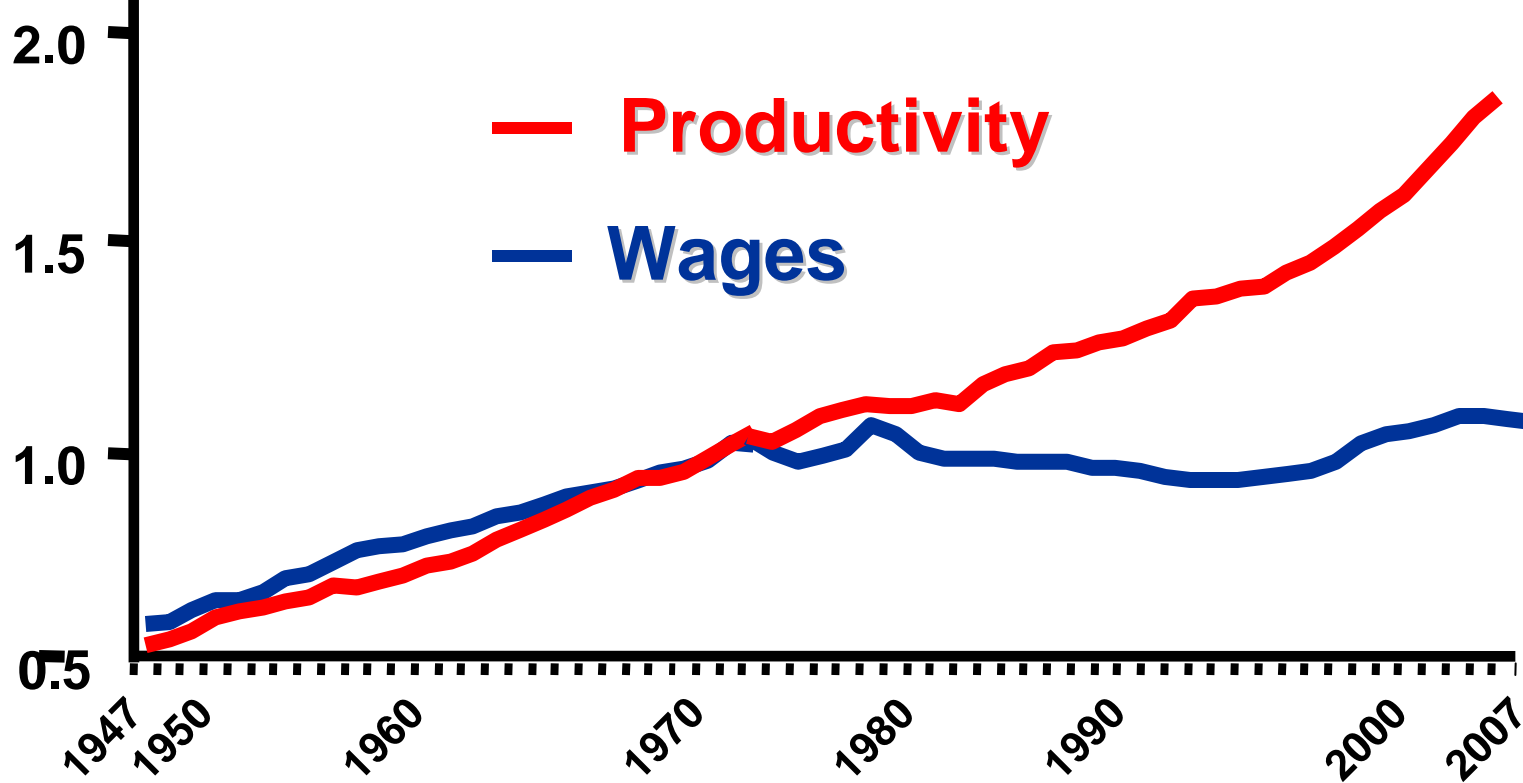
American workers with collective bargaining have a fair expectation that rising productivity should be shared to create a decent living with benefits, time off and a retirement. It is a fundamental understanding that built the largest middle class and strongest economy in world history. The slow methodical destruction of that arrangement over the last half century has dire consequences for our whole society.

The Economy Is NOT Like the Weather...

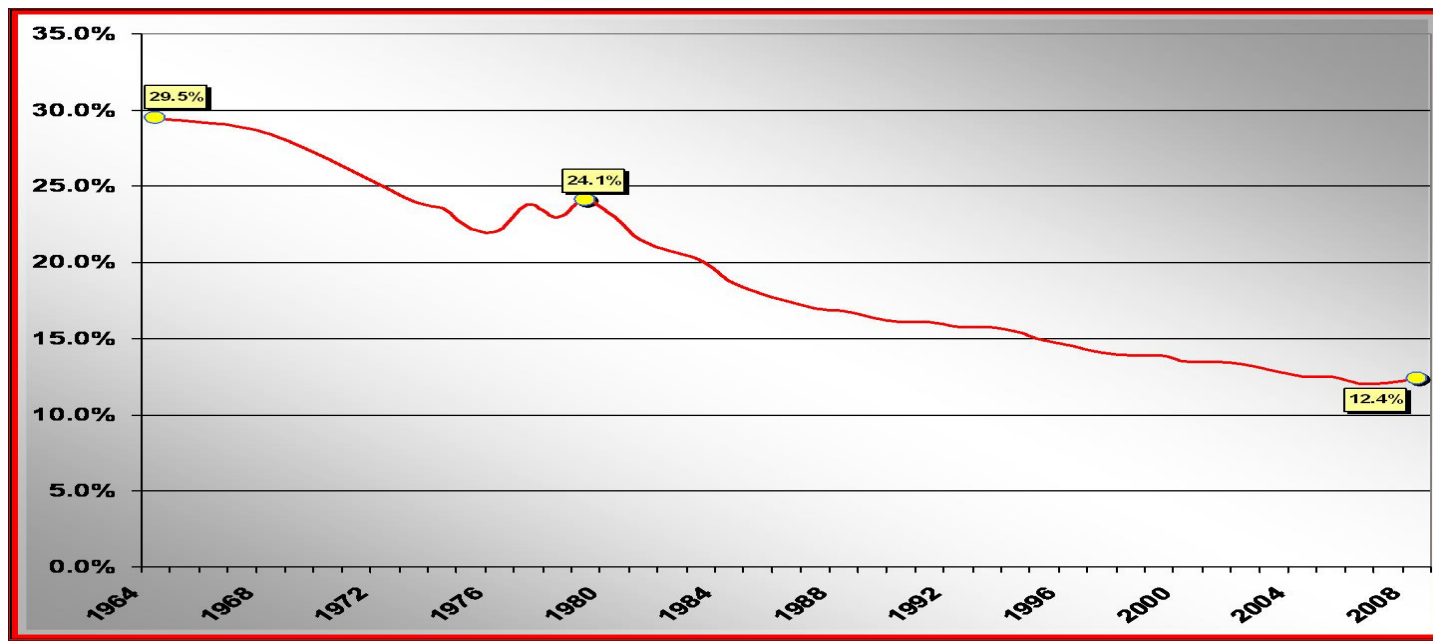


Growth in Productivity vs. Growing Gap in Wage Growth





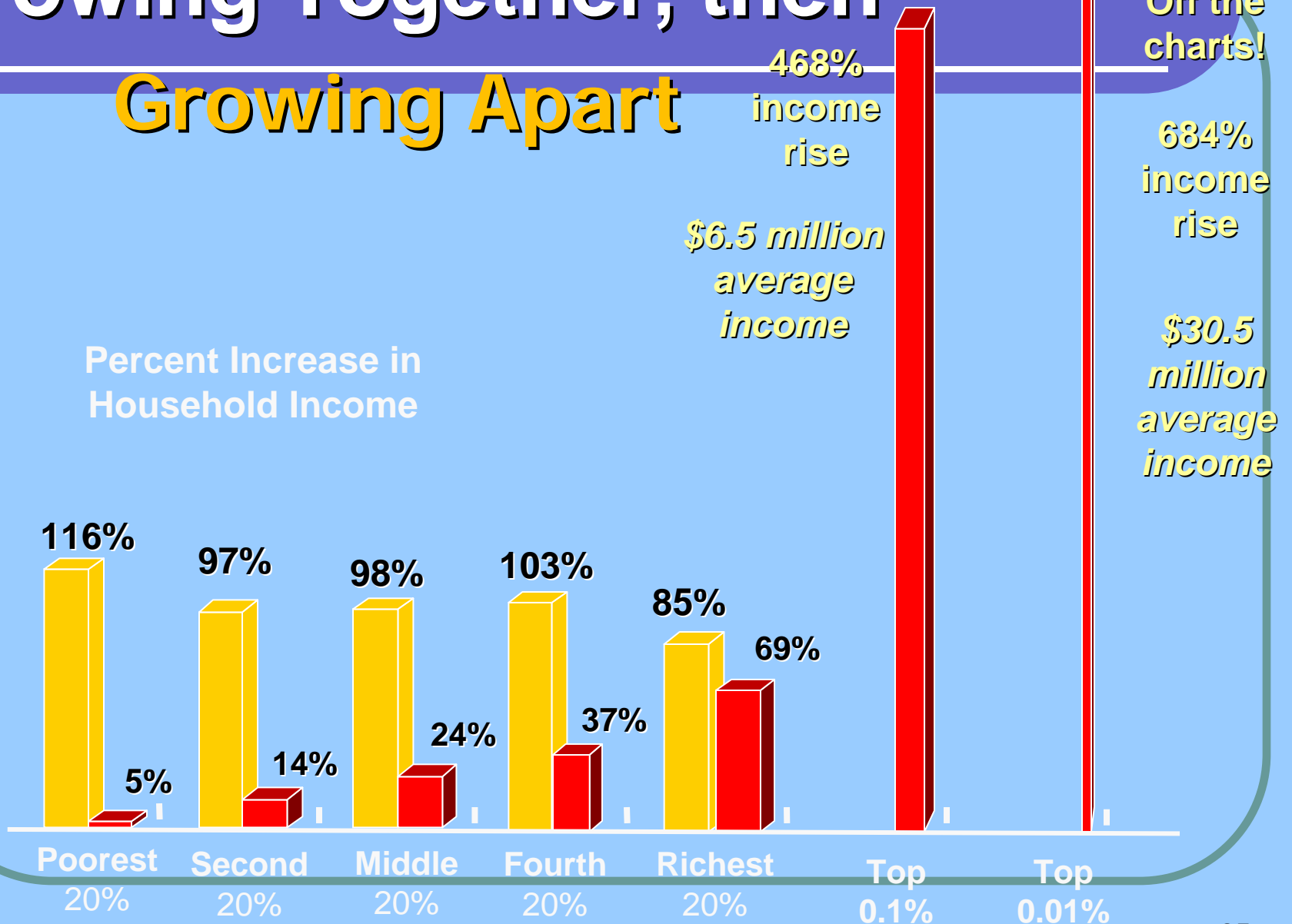
Change
in Union
Density



Growing Together, then

Growing Apart

Percent Increase in Household Income



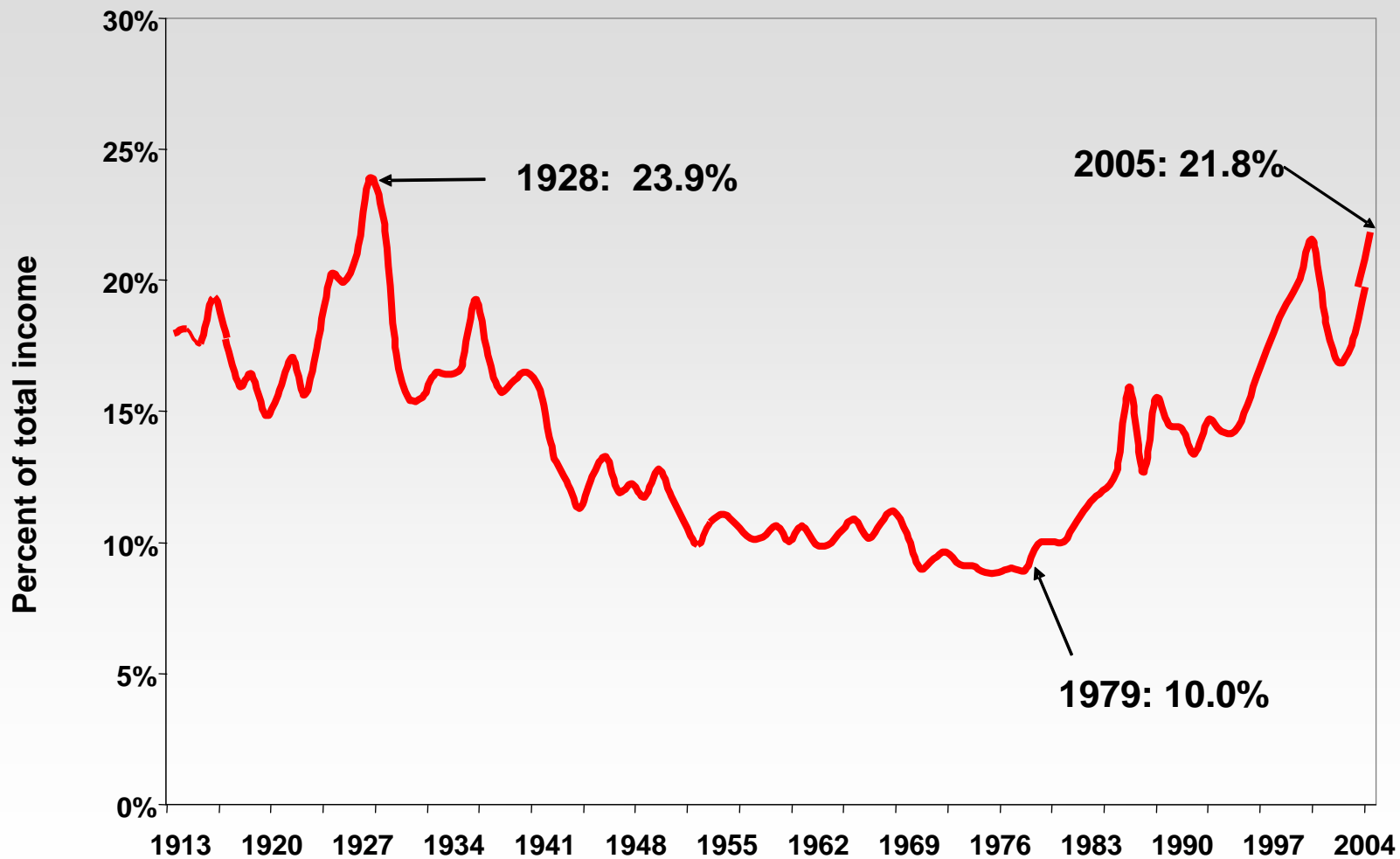
Off the charts!

684%
income
rise

\$30.5
million
average
income

Wealthiest Few Prosper as Once Before in 1928

Income Shares of the Top 1 Percent, 1913-2005



Source: Pietty and Saez (2006)

Union Motives

- Much is made of union motivations towards organizing workers. We want to do right by our current and future members. Yes, of course, we want to grow. Polling suggests 70% of non-union workers want to join us.
- We believe the NLRA in 1935 recognized employers are endowed with extraordinary power over workers and their family's lives. That power has been abused. The redirection of the wealth created by increased productivity to a few has led us to near economic ruin.
- Enough is enough! Sound bite arguments about sham so-called “Secret Ballot Elections” depend upon rhetoric over facts and context.

In Closing

Giving working people true freedom to form unions and bargain collectively is key to turning around the economy and rebuilding America's middle class. Union members are 52 percent more likely to have job-provided health care, nearly three times more likely to have guaranteed pensions and earn 28 percent more than nonunion workers. No matter what else we do to turn around America's economy and rebuild the middle class, we will not have broadly shared prosperity until we restore workers' free choice to bargain with their companies for a better life—without corporate intimidation.

The Employee Free Choice Act will do that.