

# American Meat Institute

## April 4, 2007

### Denver CO

- Developing Legal Rules
  - Zan Blue
- Constangy Brooks & Smith LLC



# The so called “Employee Free Choice Act”

This is the Holy Grail for unions.

This legislation completely rewrites the  
rules.

This is the most important bill seen in years  
concerning American competitiveness.



# The so called “Employee Free Choice Act”

This is the Holy Grail for unions.  
The House has passed this legislation.  
The Senate version has 47 co-sponsors.  
This bill can become law.



# The so called “Employee Free Choice Act”

This is the Holy Grail for unions.

Eliminates secret ballot elections



# The so called “Employee Free Choice Act”

This is the Holy Grail for unions.

Eliminates secret ballot elections

Authorizes the NLRB to fine employers up to  
\$20,000 per violation



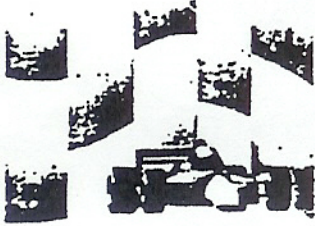
# The so called “Employee Free Choice Act”

## Practical Effects

The union card has a whole new effect.



# UAW



## Pick A Winner

### Authorization Card



(Please Print)

Name \_\_\_\_\_

Last

First

Middle Initial

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Phone (home) \_\_\_\_\_ (work) \_\_\_\_\_

Employer \_\_\_\_\_ Agency/Dept. \_\_\_\_\_

Job Title \_\_\_\_\_ Work Site \_\_\_\_\_

Working Hours \_\_\_\_\_ S.S. # \_\_\_\_\_

I authorize the International Union UAW to represent me as the exclusive bargaining agent for purposes of collective bargaining.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Call me to help on the UAW organizing campaign

*This is not a dues authorization*



PRINTED IN U.S.A.

# The so called “Employee Free Choice Act”

## Practical Effects

The union card has a whole new effect.  
There will be a permanent campaign in the  
workforce.



# The so called “Employee Free Choice Act”

## Practical Effects

The union card has a whole new effect.

An 8(a)(1) violation can draw a fine of  
\$20,000 in administrative proceedings  
before the Labor Board.

# The so called “Employee Free Choice Act”

## Practical Effects

The union card has a whole new effect.

The bill requires the Labor Board to award back pay AND in addition double back pay for certain 8(a)(3) violations.

# The so called “Employee Free Choice Act”

## Practical Effects

The union card has a whole new effect.

If the parties don't agree on a first contract within 90 days, the FMCS comes in.



# The so called “Employee Free Choice Act”

## Practical Effects

The union card has a whole new effect.

If the FMCS can't strong arm a contract  
within 30 days, the matter is referred to  
arbitration.

# The so called “Employee Free Choice Act”

## Practical Effects

The union card has a whole new effect.

The arbitration panel, whatever that may be,  
can impose contract terms for a period of  
two years.

# The so called “Employee Free Choice Act”

## Practical Effects Summary

This bill eliminates secret ballot elections.

This bill permits the NLRB to impose fines for the most minor violations.

This bill eliminates bargaining for first contracts.

# Immigration Wars

The first responsibility of a sovereign nation is to control it's borders.

The people with the courage to immigrate, legally or illegally, are the kind of people we want to employ.



# Immigration Wars

This conflict is the problem.  
Because we as a nation can't or won't do  
the first, we are doing the second.

The prosecution of employers is just  
beginning.



# Immigration Wars

Now we are seeing criminal prosecutions.

The fines are in the tens of thousands.

Civil RICO lawsuits have been given legitimacy with the *Mohawk v. Williams* decision.

Workforce raids have reached a new (low) level.

# Immigration Wars

In the stranger than fiction category:  
Golden State Fence executives plead guilty  
to repeatedly hiring unauthorized workers  
to build the border fence in San Diego.

The company paid \$4.7MM and the  
executives paid \$200K and \$100K.

# Immigration Wars

No one knows how to solve the conflict.



Brave New World  
or  
Was Aldous Huxley right?

Genetic Non-discrimination in Employment  
Act of 2007



# Brave New World or Was Aldous Huxley right?

The conflict:

Genes for diseases are now being identified.

Insurers and employers want to minimize risks.



# Brave New World or Was Aldous Huxley right?

The conflict:

So insurers and employers don't want folks with genetic markers showing tendency toward diseases on their rolls.



# Brave New World or Was Aldous Huxley right?

The proposed legislation, seen as likely to become law, is modeled on Title VII, and is to be enforced by the EEOC and private litigation.



# Email, Spoliation and a new kind of legal proceeding.

People think email is like the phone.

So they type things they would never put on paper.



# Email, Spoliation and a new kind of legal proceeding.

Email is forever.

But most storage systems are for catastrophic recovery.



# Email, Spoliation and a new kind of legal proceeding.

Most companies don't even know how to put a litigation hold on destruction of electronic documents.



Email, Spoliation and a new kind of  
legal proceeding.

And people try to hide things, whether they  
need to or not.



Email, Spoliation and a new kind of  
legal proceeding.

So the lawyers for the employee demand  
the emails first.



# Email, Spoliation and a new kind of legal proceeding.

When the company can't produce them, the lawyers yell "conspiracy to obstruct justice" and "spoliation."

And stuff like that.



# Email, Spoliation and a new kind of legal proceeding.

It works because of the duty to preserve relevant evidence once the company has knowledge of a potential claim.



# Email, Spoliation and a new kind of legal proceeding.

If the company is found to have negligently failed to preserve evidence, the court can order restrictions on the kind of evidence the company can use, or can tell the jury to assume the evidence would be harmful to the company.

# Email, Spoliation and a new kind of legal proceeding.

If the company is found to have intentionally destroyed evidence, the court can order the jury to assume liability and decide only damages.

That is bad.



# Email, Spoliation and a new kind of legal proceeding.

Confer with your legal counsel and the IT department to figure out how to announce and implement an archiving system once you learn of a potential claim.

Don't delay any longer.



# American Meat Institute

## April 4, 2007

### Denver CO

- Developing Legal Rules
  - Zan Blue
- Constangy Brooks & Smith LLC

