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SIX BILLS PENALIZING WORKING AMERICANS

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INTRODUCTION

Says Howard D. Samuel, president of the AFL-CIO Industrial Union Department: "We control the committees and the agenda on the floor [of the United States House of Representatives]."[1] This may seem a strange boast since organized labor is far down in membership--17 million in 1986 vs. 21 million in 1979, even though 12 million more Americans are employed. Yet Samuel may be correct. Despite its fast dwindling grass-roots membership, organized labor could be the beneficiary of some twenty bills pending in the House and Senate. This is the biggest labor agenda since the New Deal.

Many of these bills mandate employee benefits, essentially "backdoor taxes" on American business, workers, and consumers. Among these bills are organized labor's "Big Six":

1) **Anti-Double Breasting for Construction Companies,** which would force them to unionize their separate nonunion shops.

2) **Comparable Worth Pay Standards,** which would substitute an administered wage structure on federal workers for today's market-oriented system.

3) **Increased Minimum Wage,** which would price thousands of entry-level workers out of the job market.

4) **Mandated Employee Health Care,** which would burden business and the U.S. economy by requiring minimum health care benefit plans for employees.

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1. *Time*, June 22, 1987, p. 48.

5) Mandated Employee Parental Leave, which would force firms to provide employees with unpaid leave for specified reasons.

6) Plant Closing Requirements, which would mandate business to give advance notification before closing plants and laying off employees.

Paradoxically, enactment of these six bills would be a setback for the American worker. Whatever the seeming short-run employee benefits, these "Big Six" bills would injure employees indirectly by disproportionately hurting small business, the main source of job creation in the past twenty years. These measures, moreover, would add to the cost of goods and services, dulling further the U.S. competitive edge in the marketplaces of the world and thus exacerbating the trade deficit. By the same token, enactment of these bills would add to the unemployment rolls, weaken the employee-employer relationship, and inhibit the ability of businessmen to manage their firms.

WHAT ARE BACKDOOR TAXES?

Taxes can be direct and open, or indirect and hidden. Some taxes hidden from the consumer's view are direct levies on employers, which generate revenue for the Treasury and are passed along in the form of higher prices or, as in the case of the employer's share of Social Security taxes, lower wages. But others are even more hidden. They sneak in the "back door" by such means as government requirements that employers grant their workers a particular benefit such as minimum health care insurance plans or unpaid parental leave. As explicit indirect taxes, these employee benefits hit every American consumer in the pocketbook.

Backdoor taxes are increasingly popular in these days of Gramm-Rudman-Hollings budget limits and presidential threats of vetoes on tax increases. Mandatory employee "benefits" enable lawmakers to evade these constraints by passing the tab to employers, at least to begin with.

THE "BIG SIX" LABOR BILLS

1) Anti-Double Breasting for Construction Companies (H.R. 281 and S. 492)

Objective: These bills would amend the 1935 Wagner or National Labor Relations Act to bar double breasting in construction firms, confer union contract status on pre-hire agreements, and permit common situs picketing.

Background: Today fewer than 30 percent of the workers on major construction projects hold a union card. As recently as twenty years ago, construction unions represented nearly 80 percent of such workers. Helping to precipitate this change has been the now common construction industry practice of "double breasting" or "dual shop operations," a practice that the AFL-CIO Building and Construction Trades Department clearly wants to stop.

Double breasting or dual shop operations means that a construction company may have different independent affiliates, some with union contracts, some without. This permits, say, a long-established company with a unionized labor force to set up nonunion affiliated companies and thereby meet different market conditions, as in private construction. At the same time, it can continue to operate wage-regulated federal contracts under the Davis-Bacon Act. Without duality, a unionized company with federal work often finds its bids on private projects come in too high, because of its excessive labor costs. H.R. 281 and S.492 ban double breasting by defining a "single employer" as embracing separate companies, notwithstanding how distinct they are in specialization or location, as long as some, even indirect management, ownership, or control exists.

Common Situs Picketing. The proposed legislation also would legalize "common situs" picketing, a form of secondary or third-party boycott on construction projects. Common situs picketing thereby would allow a single union on a multi-union construction site to shut down an entire project. When President Gerald Ford vetoed a common situs bill in 1977, he was sustained by Congress.

Legalizing common situs picketing, in addition, would confer disproportionate strength to small unions. It would allow multi-situs picketing, under which a labor dispute at one company site would permit union picketing at all its other work sites as well--even in other states. Such picketing would subject neutral contractors or subcontractors on the site to another firm's labor disputes and shutdowns and prevent their employees from going to work.

The proposed legislation in addition would give pre-hire agreements, unique in the construction industry, the weight and enforceability of union collective bargaining contracts, notwithstanding the wishes of the employees affected in nonunion affiliates. In a pre-hire agreement, the company contracts with the union to set the terms and conditions of employment prior to the hiring of the first employee. But by banning double breasting and widening the application of pre-hire agreements, Congress would impose unionization on employees of nonunion affiliates.

Available Remedies. Admittedly, there are abuses associated with double breasting. But remedies for such abuse are already available under existing legislation. Example: A company seeks to evade the terms of a union contract by establishing an "alter ego" firm, or it tries to shift business to nonunion affiliates, which are not really separate and distinct. In either case a construction union can appeal to the National Labor Relations Board and charge the company with commission of an unfair labor practice. Even so, of all the recent labor practice charges filed with the NLRB, less than one-tenth of one percent of those charges claimed double breasting abuse. In the case of such a low number of abuses, legislation would hardly seem necessary.

Through anti-double breasting provisions, moreover, tens of thousands of construction workers in effect would be drafted into union membership or forced to pay the equivalent of union dues, regardless of their individual preferences. Denial of the employee's right of choice through compulsory membership or dues violates the First Amendment guarantee of freedom of association as well as the Fifth and Fourteenth Amendments guarantees of due process.

To be sure, H.R. 281 and S.492 allow an employee forced into a union to "opt out" through an NLRB "decertification" election, but this process is slow, cumbersome, and uncertain.

What is more, barring double breasting would reduce competition and managerial flexibility. With bidding on construction contracts already highly competitive, a firm with both a unionized subsidiary and an open shop subsidiary automatically would be compelled to pay the union scale across the board, likely forcing it to overbid on private contracts and thereby lose business, even in Right-to-Work states. Ironically, over time, this development could actually accelerate the rise of nonunion firms--the very trend the construction unions are trying to reverse.

2) Comparable Worth Pay Standards (H.R. 387 and S. 552)

Objective: These bills authorize a commission to conduct a job evaluation study of the federal workforce. The ultimate objective is to eliminate the wage gap between different if "comparable" occupational categories, resulting from alleged discrimination by gender. The bills would introduce an administered wage structure in place of market-determined wages.

Background: In 1981 the U.S. Supreme Court, in *County of Washington v. Gunther*, opened the door to the concept of comparable worth by ruling that county female prison guards could sue for violation of the equal pay provisions of the 1964 Civil Rights Act, even if the female guards did not perform exactly the same duties as their better paid male counterparts.

A more sweeping but temporary victory for comparable worth occurred in 1983, when a federal district judge in Washington State found the state guilty of gross gender discrimination since male-dominated jobs, it was argued, were better paid than comparable female-dominated jobs. The suit, brought by the American Federation of State, County and Municipal Employees, revolved around pairing such "comparable" jobs as nurses with plumbers and secretaries with truck drivers. The judge ordered compensating adjustments in female state employee wages and restitution for past female employee financial injury. The decision, which would have cost the state hundreds of millions of dollars, was reversed by the Ninth U.S. Circuit Court of Appeals in 1985. AFSCME is appealing the reversal to the U.S. Supreme Court.

Price Fixing. Unions see the comparable worth issue as a means of organizing employees, especially female workers. The AFL-CIO endorses the concept, which would circumvent the market forces of supply and demand in wage determination. Unions try to claim that comparable worth is the same as the 1964 Civil Rights Act provision of "equal pay for equal work." It is not. The Civil Rights Act requires that men and women performing the same job be compensated at the same rate. It does not attempt to address comparable jobs.

In essence, comparable worth amounts to price fixing. To be sure, H.R. 387 and S. 552 only authorize a commission to study the federal workforce pay structure. The resulting study, however, would likely become a springboard for comparable worth litigation and further legislation.

There are fundamental flaws in the comparable worth argument. Wage gaps, for instance, cannot be chalked up simply to gender discrimination. Typically those gaps reflect genuine differences in the work or the workforce. Mandated comparable worth pay schedules, moreover, overlook the key role of the market forces of supply and demand in establishing wages and salaries, including such subsidiary elements as demographic considerations and personal preferences for, say, indoor work as opposed to outdoor work. Indeed, comparable worth would force employees to accept wages determined by subjective bureaucrats, rather than wages derived from a market-oriented bargain between employer and employee.

The Human Condition. Women's wages are depressed today, it is claimed, because for decades women have been "pushed" into such occupations as teaching, nursing, and secretarial work. But a 1984 poll by the National Committee on Pay Equity, itself a pro-comparable worth lobby, discovered that 55 percent of women and 46 percent of men feel they are underpaid. Such feelings reflect the human condition. Moreover, social barriers between male-dominated and female-dominated jobs have been disintegrating in recent years. Male nurses, male teachers, and male flight attendants are increasingly common--as are female doctors, female lawyers, female professors, female CPAs, and female executives.

Even though the male-female wage gap is closing, the fact remains that women as a rule have less work experience, less seniority, and are less unionized than men. In addition, about half of the women clustered in low paying service and clerical jobs are in these jobs as a result of their own preferences for part-time or shorter-term work, which tends to be lower paying. Women's traditional home and child-bearing preferences also explain much of their in-and-out behavior in the labor force--behavior that tends to decrease pay.

Ignoring the market and artificially boosting female compensation would increase the cost of labor, reducing U.S. competitiveness. And under the pressure of a competitive marketplace, employers would tend to eliminate positions for workers whose pay is artificially increased by law. Thus, ironically, gender discrimination and female unemployment would rise, not be reduced, with the imposition of comparable worth standards. Comments Jennifer Roback, an economist at the Center for the Study of Public Choice at George Mason University: "Comparable worth is a major step in a direction that I believe would be tragic for American women in the long run."[2]

3) Increased Minimum Wage (H.R. 1834 and S. 837)

Objective: Increase the federal minimum wage from the present $3.35 an hour to $4.65 an hour over the next three years.

Background: These bills would amend the Fair Labor Standards Act of 1938, which sets the federal minimum wage. The sponsor of the Senate bill is Edward

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2. Jennifer Roback, *A Matter of Choice* (New York: Twentieth Century Fund, 1986), p. viii. See also, John E. Buttarazzi, "Equal Pay for Unequal Work: The Fallacies of 'Comparable Worth,'" Heritage Foundation *Backgrounder Update* No. 26, September 29, 1986; "Comparable Worth: Pay Equity or Social Engineering?" *Heritage Lecture* No. 63 (1986); S. Anna Kondratas, "Comparable Worth is Not Pay Equity," Heritage Foundation *Issue Bulletin* No. 110, July 31, 1984.

Kennedy, the Massachusetts Democrat. Ronald Reagan has vowed to veto the bill if it reaches his desk for signature, and at the same time, has called for a lower minimum wage for teenagers to reduce teenage unemployment.

The AFL-CIO has long made a higher minimum wage a major demand of Congress and strongly supports H.R. 1834 and S. 837. Organized labor's embrace of the minimum wage over the years has been based on its desire to use it as a lever to raise the entire wage structure, which is linked to the minimum wage. The AFL-CIO further endorses the concept of indexation in H.R. 79, introduced by Representative Mario Biaggi, the New York Democrat. The Biaggi bill would boost the minimum wage by $1.70 an hour in five stages and then index the minimum wage to half the average manufacturing wage.

Minimum wage legislation is not a question of justice or fairness. It is a form of price fixing, and it would be harmful for many reasons. Among them:

False Image. A U.S. Chamber of Commerce study of minimum wage employees shows that the typical minimum wage earner is single and young, works part-time, and lives at home. About 50 percent of all minimum wage employees live at home with a relative who earns much more income, and about 70 percent live in a family in which at least one other member holds a job. Almost 60 percent of these Americans are single and under 25 years of age. Indeed, better than a third are teenagers, many in their first job. In contrast to the false image created by sponsors of the legislation, the fact is that over 80 percent are not in poor households.[3]

The Minimum Wage Study Commission, created by Congress in 1977, reports that minimum wage increases inevitably spur job losses.[4] Commission studies indicate that a 10 percent hike in the minimum wage typically results in a teenager job loss of 80,000 to 240,000 jobs. And while the percentage of teenage job loss from minimum wage increases is higher than that of adults, the absolute adult job loss is greater--as many as 2.7 million for a 10 percent increase, according to one Commission study.[5]

Delaying Teenage Jobs. For teenagers, a minimum wage job is typically the bottom rung of a career ladder. Essentially, it is an extension of secondary school education and a form of on-the-job training to enable those just entering the labor force to obtain marketable skills, and then to move on to jobs with better compensation. Denying or delaying their entry into the labor force by pricing them out of the market with a higher minimum wage sets back career mobility for teenagers and many other Americans. The headline of the lead editorial of *The New York Times* of January 14, 1987, had it right: "The Right Minimum Wage: $0.00."

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3. Minimum Wage Study Commission, Fact Sheet, Minimum Wage Coalition to Save Jobs," Washington, D.C., 1987.

4. *Ibid.*

5. *Ibid.*

4) Mandated Employee Health Care (H.R. 2508 and S. 1265)

Objective: Business would be required to provide minimum health care benefit plans.

Background: The Minimum Health Benefits for All Workers Act of 1987 would require most employers to supply comprehensive health care insurance coverage to all employees and their families. The federal government would establish the basic design and content of these health plans. Private employers would have to pay for such insurance plans as one more cost of doing business, and employees and their families would be required to accept such plans.

A key feature of this bill, introduced in the Senate by Edward Kennedy, is that every employer, subject to minimum wage regulations, must enroll all employees, who work more than 17 1/2 hours a week, and their families in at least a minimum health plan. Practically every employer is subject to the minimum wage law. The proposed "minimum benefit package" includes:

- inpatient and outpatient hospital care, other than mental health care;
- inpatient and outpatient doctor services, other than mental health care;
- diagnostic and screening tests;
- prenatal and well-baby care;
- the stipulation that the insurance plan cannot limit coverage or disqualify any employee or family member because of any current or prior sickness, disorder, or condition.

Private firms currently furnish health care plans for some 132 million Americans or some 84 percent of the total private health coverage in the country. In 1985, U.S. business firms spent $105 billion on health care, not including business outlays through taxes for public health facilities. To be sure, employee coverage is incomplete. A study made for the Robert Wood Johnson Foundation and conducted by the University of California at Los Angeles determined that 22 million Americans lack such insurance.[6] The Employee Benefit Research Institute puts the figure higher, reporting that 14.5 percent of the population or some 35 million Americans lack health care coverage.[7]

There is broad agreement that covering the currently uninsured with some form of voluntary private health care plan is a desirable long-term goal. The issue is how to achieve that goal. H.R. 2508 and S. 1265 do not provide the answer. The reasons:

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6. Statement of the U.S. Chamber of Commerce by Robert E. Patricelli before the Senate Labor Committee, June 24, 1987.

7. *Ibid.*

According to a study by the Institute for Research on the Economics of Taxation, the cost of S. 1265 to American employers and employees would be $100.2 billion in 1988, escalating in later years.[8] The Institute estimates that this burden would impede the creation of at least one million jobs. Fewer jobs would mean lower output--a net loss of $25 billion in total real production in the economy. This loss would increase over time as costs of the mandated minimum health insurance program rose. In addition, the federal budget deficit would rise through a reduction in the corporate income tax and Social Security tax bases. The Institute estimates the cost to the Treasury at $35 billion next year alone.

Frustrating the States. Years of legislation and case law have set an institutional pattern that makes insurance regulation the province of the states and not the federal government. Every state has some form of mandated health insurance with more than 600 state plans in force. While these plans have boosted health care outlays for employers and decreased take-home pay for employees, they represent a continuing experiment in different approaches to the issue. A federal mandate would frustrate these efforts to find a solution at the state level.

Private incentives have helped produce a variety of innovative plans to provide quality health care at least cost, especially in the face of the medical expense inflation that has characterized the last twenty years. Among recent approaches has been the growth of health maintenance organizations (HMOs) and preferred provider organizations (PPOs), both designed to contain exploding medical costs. Private incentives along with entrepreneurial responses have contributed thereby to the success of privately financed health plans in America. More remains to be done. The private enterprise system is rising to the task. Congressional mandates would simply restrict such innovations.

5) Mandated Employee Parental Leave (H.R. 925)

Objective: Congress would mandate employers to furnish unpaid leave with job guarantees under the following conditions:

- four months for the birth or adoption of a child or placement of a foster child;
- four months for the serious illness of a child, stepchild, or legal guardian;
- four months for the illness of an older parent; and
- six months for the personal illness of a sick or disabled employee.

H.R. 925, introduced by Democrats William Clay of Missouri and Patricia Schroeder of Colorado, specifies that the total leave permitted an employee would be nine months per year, that employers would have to continue payments on health plans during the course of a leave, and that employers would provide the

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8. "Mandatory Health Insurance," Institute for Research on the Economics of Taxation, *Policy Bulletin* No. 39, July 8, 1987.

employees on leave with the same or similar jobs at the end of a leave of absence. And further, a commission would be established to recommend ways to mandate paid leave in the future.

Background: The U.S. Supreme Court ruled last January that California and certain other states could compel employers to introduce job-protected pregnancy disability leave for women, even if employers were not already required to furnish other disability benefits. Earlier, the Pregnancy Discrimination Act of 1978 mandated that employers who offer disability benefits to their employees have to treat pregnant women employees the same as they treat other disabled workers. Worker discrimination on the basis of pregnancy, states the 1978 law, is a type of sex discrimination proscribed under existing civil rights legislation.

Federal law currently mandates employee benefits only in three limited areas, all dating back a half century or more--Social Security, unemployment compensation, and workers' compensation. H.R. 925 thus would depart from the nation's traditional private sector employee benefit system.

Discriminating against Low-Paid Workers. A number of problems would be created by this bill. It would reduce flexibility, for instance, in meeting local employer and employee benefit needs. Congressional moves to mandate benefits such as parental leave would make it harder to tailor benefit packages to fit particular groups or local circumstances. Large and small businesses, retailing and manufacturing, seasonal and year-round businesses, service and smokestack industries, transient and permanent firms, all would be put on equal footing by federal mandates, thereby ignoring their special needs and particular conditions. Similarly, federal mandates would rigidly supplant entrpreneurial responses that could otherwise lead to innovative and improved benefit packages. They would also supplant employee preferences for individualized benefits, such as child care, extended paid vacations, flexible work hours, or even increased pay in lieu of benefits. And further, unpaid leave would discriminate against low-paid employees who could not afford to give up pay.

Another problem is that parental leave could lead to higher prices, lower wages, and greater unemployment. Parental leave is a backdoor tax by which employers would be saddled with another federally dictated cost of doing business and employees would be forced to give up either wage equivalents or benefits more to their liking. Some of these cost increases likely would be passed along in the form of price increases. Such costly mandates would impair the ability of businesses to create jobs.

Penalizing Women. Gender discrimination may be heightened by mandated parental leave. Even though this measure applies to both male and female, women of childbearing age might be passed over in hiring and promotion because of the employer's concern over mandated maternity leave and its impact on business operations. After maternity leave, the infant care and serious illness of a child provided for in the legislation pose other problems in hiring and promoting women. Other countries with generous maternity leave provisions, notably West European, have experienced increasing concentrations of women of childbearing age in low-paying jobs and in the unemployment lines. This experience suggests that West

European employers have had to discriminate inadvertently against women in economic terms so as to meet competition.

H.R. 925 specifies up to four months of parental leave for care of a sick child. After such extended leave, the employee must be returned to the same or a similar job. Unanswered by the proposed bill is the key question of who would fill the vacated job during prolonged leave? And what would constitute a "similar" job on return? What about litigation? Such employer concerns are real. Accordingly, parental leave requirements quite simply might induce covert sexual bias against women.

6) Plant Closing Requirements (H.R. 1122 and S. 538) and an Amendment to the Senate-Passed Omnibus Trade Bill (S. 1420)

Objective: Authorize the federal government to examine and determine, in advance, if plant closings, transfers, or layoffs are being carried out "in good faith." Require public notification of a private management decision to shut down a plant, relocate operations, or lay off personnel, and require employers to negotiate with affected unions a management desire to close a plant or lay off employees.

Background: Plant closing legislation was averted in the House in the 99th Congress. Floor debate was extensive, and five different votes were taken. The final vote was 208-203 against the legislation. Earlier this year, however, the Senate voted for the omnibus trade bill (S. 1420), which incorporated the following plant closing provisions:

◆◆ An employer would have to furnish 60 days notification of plant closings or layoffs that would result in an "employment loss" for 50 or more workers during a 90-day period.

◆◆ The employer would have to give notification to each worker affected, to the state dislocated-employee agency, and to the local governments affected.

◆◆ A permanent layoff, a layoff of indefinite duration, a layoff of definite duration in excess of six months, or a reduction in working hours by 50 percent would all be construed as "employment loss."

◆◆ Employers would be subject to the law if they employed 100 or more employees.

Plant closings and worker dislocations unquestionably are problems, and they are distressing for all involved. But they are best addressed by the use of existing public and private facilities, which preserves the flexibility of the American free enterprise system to create jobs--which it has accomplished at a pace in the last seven years far faster than that of Japan and Western Europe combined. H.R. 1122 and S. 528, on the other hand, contain provisions that either are unnecessary or would hurt the long-run interests of U.S. workers. The reasons:

Laid-off and dislocated workers can tap existing employee placement, readjustment, and relocation programs available through the U.S. Labor Department.

For example, through the 1982 Job Training Partnership Act Title III program, administered by state job-training coordinating councils, thousands of dislocated workers are aided each year. Unemployment insurance compensation is also available to tide the worker over.

Responsible employer termination procedures are typical of most plant closings and serve to allay their impact on employees. These procedures generally include individual counseling, job placement services, severance pay, liberalized pension provisions, and when practicable, early notification of the employees and communities affected. Write the editors of *Regulation* magazine: "When both general and specific notice are taken into account, the number of establishments giving notice rises to 88 percent, with almost 60 percent providing more than two weeks."[9]

Prescriptive plant closing notification would boomerang against its intended beneficiaries. Forcing notification upon employers in delicate plant closing situations might break the confidentiality needed for selling the plant to another owner better fitted to operate it at a profit or converting the plant into another line of work. Moreover, prenotification would confer substantial new powers to trade unions and local governments, while undermining the flexibility required for effective management decision making. The result could well be the chilling of free enterprise and a net loss of jobs. Consider the dismal job situation in Western Europe, where prenotification is common.

CONCLUSION

The "Big Six" bills are touted as being "pro-labor." They are not. They are, however, pro-unions. They are not pro-laboring American men and women. All six bills impose costs on the employer through backdoor taxes, thereby curtailing job generation and economic growth. The tab, of course, eventually lands on the employee and the consumer. Meanwhile, the bills, if enacted, would be a drag on national productivity and U.S. competitiveness.

Instead of looking at measures that destroy jobs, impede job creation, and slow U.S. economic growth, Congress should help working Americans by creating an environment conducive to economic growth and job creation. Specifically:

◆◆ Repeal the Davis-Bacon Act and other laws applying to federal contracts that prescribe wage rates.

◆◆ Preserve and enlarge the right to work at home.

◆◆ Widen antitrust coverage to include those particular state and local occupational licensing requirements, including those for taxi medallions, hairdressers, and undertakers, which in effect confer monopoly status through quota constraints and thereby serve to limit job opportunities.

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9. "Pink Slips and Politics," *Regulation*, No. 1, 1987, p. 11.

◆◆ Examine the entire gamut of frontdoor and backdoor taxes in order to lighten tax burdens and thereby advance the competitiveness and job creation capability of American enterprise.

Organized labor's agenda for employee benefits is a facade for backdoor taxes on America's workers. These taxes would destroy the golden goose of U.S. job creation, mainly by adding to the cost of America's goods and services and thereby dulling further America's competitiveness in world markets. It follows that the "Big Six" labor bills, if enacted, will result in higher unemployment, weaken the employer-employee relationship, reduce management flexibility in designing "customized" benefit packages, and weigh heavily against small business--the big source of job creation in the last twenty years.